



Is the public shaping the future of their NHS?

A report on the public consultations around GP-led health centres

Executive summary

The NHS Support Federation set out to analyse how the public is being consulted on the introduction of GP-led health centres in every Primary Care Trust (PCT) area in England.

A survey of all 152 PCTs showed that there were wide variations in the timetables and approach to consulting taken by each PCT and even confusion about the need to consult at all.

Despite legal advice from the Department of Health (DH) about the obligations on the PCTs to consult, we also found evidence of legal breaches by a number of PCTs in their consultation practices.

Our further study of around 40 PCTs compared the consultation procedure that took place with the PCTs legal obligations for consultation (as advised by the DH and set out in binding guidelines on consultation.)

The results show that;

- only 22% of PCTs are explicit in their consultation documents about the fact that a new health centre could be run by a commercial or voluntary sector provider, 36% mention it implicitly whilst 42% make no reference to it at all. Legal advice issued by the DH clearly states that consultation should cover “**the approach to selecting the preferred bidder and the proposed contractual mechanism**”;
- 2/3 of PCTs do not ask local people whether they agree with the overall plan for a GP-led health centre;
- 16% provided less than 12 weeks for responses, the minimum set out in the cabinet code on consultation;
- only 16% of PCTs asked about the importance of the distance of travel to the new health centre;
- 27% did not use a questionnaire to help guide responses.

We conclude that in a large number of PCTs consultation has fallen short of the legal obligations as interpreted by the Department of Health. In these instances local people have effectively been denied the proper information and the opportunity to influence important primary care proposals.

In our view PCTs should not proceed with such changes unless the public have been properly consulted. The obligation to consult on these proposals is legally defined and recognised by the DH. The DH therefore needs to investigate consultation practices nationally and abandon their current implementation timetable until this has been achieved.

The survey findings show a need for far more stringent monitoring and enforcement of standards around consultation on health care changes. Some PCTs appear to have followed the guidance but many fell short of it. Often they appear to have failed to consult the public at a formative stage and frequently there was little evidence that the public’s view had been sought prior to the start of the tendering process. Overall standards vary far too greatly.

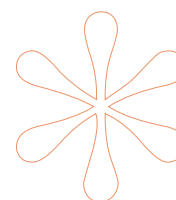
The process of consultation has to involve transparency for it to gain public confidence. The public and stakeholders must see it as a genuine point of influence for them.

There is a need for far greater accountability of NHS bodies and providers especially in the new market-based era for the health service. Diminishing is the inherent protection of a public service ethos. Public consultation is therefore an essential check to safeguard the public interest.

1. Introduction

From the NHS review carried out by Lord Darzi came a national plan to improve access to primary care services (Annex A). One of the main elements of the plan is the provision of 150 new GP-led health centres, roughly one for each Primary Care Trust (PCT) in England¹. This is a significant programme not just because of its size, but also because the new centres

¹ Our NHS Our future: NHS next stage review - interim report, 4 October 2007



In a large number of PCTs consultation has fallen short of the legal obligations as interpreted by the Department of Health.

are likely to be run by non-NHS providers, who in the main will be private companies. The NHS Support Federation is very concerned about the impact of this approach upon the founding principles of the NHS and believes that it is crucial that the public in each PCT has an opportunity to examine, influence and approve each individual project.

It is rare for all 152 PCTs in England to be developing a similar project at the same time and this offered an opportunity to assess the different approaches taken and compare these against various legal obligations and best practice outlined by the government. From a preliminary web-based review of all PCTs it appeared that each was following a similar timetable for the procurement process (Annex A). However, when it came to the public consultation process for the projects, the review showed that a distinct timetable for the consultation procedure in each PCT was less obvious. At the time the review was conducted (July -October 2008) the evidence for public consultation varied, some PCTs had clearly completed the procedure, in others it was still ongoing and in others it was unclear what, if any, public consultation had taken place. To gain further insight into the procedure a more detailed analysis was conducted of the consultation practices of 37 PCTs outside of London. The information obtained from each PCT was then compared to published guidelines for consultation procedures and legal advice offered by

the Department of Health.

2. A Study of those consulting

Our detailed analysis of the consultation procedures focused on 37 PCTs each of which had undertaken a public consultation procedure, or were in the process of consulting on specific proposals for a new GP-led health centre as outlined in the Darzi review. Each PCT website was searched thoroughly and the information available to the public on the new health centre scheme collected. Factors about the design of the consultation, such as its length and scope were recorded. If questionnaires, guide questions or leaflets were available as part of the consultation these were analysed and the type of information they contained noted, including what questions were being asked and what information was being revealed about the intended scheme.

