
Select Committee on Health and Adult Social Care

Report of the Lead Officer to the Committee

'Have your say' a Consultation on the regulations for Local Involvement Networks (LINKs)

Purpose of Report

1. To up-date Members on developments to date in Dudley in establishing a Local Involvement Network (LINK)
2. To consider the "Have your say" consultation document on the draft regulations for Local Involvement Networks (LINKs) and to consider the questions for consultation that have been raised in the document.
3. The consultation document can be accessed online by visiting www.dh.gov.uk/en/Consultations/Liveconsultations/DH_078794 Furthermore a paperback version of 'Have your say' has been made available in the members' library.

Background

4. Members considered a report in July 2007 by the Lead Officer to the Committee introducing the concept of LINKs and the Local Authority's role involvement in shaping a LINKs in Dudley.
5. Now that the situation is clearer about establishing the LINK, further work has been done to begin the procurement exercise. The Health Improvement and Modernisation Management Team chaired by Linda Sanders and in which the Chief Executives of both Dudley Primary Care Trust and the District General Hospital participate with other relevant senior officers has agreed to act as the Project Board with Brendan Clifford acting as Project Manager. A Project Team to work on behalf of the Board is being established with representation from key partners. This team will also have the help of a wider Reference Group that will be established following a local Stakeholder event planned for the second half of November and to which Members of the Committee will be invited. This activity will feed into the procurement activity to establish a host in Dudley to commence work in the new financial year.

The remainder of this report, focuses on the legislative aspects of LINKs about which the Department of Health are consulting. Moreover it is an opportunity for members to comment on the proposed regulations for LINKs, which, subject to parliamentary passage, have to be in place in Dudley by April 2008.

4. As part of the Local Government and Public Involvement in Health Bill, which reached royal assent this month, the government proposes to abolish Patient and Public Involvement Forums and replace them with similar bodies called LINKs. The reasons for this change are set out in the document "*A stronger local voice: A framework for creating a stronger local voice in the development of health and social services*" (DH, 2006). Government assert that their design will be more effective than PPIFs and will have a wider remit; it will also be able to look at social care services as well as NHS services.
5. In August 2007 the Department of Health published the initial guidance on LINKs '*Getting Ready for LINKs*'. The LINK will be a network of individuals and organisations that have an interest in health and social care and want to influence local services. The LINK should be established by April 2008 and will have a role in:
 - Promoting and supporting the involvement of people in the commissioning, provision and scrutiny of local health services
 - Obtaining the views of people about their needs for and experiences of local health and social care
 - Raising the concerns of local people with those responsible for commissioning, providing, managing and scrutinising services
6. The Guidance explains that people or organisations that want to take part in the LINK will be volunteers and can be either Members or Participants. Members will make a commitment to be involved in the LINK on a regular basis while Participants will be able to influence local health and social care services but may not be able to participate on a regular basis.
7. The guidance also explains that it will be the role of the Local Authority to procure a host organisation to support the LINK, however the LINK and the Host would have to be independent of the Local Authority. The LINK will determine its own structure and priorities. The guidance also sets out that the role of Health and Scrutiny Committees (HASC) in Dudley should be to monitor and scrutinise the process to ensure value for money.
8. Following on from "*Getting Ready for LINKs*", on September 28 2007 the DH published "*Have your Say: A Consultation on the regulations for*

LINKs". Members should be advised that this document can be accessed online (see paragraph 2) and that a paperback copy has been made available in the members' library.

9. The consultation is about the regulations the Secretary of State intends to place on health and social care service providers so that LINKs can fulfil their proposed role and function where it concerns the draft regulations. These regulations are designed to make sure that LINKs are able to gather information by visiting and viewing health and social care facilities amongst other methods, and that both service providers and Overview and Scrutiny Committees respond and take appropriate action to reports given to them by LINKs.
10. The draft regulations that the DH are seeking views on can be grouped into four main categories:
 - o Requests for Information;
 - o Responding to reports made by LINKs;
 - o Rights of entry to health and social care premises
 - o and the Referral of an issue to the designated Health Overview and Scrutiny Committee.

