APPENDIX 1

LIBERATING THE NHS: LOCAL DEMOCRATIC LEGITIMACY IN HEALTH

The Government would welcome views on the following questions:

Q1 Should local HealthWatch have a formal role in seeking patients' views on whether local providers and commissioners of NHS services are taking account of the NHS Constitution?

Comments:

Yes a formal role is important because if it is informal then there is a risk of comments being considered unrepresentative or insubstantial . However sufficient resources will be required to ensure patients' representative views are captured and the key issues of the NHS Consultation are fully communicated and understood.

Q2 Should local HealthWatch take on the wider role outlined in paragraph 17, with responsibility for complaints advocacy and supporting individuals to exercise choice and control?

Comments:

These are all separate functions, and may either duplicate with other bodies, be contradictory. There are other more specialist areas for complaints advocacy which may be better suited to supporting patients and allowing those with accountability for commissioning (especially these are jointly commissioned between the NHS and local authorities) or service to respond and develop improvements.
Healthwatch should however be allowed to monitor complaints and make recommendations to commissioners on improvements.
It should be for local determination on support for individuals to exercise their choice and control of health and social care.

Q3 What needs to be done to enable local authorities to be the most effective commissioners of local HealthWatch?

Comments:

Providing a framework and examples of best practise and cost effectiveness does help improve effective commissioning. Advice also on linking this to wider cross -boundary consortia and providers of support and engagement. Consortia arrangements for commissioning LINKs has been a mixed experience in different areas for example.

Q4 What more, if anything, could and should the Department do to free up the use of flexibilities to support integrated working?

Comments:

Provide clarity on outcomes intended, especially where joint funding and services are being deployed (current regulatory, and flexibility risk inhibits the sharing of risk). Transparency and longer term funding encourage sharing risk and investment across health and social care , both in adult sand children services, as well as retaining skills.
Leave to local determination the best use of flexibility.

The continuation of 'fines' on local authorities for delays transfers of social care (DTOC) is overly bureaucratic and involves staff time inefficiently due to laborious administrative systems. An incentive would be for the Department to encourage acute NHS Foundation Trusts and/or NHS Commissioners to pool funds with the LA and agree on integrated outcomes such as the development of more local preventive and rehabilitative services which benefit the patients and reduce hospital admissions.

Q5 What further freedoms and flexibilities would support and incentivise integrated working?

Comments:

One fundamental issue for the flexibility for pooled commissioning budgets is the fact that NHS Care is free at the point of delivery and social care subject to means tested charges. The Government's Review of Long Term Social Care funding provides an opportunity for this to be taken into account.

The Equality Act 2010 and the Human Rights Act 1998 both emphasise the need for public procurement to improve equality as in care and support. Local authorities and NHS commissioners should have more freedom locally to use combined procurement to improve fair access to health and care services and thereby improve efficiency and lower cost outcomes.

Q6 Should the responsibility for local authorities to support joint working on health and wellbeing be underpinned by statutory powers?

Comments:

The existing powers on health and wellbeing in the Local Government Act 2001 would be sufficient if all NHS bodies have similar statutory duty to cooperate. This power and the equalities legislation outline in Q5 requires guidance and flexibilities for joint working, with the outcomes in public health being the measure of success.

Q7 Do you agree with the proposal to create a statutory health and wellbeing board or should it be left to local authorities to decide how to take forward joint working arrangements?

Comments:

If there is a statutory Health & Wellbeing Board then there must be a statutory duty on all key bodies to cooperate (as in Q6 above).

There would need to be clarity on the separation of joint executive commissioning planning and pooled budget functions from the engagement on priorities and scrutiny functions, to allow for appropriate governance and accountability.

Q8 Do you agree that the proposed health and wellbeing board should have the main functions described in paragraph 30?

Comments:

Yes, providing these are clarified as in Q7 above, and have strategic fit with overall corporate and community partnership objectives. It may be that the local separation of executive from engagement and scrutiny functions would lead to the board having the democratic accountability focus separate from the joint commissioning executive functions agreed between the local authority and NHS commissioners.

Q9 Is there a need for further support to the proposed health and wellbeing boards in carrying out aspects of these functions, for example information on best practice in undertaking joint strategic needs assessments?