We consider the results from this sample of PCTs to give a significant insight into the approach PCTs in general could be taking towards consultation, however, it should be noted that we are aware that PCTs employ a range of ways to engage the public, some of which, including citizens' juries, focus and stakeholder groups, are not readily accessible to the public. For this reason, our sample concentrated on those PCTs that made information on the public consultation readily available on their websites.

The information gathered from the PCTs was assessed against two sets of guidelines – Cabinet Office



Criteria and legal advice from the Department of Health. The Cabinet Code of Practice in consultation² lays out a code which is binding on all government departments and agencies – barring exceptional circumstances. It describes the duties of agencies as:

- Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
- Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
- Ensure that your consultation is clear, concise and widely accessible.
- Give feedback regarding the responses received and how the consultation process influenced the policy.
- Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
- Ensure your consultation follows better regulation practice, including carrying out a Regulatory Impact Assessment if appropriate.

The information gathered from the PCTs was assessed against criteria 1-3. The legal advice offered from the Department of Health (DH) to PCTs states that the following areas should be part of the consultation, **"This should cover the service specification, the approach to selecting the preferred bidder and the**

² Cabinet Code of Practice on consultation, January 2004

proposed contractual mechanism."³

3. PCTs not consulting?

Outside of the detailed analysis, our review found a number of PCTs that had clearly not consulted with the public and many where the situation was unclear on the specific proposals, as no information was readily available on-line on the consultation procedure. Nationally there has been guidance from the DH to PCTs about their legal obligation to consult the public on these proposals - "the DH supports PCTs views that consultation is required in relation to these tenders."

By not consulting adequately PCTs could be in breach of section 242 of the NHS Act 2006, which states that consultation must be arranged in respect of local health services in:

- "a) the planning of the provision of those services
- b) the development and consideration of proposals for changes in the way those services are provided, and
- c) decisions to be made by that body affecting the operation of those services.

The duty applies if implementation of the proposal, or a decision (if made), would have impact on -

- a) the manner in which the services are delivered to users of those services, or
- b) the range of health services available to those users."

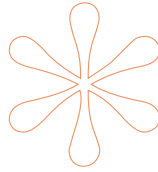
³ Department of Health paper - Equitable Access to Primary Medical Care Consultation Guidance

In the first few months after the announcement of the funding for GP-led health centres there was evidently some confusion amongst PCTs about the need to consult. Several stated publicly that they believed no consultation to be necessary because the policy had been decided at a national level.

The GP magazine Pulse reported on 15 April 2008 that: "PCTs are under such pressure to force through plans for polyclinics that they are sidestepping the normal processes for consulting with GPs and patients...Of eight PCT proposals analysed by Pulse, only one gives GPs and patients any say in the location of the new surgeries. One PCT admitted there was no point in consulting over whether polyclinic plans should go ahead, because ministers were insisting they had to."

The legal advice offered to PCTs is unequivocal in its conclusions about the need to consult. Although it is unclear at what stage this advice was first made available to PCTs.

It was evident from our review of all the PCTs that some had not consulted on the Darzi-inspired health centres at all, however it was also the case that the lack of information on the public consultation procedure on certain PCT websites was merely due to the completion of the procedure. But in these latter cases the PCTs should still have shown what impact the consultation has had on the project



Frequently there was little evidence of the public's view being sought prior to the start of tendering

plans.

In our review it was often difficult to establish using information easily available to the public, the exact procedure used by some PCTs to consult with the public. In some of these cases a freedom of information (foi) request was sent to the PCT in order to establish a clearer picture of the situation, in particular in areas where it appeared initially that little or no engagement had taken place, or where a suspected breach of the law had occurred.

A small number of recent test cases has provided some guidance from the courts as to what it regards as the minimum requirement for a public consultation. But it is still the case that there are many grey areas that are subject to interpretation. It is also evident that there are also a number of ways that a consultation can fall well short of the centrally produced guidance without being unlawful. This situation has led to wide variations in approach and standards.

The lack of clarity is exemplified by the DH advice that states, "consultation must be adequate both in terms of time and content and appropriate to the scale of the issue being considered. Without knowing how this translates into practical steps it is unsurprising that PCTs seem to have interpreted this

advice differently.