These have been summarised in paragraphs **11 to 28** and for reference purposes the page numbers that each category relates to in the consultation document can be found adjacent to the category headings.

Requests for information (pages 6 – 10)

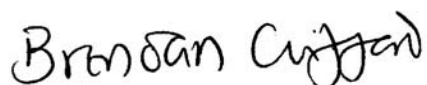
11. LINK should have the ability to request information about health and social care services from the relevant service provider in order to enable them to monitor the provision of these services and assist them with their reports.
12. 'Have your say', however, does not include any proposals on this power, deeming that the provisions of the Freedom of Information Act 2000 (FOI) places sufficient duties already on service providers, as public authorities, to respond to the LINKs' requests. The FOI Act requires that, apart from exempted cases, requests for information should be responded to within 20 working days.
13. As well as any general comments the DH specifically asks if service-providers should have duties to provide information to LINKs beyond those imposed by the FOI Act and if so what should these be and why are they needed.

Responding to reports made by LINKs (pages 11 –12)

14. When a service provider receives a report or recommendation for the first time it will have 20 working days to acknowledge receipt and

provide an explanation to the referring LINK of any action it intends to take in response or why it does not intend to take any action.

15. The report or recommendation must also be passed on to any other relevant service provider that does not appear to have received the report; this applies if the report was received from the LINK or another service provider.
16. If a service provider receives a report regarding a service that it is not the relevant commissioner of then it must still acknowledge receipt and pass the report or recommendation onto the relevant service provider within 20 working days.
17. Where there is more than one relevant service provider they can agree that one of them will respond on behalf of them all within 20 working days.
18. The DH wishes to know if a timescale of 20 days is appropriate as well as any other comments. Members should be advised that children's services are exempted from this particular regulation (the reason given for this is that there are already effective mechanisms in place to ensure that the views of children and young people are taken into account in the planning, regulation and inspection of service).



Brendan Clifford
Lead Officer to the Committee

Rights of entry to health and social care premises

(pages 13-17)

19. LINKs are also able to gather information by sending authorised representatives of LINKs to inspect premises owned or controlled by service providers to observe the nature and quality of services. For the purposes of this area of regulation the following other persons are to be named by the Secretary of State as service providers:
 - GPs and all those providing primary medical services
 - dentists and all those providing primary dental services
 - opticians and all those providing primary ophthalmic services (and who own or control premises where services are provided)
 - pharmacists and all those providing primary pharmaceutical services (and who own or control premises where services are provided)
20. 'Rights of Entry' is an important change to earlier guidance in that duty for entry was reinstated over concerns that the loss of the ability to conduct 'spot checks' would hamper the work of LINKs.
21. The regulations do not allow LINK representatives the right of entry where the provision of a service or the privacy or dignity of a person might be compromised by doing so. An authorised representative of the LINK is someone who has been authorised in "accordance with the arrangements the LINK has put in place." LINKs "should use their right with discretion and judgement" when exercising this power. The service provider may refuse entry to the representatives of LINKs if:
 - the service itself or a person's privacy or dignity were to be compromised if entry was allowed
 - the area of the premises that the representative of the LINK wished to view is a personal area such as a premise occupied by one or more persons as their home, non-communal areas of care homes, areas of the premises used as accommodation for employees
 - the premises, or part of the premises, is not being used for health or social care provision

- the LINK's representatives are "in the opinion of the service provider not acting reasonably and proportionately" in seeking entry to the premises, or part of the premises
 - children's services which are exempted entirely from these regulations are being provided as different provisions already exist
22. In addition to general comments, the DH seek views on whether the exemptions of certain premises are appropriate, if further premises should be exempted, and whether the safeguards in place are proportionate and if not why and how they should be altered.

Referral to an overview and scrutiny committee

(pages 17-18)

23. LINKs will have the power to refer issues to HASC. This is to ensure that health and social care services are locally accountable.
24. Following a referral of a social care matter, OSCs are obligated to consider the referral and decide whether it should review and scrutinise the social care services detailed in the referral. The OSC must keep the referring LINK informed of its actions.
25. OSCs should acknowledge the receipt of a LINK's referral of a social care issue within 20 working days.
26. The Government plans to use the existing regulation-making powers (in section 244 of the NHS Act 2006) to amend the current secondary legislation in relation to the referral of health matters to OSCs to mirror the policy set out for social care OSCs in the Local Government and Public Involvement in Health Bill.
27. In addition to general comments on the regulations summarised in paragraph 20, the DH specifically wishes to know if the timescale of 20 working days is appropriate.