Comments:

The dissemination of Best Practice, the measurement of outcomes and delivery of efficiencies will all be vital for a Health & Wellbeing Board. Some resource to achieve this, together with close links to the Public Health functions hosted in the local authority, would be necessary for an effective JSNA to be produced with local agreement with patients, Healthwatch and other stakeholders on the priorities for investment in health and social care.

Q10 If a health and wellbeing board was created, how do you see the proposals fitting with the current duty to cooperate through children's trusts?

Comments:

The Lead Members for Adults & Children's Services see a positive opportunity to give the Health & Wellbeing Board a 'Think Family' strategic approach. The same duty to cooperate would be important to ensure the autonomous GP and school stakeholders are engaged in an efficient way. Further discussions are needed locally and national best practise advice would be helpful including how local arrangements for coordination of Children Services follows the Children trusts..

Q11 How should local health and wellbeing boards operate where there are arrangements in place to work across local authority areas, for example building on the work done in Greater Manchester or in London with the link to the Mayor?

Comments:

A health and wellbeing board framework for different Council tiers, or consortia, would help for consistency and promote efficiency where these can be combined (some Adult and Children Safeguarding board arrangements are good examples of such collaboration). This should be down to local determination as to what fits best and where in terms of accountability.

Q12 Do you agree with our proposals for membership requirements set out in paragraph 38 - 41?

Comments:

Clarity is required on stages, evidence, outcomes and effectiveness as suggested at question 13. Also the clarification on the range of functions as outlined in Q 7 above, would determine the membership as The local political mandate has to be seen as the key influence as representing the democratic legitimacy.

Q13 What support might commissioners and local authorities need to empower them to resolve disputes locally, when they arise?

Comments:

National framework and guidance following good practice would enable standards to be set and reviews to determine disputes. Joint commissioning executive functions should operate with separate scrutiny and accountability arrangements to ensure transparency and that disputes have channels for resolution.

Requirements on NHS to cooperate and consult on major service redesign at early stage with the local authority through health and wellbeing boards.

Q14 Do you agree that the scrutiny and referral function of the current health OSC should be subsumed within the health and wellbeing board (if boards are created)?

Comments:

No we do not think that a Health & Wellbeing Board with strategic, coordinating and influencing functions should also hold scrutiny and accountability functions. These should be separate as outlined in Q7 above.

Q15 How best can we ensure that arrangements for scrutiny and referral maximise local resolution of disputes and minimise escalation to the national level?

Comments:

See answer to Q13. A duty on NHS commissioners to formally consult at early stage of all major service redesign with the local authority through the health and wellbeing board.

Q16 What arrangements should the local authority put in place to ensure that there is effective scrutiny of the health and wellbeing board's functions? To what extent should this be prescribed?

Comments:

This should be down to local determination within national framework, dependant on outcomes measurement. If there was the separation outlined in Q7 then a joint commissioning executive would be effectively scrutinised by a participatory stakeholder board, and the principles for this should be prescribed with local determination as to the delivery.

Q17 What action needs to be taken to ensure that no-one is disadvantaged by the proposals, and how do you think they can promote equality of opportunity and outcome for all patients, the public and, where appropriate, staff?

Comments:

This should be covered by the Equality Impact Assessment requirements for all proposals made by any joint commissioning executive. The health and wellbeing board should ensure representation

of vulnerable and disadvantaged groups that reflects local population in the setting priorities from the JSNA, the equalities legislation driving quality and efficiency as set in Q5.

Q18 Do you have any other comments on this document?

Comments:

a) ***The guidance on JSNA should include the health and social needs of children and adults, as well as the impact of services and interventions invested in. The process whereby public health hosted within the local authority works through a health and wellbeing board to agree upon priorities of needs that should be addressed by joint commissioning arrangements, would need tyo include the equalities aspects outlined in Q5.***
b) ***Combining the GP consortia and NHS specialist commissioners in joint working arrangements with local authorities is vital. It is assumed in the comments that NHS commissioners refers to both in such arrangements.***
c) ***There is a risk of local authorities being seen publicly as accountable for NHS services, for which the White Paper clearly states they do not directly control. Democratic accountability is welcome and needs to be dealt with in the separation of any joint commissioning executive from scrutiny/engagement functions.***

Responses to the questions in this consultation document should be sent to nhswhitepaper@dh.gsi.gov.uk or to the White Paper Team, Room 601, Department of Health, 79 Whitehall, London SW1A 2NS by 11 October 2010.