4. The 37 PCT sample: results and discussion

- The top-line results

- Only 22% of PCTs are explicit in their consultation documents about the fact that the new health centre could be run by a commercial or voluntary sector provider, 36% mention it implicitly whilst 42% make no reference to it at all;
- 2/3 of PCTs do not ask local people whether they agree with the overall plan for a GP-led health centre;
- 16% provided less than 12 weeks for responses;
- only 16% of PCTs asked about the importance of the distance of travel to the new health centre;
- 27% did not use a questionnaire to help guide responses.

What these results mean

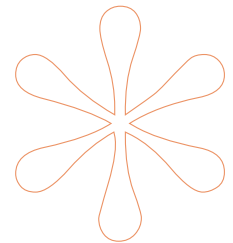
1) **42% of the sample PCTs make no mention of the tendering or outsourcing process** in the public consultation procedure and therefore the public will have no idea that the health centre could be run by a non-NHS provider. This is a significant aspect of the GP-led health centres, yet PCTs do not explain adequately why or how a new provider is being chosen. It is also contrary to the legal advice issued by the DH which states that consultation should cover “the approach to selecting the preferred bidder and the proposed contractual mechanism.”

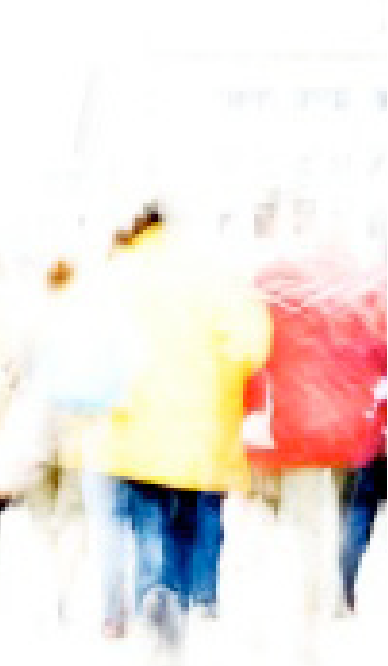
2) **Two thirds of PCTs did not seek public approval on the overall**

plan. Some PCTs were explicit that such approval was not part of the consultation as the introduction of 150 GP-led health centres had been ordered on a nationwide level. This may not be against consultation guidelines but it does bring into question the fundamental point of a consultation where the public cannot comment on its level of agreement for the scheme, especially where large amounts of public funds are involved.

3) **Nearly all the consultation documents describe only the positive aspects** of the PCTs preferred proposal. A full impact assessment would look at other aspects, including the closure of surgeries or the number of patients who may have to travel further. This would help to address public concerns and truly incorporate an accurate public response into the decision. The Cabinet Office Code of practice on written consultation states: “documents should however set out the main information and competing arguments relevant to a decision.” Our findings seem to confirm those of a survey of 28 PCTs by Pulse magazine (15 April 2008) which found that more than two-thirds of the PCTs it surveyed had failed to carry out any official impact assessment of GP-led health centres.

4) **16% of PCTs had not planned enough time for public discussions** and responses to their proposals. The government guidelines state 12 weeks as the minimum time for public consultation - “sufficient time should





be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation... Inadequate time for responses is the single greatest cause of complaint over consultation by government”

5) **There is a wide variation in the standard of information** offered in consultation documents and as a result in a significant number of areas the public will not have had their views adequately sought or considered. Whilst there are PCTs that follow best practice it is evident that not all are following the guidelines and that gives the strong impression that some PCTs are not committed to including the public’s views.

6) **We have found instances where the haste of the PCT to meet the DH deadlines has -** in the opinion of our legal advice, **made their consultation unlawful.** In two cases the tender documents were sent out to potential bidders before the consultation had been completed. In this situation it is difficult to see how the views of the public could have been included and therefore breaks one of the key rules for the consultation process.

7) The **variation in approach to consultation** found in the survey seems to derive from different interpretations of the guidance and legal obligations. This seems to be a recipe for different standards. There are no legal definitions in terms of the length of a consultation and only a few test cases to guide PCTs in

how a lawful consultation should be conducted.

5. Recommendations to improve the consultation procedure

1) The public should be given the chance to give their views about whether they agree with the specific proposals. They should also be given full information about what the project is and how it will be run. The fact that this did not happen in many PCT areas is a fundamental flaw. This policy was widely seen as dictated from the centre which effectively reduced the public’s input when it came to considering a local plan in each PCT area.