Questions for Consultation to inform the Committee's response

28. A summary of the specific questions that 'Have your say' is seeking views on that Members should consider as part of the Committee's response can be found in Appendix 1.

28. Members have the option to forward their comments to Scrutiny Officer outside the Committee but should be advised that these should be received no later than 7th December. All formal responses must be with the Department of Health by 21 December.

Finance

29. A grant of £10,000 has been sent to each authority to give financial support to the initial procurement/commissioning of the Host organisation. Additional funds will be forthcoming for use by the LINK and will be allocated using a 'relative needs' formula.

Law

30. The Local Government and Public Involvement in Health Bill 2007 will be the legal basis for the establishment of LINKs.
31. The relevant statutory provisions regarding the Council's Constitution are contained in Part 11 of the Local Government Act 2000, together with Regulations, Orders and Statutory Guidance issued by the Secretary of State.

Equality Impact

32. The aims and principles of LINKs can be seen as contributing to the equality agenda in its pursuit of improving care for all. This implies a challenge to ensure that services meet the needs of all sectors of the community to make this an even greater reality in Dudley.

Recommendations

33. The committee consider the proposals in 'Have your say' and make decisions about them as appropriate.

Brendan Cuffey

.....
Brendan Clifford

Lead Officer to the Select Committee on Health and Adult Social Care

Contact Officer: Aaron Sangian (01384) 814757
aaron.sangian@dudley.gov.uk

List of Background Papers

A Stronger Local Voice: A Framework for Creating a Stronger Local Voice in the Development of Health and Social Care Services. Department of Health June 2006.

The Local Government and Public Involvement in Health Bill 2007

Next steps in the development of Local Involvement Networks. Report of the Lead Officer to the HASC July 2007

Getting Ready for LINks. Department of Health August 2007

Appendix 1- Questions for Consultation

34. Members may wish to consider the points in italics to assist them with their response.
35. Questions relating to 'Responding to requests for information made by a LINK' **(see page 10)**:
- Do you think that service providers should have duties to provide information to LINKs that go beyond the obligations imposed in the FOI Act 2000?
 - If so, what should they be and why are the duties needed?

Members may think it is hard to see, at this stage, what further provisions and duties could be in place over and above the FOI act to ensure that a response is given to any information request made by a LINKs.

36. Questions relating to 'Responding to reports and recommendations made by a LINK' **(see page 12)**:
- Do you have any comments on these proposals?
 - Is the timescale of responding within 20 days appropriate?

Members may think that 20 days is an appropriate length of time for a provider to at least acknowledge a report or recommendation sent by a LINK, however the time limit for the report to be referred to the officer commissioning the service could be reduced.

Members may disagree about the exemption of children's services from this duty as no age delineation applies to LINKs.

37. Questions relating to 'Duty of service providers to allow entry by LINKs' (**see page 16**):

- 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?

Members may think that unless a clearer indication of the purpose of these visits is given it would be difficult for service providers to assess the reasonableness of the requests of LINK representatives.

Members may want more information on an acceptable procedure for visits and how the service providers might assess the reasonableness of LINK representatives' behaviour. Members may also want clarification on whether the LINK would need to give notice of inspection and how many representatives would be allowed to inspect at any given time.

From a resource angle, Members may wish to query whether the CRB safeguard applies to all members of the LINK.

38. Questions relating to 'LINK referral to an overview and scrutiny committee' (**see page 18**):

- Do you have any comments on these proposals?
- Is the timescale of responding within 20 days appropriate?

Members may think it would be useful to develop a protocol for engagement to be drafted up between the LINK and OSC to help contribute to the productivity of each body.

Members may wish to ask the DH for clarity over the term 'respond' in this section. Mindful of the HASCs limited resources, is simple acknowledgement of the issue acceptable or is the OSC obliged to respond with a specific reason for why it will or will not be taking up an issue?