
Report to
Scrutiny Board 4
Cabinet
Council

14 November 2007
14th November 2007
4th December 2007
11th December 2007

Report of
Assistant Chief Executive

Title
Response to "Have Your Say" Consultation on the regulations for Local Involvement Networks

1 Purpose of the Report

- 1.1 To agree a response to the Department of Health "Have Your Say" consultation on the draft regulations for Local Involvement Networks
- 1.2 To offer Scrutiny Board 4 an update on the development of Local Involvement Networks

2 Recommendations

- 2.1 Scrutiny Board 4 is recommended to agree the response at Appendix 1 for approval at Council on 11 December 2007.

3 Information/Background

- 3.1 The Local Government and Public Involvement in Health Act 2007 includes provisions to establish "Local Involvement Networks" or "LINKs".
- 3.2 A LINK is envisaged as a network of local people and organisations, funded by government and supported by an independent organisation, to hold commissioners and providers of health and social care services to account. There will be a LINK in each local authority area that has social services responsibility. Commissioning of the independent support organisation or "host" will be a local authority responsibility. The introduction of LINKs and their "hosts" will replace the current Public and Patient Involvement Forums, Forum Support Organisations, and Commission for Patient and Public Involvement in Health.
- 3.3 LINKs are intended to be an improved mechanism by which the public can have a say in local health and social care services. Their role is to promote and support involvement, obtain and present the public's views, and make recommendations for service improvement.

3.4 The Bill gives LINKs the following powers:

3.4.1 To make recommendations to the NHS and local authorities and receive a response

3.4.2 To ask for information and get a reply within a specified period of time

3.4.3 To access some health and social care premises

3.4.4 To refer matters to local health overview and scrutiny committees and receive a response

3.5 This consultation proposes regulations related to the powers at 3.4. The process of initiating a consultation on regulations before the Local Government and Public Involvement in Health Bill received Royal Assent is unusual, and reflects the short timetable the government has in mind for the introduction of LINKs. It is anticipated that local authorities will be required to have commissioned a host by 1 April 2008. The full consultation paper is available at:

http://www.dh.gov.uk/en/Consultations/Liveconsultations/DH_078794.

3.6 This consultation closes on 21 December 2007.

3.7 Proposed regulations relating to requests for information

The consultation proposes that the existing Freedom of Information Act 2000 is adequate for the purposes of LINKs. The FOIA requires public authorities to provide information within 20 working days – though this can be extended – and there are classes of information that are exempt. A summary of these is in the consultation.

3.8 Proposed regulations relating to responding to reports and recommendations made by LINKs.

The consultation proposes that a "services provider", when in receipt of recommendations, will have 20 working days to respond and explain what action, if any, it proposes to take. The draft regulation proposes that commissioners take a lead role in responding to recommendations. The regulations propose that "services providers" of children's social care activities and functions will be exempt from the duty to respond.

3.9 Proposed regulations relating to the duty to allow entry to LINKs

The draft regulations impose a duty on health and social care "services providers" to allow authorised representatives of LINKs to enter premises that they own or control (with some exceptions) to observe the nature and quality of services.

The duty extends to include GP surgeries, other primary care sites, dentist surgeries, opticians, and pharmacists, but excludes premises that provide social care to children. The proposed regulations prevent access where admission would "compromise the effective provision of care services or the privacy or dignity of any person", or where, "in the opinion of the services-provider...[the LINK representative] is not acting reasonably or proportionately". Non-communal areas of care homes would not be included in the duty. Given that many care homes are owned and controlled by private sector providers and not local authorities or the NHS, the right of access would not apply to these premises.

Authorised LINKs representatives are not required to give notice of their visits. "Authorised" in this context includes having undergone a criminal record check, and suitable training.

3.10 Proposed regulations relating to LINK referral to an overview and scrutiny committee

Overview and scrutiny committees will be required to acknowledge receipt of a referral within twenty working days. The committee would then be required to inform the LINK of the actions it takes in response to the referral.

4 Proposal and Other Option(s) to be Considered

- 4.1 A proposed response is at Appendix 1.
- 4.2 This response was developed in consultation with colleagues in Coventry City Council and in partner organisations.