2) Despite providing legal advice and a template for PCTs to follow to achieve an effective consultation, significant numbers failed to reach this standard. This aspect of their work must be regularly assessed and penalties for poor performance considered. We need more enforcement of the legal obligation to consult and a constant monitoring of the standards, certainly until they have reached a much greater consistency.

3) All PCTs should include on their websites details of the consultation procedure, including how the public can get involved, its length and how to obtain further information about the scheme. After the consultation is finished a summary of the findings and how these were incorporated into the project should also be made publicly available.

The process of consultation has to involve transparency for it to gain public confidence. The public and stakeholders must see it as a genuine point of influence for them.

4) There is a need for far greater accountability of NHS bodies and providers especially in the new market-based era for the health service. Diminishing is the inherent protection of a public service ethos. Public consultation is therefore an essential check to safeguard the public interest. There is still evidence that it is not seen as a way to shape better policy, more as barrier to be passed. More effort should be made to engage the public at a formative stage. More public representation within NHS bodies would help to force a change in attitudes towards using public experience and views.

Annex A

The background to the development of GP-led health centres

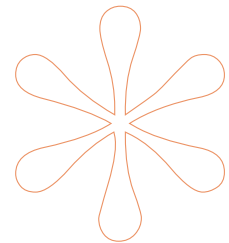
How it started?

The interim report of the Next stage review carried out by Lord Darzi published in October 2007 found that access to primary care services and the quality of service varied significantly across the country. As a result, the Equitable Access to Primary Medical care programme was launched, with £250 million of funding to place 100 new GP surgeries in the 25% of areas with the poorest access. In addition each PCT was told to organise a new GP-led health centre and the running of this was to be put out to tender.

These centres must have prescribed features, laid down by the DH. They must have a walk-in centre available to non-registered patients and open 8am-8pm, 7 days a week. Over the months following the Darzi report, PCT managers were left in no doubt as to their duty to put this in place and were given a tight, year-long timetable with intermediate deadlines from the DH. Contracts to provide these new centres must all be signed by the end December 2008 according to the DH timetable.

How was the decision made?

Announced by the government in late 2007 the decision to implement health centres was passed to PCTs via SHAs. Many of the PCTs refer to the



2008/09 operating framework which is a national work plan that each PCTs is guided by. This was backed up by letters from the DH explaining the timetable and the format that the new centres should take.

“The NHS Operating Framework 2008/09 confirms that each PCT will be expected to complete procurements during 2008/09 for (as a minimum) the GP services that form the core of these health centres” Ben Dyson, Director of Primary Care, Commissioning and System Management Directorate.

Public reaction

Controversy started immediately when GPs realised how this plan was being enforced. There was talk of thousands of GP surgeries closing, thrown out of business by these new centres. The government moved into reassure, saying that none would close as this was new money and additional services. But the threat to long-standing informal agreements between surgeries not to compete for patients and secure practice income was still too much for the BMA and thousands of family doctors. They organised a million strong public petition to “save the family doctor”.

For patients, concerns centred around the distance of travel to new health centres which many believed would centralise services. Indeed the detail of the plans showed that in many cases existing surgeries were being centrally re-sited under one roof. The greatest users of family doctors are

older people and the very young. Consequently, some PCTs found that the distance of travel was a big public concern in the feedback that they received.

Where are these big health centres to be sited? What they will provide and who will run them? Despite such important questions of public interest doubts were expressed at the local level about the need to consult the public. One of the prominent reasons given by PCTs was that this was a centrally-dictated policy from the DH. Essentially they had no choice about health centres so neither did the public.

This was not a belief held by all, but at an early stage in the year long process Pulse magazine reported that some PCTs had no plans to consult the public. For the NHS Support Federation this seemed a major loss of public accountability. The public should have a genuine opportunity to influence the future of these local health services at a crucial point in their development. Many PCTs that were consulting the public were not asking about the principle of the centres, to see if they had public support. The big question that was not being talked about was who was going to run these centres.

Enter Virgin and several other multinational companies who were reported to have shown interest in running a number of the new health centres. They saw a real business opportunity in taking on the role

of NHS provider but also in selling their own private health products to NHS patients at the same time. This one issue raised an obvious conflict of interest and one in which NHS patients were inexperienced. For years patients have never needed to question the motives of those that provided NHS care. On top of this is the additional concern about commercial influence, with Virgin proposing to offer GPs financial incentives to sell Virgin products to NHS patients.

