

response to consultation on a local healthcare bill

March 2008

About the Scottish Consumer Council

The Scottish Consumer Council (SCC) was set up by government in 1975. Our purpose is to promote the interests of consumers in Scotland, with particular regard to those people who experience disadvantage in society. While producers of goods and services are usually well-organised and articulate when protecting their own interests, individual consumers very often are not. The people whose interests we represent are consumers of all kinds: they may be patients, tenants, parents, solicitors' clients, public transport users, or simply shoppers in a supermarket.

Consumers benefit from efficient and effective services in the public and private sectors. Service-providers benefit from discriminating consumers. A balanced partnership between the two is essential and the SCC seeks to develop this partnership by:

- carrying out research into consumer issues and concerns;
- informing key policy and decision-makers about consumer concerns and issues;
- influencing key policy and decision-making processes;
- informing and raising awareness among consumers.

The SCC is part of the National Consumer Council (NCC) and is sponsored by the Department for Business Enterprise and Regulatory Reform. The SCC's Chair and Council members are appointed by the Secretary of State for Business, Enterprise and Regulatory Reform, in consultation with the First Minister. Martyn Evans, the SCC's Director, leads the staff team.

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The SCC assesses the consumer perspective in any situation by analysing the position of consumers against a set of consumer principles.

These are:

ACCESS

Can consumers actually get the goods or services they need or want?

CHOICE

Can consumers affect the way the goods and services are provided through their own choice?

INFORMATION

Do consumers have the information they need, presented in the way they want, to make informed choices?

REDRESS

If something goes wrong, can it be put right?

SAFETY

Are standards as high as they can reasonably be?

FAIRNESS

Are consumers subject to arbitrary discrimination for reasons unconnected with their characteristics as consumers?

REPRESENTATION

If consumers cannot affect what is provided through their own choices, are there other effective means for their views to be represented?

Published by the Scottish Consumer Council
March 2008

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The Scottish Consumer Council welcomes the opportunity to respond to this consultation which deals with the important issues of patient and public involvement in the NHS, and the role and accountability of NHS boards.

The consultation document is in two parts: the first deals with strengthening the involvement of patients and communities in deciding how NHS services are planned and delivered, while the second deals with direct elections to NHS boards.

The SCC would like to make some initial general comments on the consultation document.

1 General comments

In this response, the SCC makes plain that it does not believe that introducing direct elections will contribute either to the greater involvement of local communities in the decision-making process, or to better governance in NHS boards. We believe that to ensure good governance in NHS boards there needs to be:

- effective and independent external scrutiny of NHS Boards;
- a strengthened role for non-executive members. of NHS Boards; and
- a review of the governance of NHS boards, including the role of executive and non-executive members.

At present, non-executive members of NHS boards play a vital role in the governance of local NHS services. They have a crucial role in providing assurance that:

- policies and procedures have been properly followed by the board;
- board decisions have been properly taken;
- the interests of patients and local communities have been taken into account; and
- boards are genuinely working in the public interest.

Some non-executive members would see their primary responsibility as being to patients and to the local community, although others might describe it more generally as being about representing the public interest.

On Board :A Guide for Board Members of Public Bodies in Scotland (Scottish Executive 2003) sets out the position of boards and board members as follows:

Boards are appointed by, and are accountable to, Scottish Ministers and are required to work within the policy framework set by the Scottish Executive.

Your specific role may vary depending on the role of the Board to which you have been appointed and the capacity in which you have been appointed, but generally you will be expected to:

- *contribute to decision-making and share responsibility for the Board's decisions;*
- *attend Board meetings on a regular basis and be well prepared by reading relevant papers in advance;*
- *attend training events and keep up to date with subjects relevant to the body's work;*
- *contribute to the work of any committees that have been established by the Board; and*
- *represent the Board at meetings and events when required.*

The role of non-executive board members is challenging: they are involved in complex decisions balancing clinical and financial considerations while taking account of the needs and preferences of local people.

The SCC believes that it is important that the Scottish Government should carry out some research into the governance of NHS boards, which should consider the role of non-executive members, the extent to which they feel they are able to fulfil their role, and how their role could be strengthened. This might be through induction, mentoring, networking opportunities, study visits, training or other forms of support. One possible development was outlined in the SCC's response to the recent consultation on independent scrutiny panels, in which we argued that these panels might be more effective if they were seen as a source of expert independent advice to non-executives, offered in the course of the decision-making process, rather than at the end of the process, as is the case with scrutiny. We argued that some independent expert input could be useful, particularly to strengthen the voice and role of non-executive board members.¹ This research should also look at the balance between executive and non-executive members.

Characteristics of the NHS: a consistent managed service

At present, the NHS in Scotland is a national service, managed through the Scottish Government. Decisions about major policy in the NHS are made by the Cabinet following advice from the Cabinet Secretary for Health and Wellbeing. Decisions about how this national policy is implemented at local

¹ Scottish Consumer Council, Response to the consultation on independent scrutiny of proposals for major changes in NHS services, January 2008

level is the responsibility of NHS boards, which have a statutory duty to consult and involve their local communities in their decision making processes.

It is important to consider what impact direct elections to NHS boards would have on people's expectations of how NHS boards would make decisions, and on the idea that the NHS in Scotland provides broadly the same quality and range of care and treatment in all parts of Scotland.