5 Other specific implications

5.1

	Implications (See below)	No Implications
Best Value		
Children and Young People	✓	
Comparable Benchmark Data		
Corporate Parenting	✓	
Coventry Community Plan		
Crime and Disorder		
Equal Opportunities		
Finance		
Health and Safety		
Human Resources		
Human Rights Act		
Impact on Partner Organisations	✓	
Information and Communications Technology		
Legal Implications	✓	
Neighbourhood Management		
Property Implications		
Race Equality Scheme		
Risk Management		
Climate Change & Sustainable Development		
Trade Union Consultation		
Voluntary Sector – The Coventry Compact		

Children and Young People/Corporate Parenting

The proposed regulations largely exclude children’s social care from the purview of the LINKs.

Impact on partner organisations

The proposed regulations are of direct interest to local NHS organisations and other health service providers.

Legal implications

The City Council and partners will be required to understand and, if necessary, define, the legal scope of LINK activity, most notably regarding the right to enter and view.

6 Monitoring

6.1 The outcome of the consultation will be reported to Scrutiny Board 4.

7 Timescale and expected outcomes

7.1 The proposed response, if approved will be referred to full Council for consideration at its meeting on 11 December 2007. The consultation closes on 21 December 2007. Local Authorities will be expected to have commissioned a "Host" for the LINK by 1 April 2008. Regulations can therefore be expected to be laid before Parliament in the New Year.

List of background papers

Proper officer: Jos Parry, Assistant Chief Executive

Author: Telephone Mon-Wed: 024 7683 1122 Thu-Fri: 01926 744391
Jonathan Jardine, Scrutiny Co-ordinator (Health), Chief Executive's Directorate
(Any enquiries should be directed to the above)

Other contributors:

Papers open to Public Inspection

Description of paper
None

Location

Scrutiny Board 4, 14 November 2007

Item 6

Appendix 1

Response to "Have Your Say" Consultation on the regulations for Local Involvement Networks

Children's social care services

Coventry City Council is generally happy with the approach set out in these proposed regulations. We accept that that the regulatory and inspection framework for children's social care services is largely separate from that for health services and adult social care, and it is therefore appropriate that LINKs do not have powers to access premises or require responses to recommendations.

Questions relating to 'Responding to requests for information made by a LINK'

Do you think that services-providers should have duties to provide information to LINKs that go beyond the obligation imposed in the FOI Act 2000? If so, what should they be and why are duties needed?

In addition to seeking advice from the Council's FOI officer, we have consulted with local NHS partner organisations. The consensus is that the FOI Act 2000 is an appropriate basis for the LINKs to seek information.

Given the separate statutory basis on which health overview and scrutiny committees can seek information from local NHS organisations, it could be that where a LINK seeks information that may not be available via the FOIA route, it could work collaboratively with a health overview and scrutiny committee to seek access to the information. This could be included in statutory guidance.

Guidance for health overview and scrutiny recommends that NHS organisations include in contracts a requirement that private contractors co-operate with requests for information from health overview and scrutiny committees. That guidance could be extended to include requests for information from LINKs.

Questions relating to 'Responding to recommendations made by a LINK'

Is the timetable of responding within 20 working days appropriate?

As long as it is made clear that it is acceptable for a representative of a service provider – such as the appropriate Director, for example – to respond without a requirement for formal approval from an NHS Board or local authority executive, then the twenty working days limit is acceptable.

Questions relating to 'Duty of services-providers to allow entry by LINKs'

Do you have any comments on these proposals?

Are the premises that are exempted from the duty to allow entry appropriate?

Are there any further premises that should be exempted?

Do you feel the safeguards in place are proportionate? If not, why not? What do you think should be altered and why?

We have notified NHS partners of this element of the consultation – particularly with reference to access to primary care providers – and they may respond separately.

From the perspective of Coventry City Council, the limitation of access to premises “owned and controlled” by a service provider is significant. Only a relatively small percentage of social care premises are owned and controlled by the local authority, and in Coventry this percentage may drop to zero in a few years. With this in mind, it would seem appropriate to offer guidance to local authorities about how they might include LINKs representation on inspection visits of privately owned and controlled premises. As with requests for information from private sector providers, guidance could be issued setting out how contracts with private sector providers might include reference to allowing LINKs some form of access.

Future guidance should also address how disputes over access are handled, particularly given the proposed regulation that LINKs members can be denied access if they fail a “reasonable” and “proportionate” test. Existing local authority complaints procedures would seem a suitable basis for resolution of disagreement relating to adult social care premises.

Questions relating to ‘LINK referral to an overview and scrutiny committee

Do you have any comments on these proposals?

Is the timescale of responding within 20 days appropriate?

As long as it is acceptable for the chair of an overview and scrutiny committee to acknowledge receipt of a referral without the requirement to formally and publicly consult other committee members at a meeting of the committee, then this regulation poses no difficulties.