The intention to commercialise primary care on a massive scale is clear. The government believes that competition between providers improves quality and choice. The NHS Support Federation believes that the dominance of commercial thinking will undermine the commitment towards comprehensive health care. We also believe this factor will undermine some of the traditional strengths of the NHS such as its low cost and its ability to cooperate through a vast national network to the benefit of patients. Therefore we believe completely in the need for public scrutiny and discussion.

There are clearly significant issues for the public to get its teeth into with regard to the future of the NHS, which are epitomised within the decision about how these new health centres should be run. However, this topic is completely missing from most of the consultations for the new centres. Many PCTs were not explicit about the fact that the contract to run the new

centres were being put out to tender with the distinct possibility of a non-NHS provider winning the contract. The reality is that without the full consent of the public, by early 2009 there could be 150 new health centres largely run by the private sector, that to a certain extent centralise existing services.

Annex B:

What is the timetable for procurement?

“We intend to ask SHAs to report progress against the following key milestones in the overall procurement timescale.”

Milestone	Task	Reporting Date
1	SHAs sign off PCT project specifications	29 Feb 08
2	PCTs to have placed adverts and Memorandum of Information (MOI)	16 May 08
3	PCTs evaluate Pre-Qualifying Questionnaire (PQQ) and select bidders	29 Aug 08
4	SHAs sign off Invitation to Tender (ITT) and PCTs issue to selected bidders	31 Oct 08
5	Contracts awarded and signed	31 Dec 08

What else was prescribed?

GP led health centres must have features below. according to the DH prescription

- Core GP services
- Maximising opportunities to integrate and co-locate with other community based services
- Easily accessible location
- Open 8am-8pm, 7 days a week
- Bookable GP appointments and walk-in services
- Registered and non-registered patients

“PCTs are being encouraged to build on these core features to increasingly bring together a wider range of community-based services - such as pharmacy services, diagnostic services and social care - focused on promoting health and reducing health inequalities. However, to avoid too prescriptive a national approach we left it to PCTs to determine how far and at what pace to pursue this more integrative approach.”

Clearly for the DH there is a tension between wanting to ensure that PCTs follow the instructions to build a health centre, whilst appearing not to impose a one size fits all plan.

There is strong understanding of the command and control mechanism amongst senior managers. PCT Board minutes show discussions which in most cases reveal a belief that PCTs have no option but to build a GP-led health centre whether they want to or not. The few that did try to object did so because they felt the plan did not suite the needs of local people and that the money could be spent in other ways. As Pulse reported in April 2008 any objector has long since given up their case and fallen in line. The Federation believes that putting PCTs under this pressure in this time scale will result in public money being wasted on less than effective schemes.

The situation with the PCTs and SHAs indicates that they are used to taking instructions from the DH and that they are also used to following

them. The powers that the government has to instruct local NHS bodies are defined in law but how they have been invoked in this instance is unclear. The habit of following a central dictat is so hardwired that instructions are followed without the formality of mentioning formal powers. Clearly this goes to the heart of the idea of decentralised NHS and shows that at present we are a very long way from disconnecting PCTs from the centre.

What choice did the PCT have, was there enough time to organise this procurement and uphold their commitment to proper public consultation? It is clear that those who began the process soon after the announcement ran into fewer difficulties in completion and management and included the results of the consultation within the tender that was sent out to potential bidders.

What is the point of public consultation?

Although it is recognised in law that the public have a right to be consulted on significant changes to its NHS there is the risk that these rights are not upheld. Our health services should be based primarily on patient needs, not on other financial or commercial goals. Engaging with the public through the process of designing new policy will undoubtedly produce better services. The cost and delay can be justified in terms of proceeding with evidence-based changes. The alternative allows the possibility for bad ideas poorly applied which when the health of a community is at stake is not a sound approach.

Public consultation is therefore a vital part of policy making and also a crucial element of accountability. Proper public engagement is part of the safety and scrutiny process. Information has to be provided openly and procedures and plans have to be presented, experts and the everyday user have to be asked for their views and then these views have to be shown to be taken into account. It is a worthy concept backed up by law, but is it working and what can we do to improve it?

Supported by UNISON's general political fund.

The NHS Support Federation is an independent organisation that works to protect and promote a comprehensive NHS, with equitable access and active public involvement.

Our supporters are affiliated organisations are drawn equally from the health profession and the general public. If you require further information visit our website www.nhscampaign.org or contact us directly:

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