HEALTH OVERVIEW AND SCRUTINY PANEL
27 SEPTEMBER 2012

RESPONSE TO GOVERNMENT CONSULTATION ON LOCAL AUTHORITY HEALTH SCRUTINY

Assistant Chief Executive

1 PURPOSE OF REPORT

1.1 This report invites the Health Overview and Scrutiny Panel to note the Council's response to a consultation over proposals for Local Authority Health Scrutiny.

2 RECOMMENDATION

2.1 That the Health Overview and Scrutiny Panel notes the Council's response to the Department of Health's consultation over proposals for Local Authority Health Scrutiny.

3 SUPPORTING INFORMATION

3.1 The Department of Health published its proposals on Local Authority Health Scrutiny[1] on 12 July 2012, with a closing date for responses of 7 September. The consultation sought views on whether health service reconfiguration and referrals should also include a:

- requirement for local authorities and the NHS to agree and publish clear timescales for making a decision on whether a proposal should be referred;
- new intermediate referral stage to the NHS Commissioning Board for some service reconfigurations;
- requirement for local authorities to take account of the financial sustainability of services when considering a referral, in addition to issues of safety, effectiveness and the patient experience; and
- requirement for health scrutiny to obtain the agreement of the full council before a referral can be made.

3.2 The attached response was agreed with Members of the Panel, also with the Executive Member for Adult Services, Health and Housing.

ALTERNATIVE OPTIONS CONSIDERED/ ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS/ EQUALITIES IMPACT ASSESSMENT/ STRATEGIC RISK MANAGEMENT ISSUES / OTHER OFFICERS/ CONSULTATION – Not applicable

Contact for further information

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[1] http://www.dh.gov.uk/health/2012/07/health-scrutiny

Bracknell Forest Council Response to Department of Health Consultation on Local Authority Health Scrutiny

General

Bracknell Forest Council welcomes the Government's commitment to increase accountability and enhance the public voice on the National Health Service, and the commitment to make the new NHS bodies subject to effective scrutiny and accountability. The Council believes that the provision of good health services depends on effective scrutiny of health service providers by democratically elected representatives of the local community. We provide below the Council's comments on the Department of Health consultation proposals for health scrutiny.

Q1. Do you consider that it would be helpful for regulations to place a requirement on the NHS and local authorities to publish clear timescales? Please give reasons

We support this proposal in principle. However, it would be unreasonable to require local authorities to immediately notify the NHS body of the date by which they intend to make a decision (as to whether to refer the proposal). In practice, referrals are rare and a decision to embark on that route would only be taken after careful consideration. Consequently, and given that most consultations run for at least 8 weeks, we suggest that local authorities are encouraged to notify an indicative decision date within three weeks of receiving consultation proposals.

Q2 Would you welcome indicative timescales being provided in guidance? What would be the likely benefits and disadvantages of this?

No. Whilst indicative timescales can sometimes be useful, as the consultation document recognises (paragraph 52), every reconfiguration scheme is different, and any prescribed timescale would risk undermining the value of the scrutiny process which the government is trying to strengthen. Instead, the guidance could usefully state that it is incumbent on local authorities to work constructively with NHS bodies to complete the consultation process expeditiously, with no undue delays.

Q3. Do you consider it appropriate that financial considerations should form part of local authority referrals? Please give reasons for your view.

Yes. Costs, savings, clinical outcomes and safety – as well as wider impacts e.g. on social care - must all be properly considered in any local authority referral concerning reconfiguration proposals. However, we do not think there should be any obligation on local authorities to put forward alternative proposals (paragraph 60). Whilst local authorities should be free to suggest alternatives, the onus should always be on the NHS to determine options and financially assess them.

Q4. Given the new system landscape and the proposed role of the NHS Commissioning Board, do you consider it helpful that there should be a first referral stage to the NHS Commissioning Board?

We consider that the NHS Commissioning Board's real influence over local commissioners will be extensive, such that a first referral stage to them would not be appropriate in all cases. Accordingly, we favour the alternative approach set out in paragraph 67, whereby local

authorities would have the discretion to raise concerns with the Commissioning Board, whilst retaining the right to make referrals directly to the Secretary of State.

Q5. Would there be any additional benefits and drawbacks of establishing this intermediate referral?

An intermediate referral offers the prospect of faster resolution to concerns, but this would be uncertain. Possible drawbacks would include the additional time and cost of having another stage in the referral process. Clarity over timescales and decision making is very important.

Q6. In what other ways might the referral process be made to more accurately reflect the autonomy in the new commissioning system and emphasise the local resolution of disputes?

The Council suggests that there might be a valuable role for Health and Wellbeing Boards in the local resolution of disputes. This forum offers the potential to achieve an informed consensus among representatives of bodies with the strongest local knowledge, responsibility and influence. This could be a discretionary referral mechanism for the local authority health scrutiny, as an adjunct to their right to make referrals directly to the Secretary of State.

Q7. Do you consider it would be helpful for referrals to have to be made by the full council? Please give reasons for your view.

This additional requirement would not be consistent with the expressed aim of the Government to strengthen and streamline health scrutiny, and would add a procedural delay. Neither would it accord with the Local Government framework whereby full Council determines the policy framework and other high level decisions, entrusting more detailed issues to individuals and committees appointed by them. Nor are the arguments in the consultation paper on assembling evidence convincing. Furthermore, it would slow down the process as full Council meets relatively infrequently (once every two months is the norm). It should also be noted that referrals are rare, indicating that in practice local authorities use this referral power very sparingly.

An alternative, preferable approach would be to require that any referral by local authority scrutiny must be accompanied by a statement by the Council's Executive; the presumption being that the referral will be treated much more seriously by the SoS if the Council's leadership are supportive of the case made for the referral.

Q8. Do you agree that the formation of joint overview and scrutiny arrangements should be incorporated into regulations for substantial service developments or variations where more than one local authority is consulted? If not, why not?

No. This would reduce the mandate for local decision making and would not reflect practical reality at local level, where different configurations of health providers result in differing boundaries geographically. Furthermore:

- There should be no sanctions for failing to form a joint committee. The reason for this is that one or more councils in the area may be unwilling to become involved in a joint committee, and it would unfair to punish those which are prepared to be involved;
- Individual councils must retain the right to make their own responses to a consultation. This is because consensus might be achievable between members of a joint committee on some aspects of the consultation response, but it is inevitable that individual councils may hold differing views on reconfigurations that

hold out differing benefits/disadvantages between the council areas making up the joint area.

Q9. Are there additional equalities issues with these proposals that we have not identified? Will any groups be at a disadvantage?

None that we are aware of.

Q10. For each of the proposals, can you provide any additional reasons that support the proposed approach or reasons that support the current position? Have you suggestions for an alternative approach, with reasons?

Our views are incorporated in the responses to the questions above.

Q11. What other issues relevant to the proposals we have set out should we be considering as part of this consultation? Is there anything that should be included that isn't?

It would be useful to set out more fully the government's aspirations on the interaction of Healthwatch with the local authority scrutiny arrangements.