The interests of patients and communities, and the public interest

Sometimes in the consultation paper the interests of patients and communities are addressed together as if they were the same thing. There are, however, many situations in which they are not the same. The interests of one group of patients may conflict with those of another group. For example, one group of patients might believe that an NHS board should be funding a particular treatment, while another group might be lobbying for more in-patient or specialist services for their group. Equally, the interests of one group may conflict with the more general interests of a particular geographical community, for example where increased spending on treatment for one group of patients means that there can be less investment in community based services for all patients in a particular geographical area.

Section 1 How could the role of patients and communities in deciding how NHS services are planned and provided be strengthened through existing policies, within the current framework of appointed NHS boards?

The SCC has a long-standing commitment to patient and public involvement in the NHS, and we believe that this is an area which needs continuous development to ensure that patients are put firmly at the centre of healthcare, and that the concerns and interests of patients, their carers and families are taken fully into account at all levels of decision-making within the NHS.

It is important to differentiate between the various levels at which patient and public involvement takes place, including:

- a patient or carer's involvement in making decisions about their own care;
- service user involvement in designing and planning current services;
- involvement and engagement of local communities in decisions about how future services are provided in their local areas;
- involvement of patients and members of the public in monitoring health services; and
- involvement of representatives of patients and the public in national policy making settings.

It is also important to distinguish between obtaining the views of patients based on their own personal experience of services, and being able to identify and define in more general terms the interests of patients and local communities. In some settings what is needed is people who can represent the interests of a wider group of patients, or indeed all patients, rather than simply their own personal views.

The SCC is very supportive of actions which can increase meaningful patient, carer and community involvement in the planning of local health services, and we believe that there is currently a wide range of activity taking place at local level.

One of the most challenging aspects of public involvement is to ensure that the most appropriate mechanisms or tools are used, and that the right people are involved. It is a fundamental underpinning principle of effective patient and public involvement that, having agreed the aim of the involvement activity, an appropriate method is selected to achieve the desired aim. Sometimes, health bodies may believe they have consulted, but for one reason or another this consultation may not have been done appropriately, or the wrong people may have been engaged or consulted.

The SCC is currently particularly concerned about the difficulties of finding people to act as advocates for the general patient or public interest in a range of settings (working groups, steering groups, programme and project boards) operating at national level in Scotland, and often having a direct input into policy development. A paper on this has been sent to the Chief Executive of the NHS and a copy is attached as an appendix to this consultation response.

Specific questions on Section 1

1 Do you think the current proposals for independent scrutiny of service change proposals help achieve the aim of better engaging and involving local communities?

We do not believe that the proposal will, in itself, contribute to NHS boards engaging with local communities better. We see some potential for independent panels contributing to the role of non-executive members of boards, rather than to the involvement of the local community. This is outlined in our response to the consultation on independent scrutiny panels.²

The primary responsibility for engaging with and involving local communities should remain with NHS boards, under the monitoring supervision of the Scottish Health Council. We would also emphasise that the effective and independent scrutiny of all the activities of NHS Boards (identified by the Crerar Review) is a necessary condition to improve the governance of the NHS.

² ibid

2 How could additional guidance to NHS boards on making public consultation as effective as possible help achieve this aim?

The SCC is not aware that there is a need for any more guidance in this area. The problem is not a lack of guidance, but a lack of understanding of and support for effective engagement with local communities, or with particular patient groups, as appropriate to the subject matter.

As well as existing guidance, there are programmes, events and training which NHS boards can access to improve their skills and knowledge. The Scottish Health Council also has an important role, in sharing evolving practice, which it does through its website, through the publication of reports on boards' performance on public involvement and through training and networking events. The SCC supports the Consultation Institute in its work to improve best practice in consulting and engaging with local communities.

3 Would the appointment of more lay members to NHS boards – perhaps to directly represent patients or other groups – help achieve the aim? How might this be achieved?

As we have argued above, while the SCC is in favour of a more effective role for non-executive members, this is not primarily about fulfilling the aim of engaging with and involving local communities, but about good governance.

We have argued that there should be a review of the governance and structure of NHS boards, and this should include looking at the role and position of non-executive members, the role of executive members, and the appropriate balance between executive and non-executive members.

Given the importance of the current role of non-executives and the challenging nature of the task they have to fulfil, we would be in favour of people with relevant skills and experience holding these positions rather than people to directly represent particular groups. Some people are able, because of their own background and experience, to represent the general interest of patients on NHS boards, but it can be a mistake to assume that anyone who has been a patient can necessarily do this in an appropriate way at the level of an NHS board. It is certainly important to try to include people able to advocate for the general patient interest on boards, alongside people who bring other skills, for example in management, finance etc.

4 In particular, would adding more local authority councillors (one from each local authority whose area a board services is currently appointed to that board) help achieve this aim? Could local authorities have a role in scrutinising public and community engagement?

As in our response to the previous question, adding local authority councillors to the board does not in itself help achieve the aim of effective engagement with and involvement of local communities. As members of NHS boards,

councillors are not formally accountable to their electorate, as they are in relation to their council work, but to the Scottish Government.

Local authorities should be closely involved with NHS board activity through community planning processes, joint working and memorandums of understanding at different levels. Because of this partnership role, we do not think it would be appropriate for local authorities to scrutinise the public and community engagement carried out by NHS boards, particularly when the Scottish Health Council already has this role.

Members of local communities may turn to their elected councillors to act as their advocates in relation to decisions which NHS boards have made. The SCC supports elected councillors taking on this role as advocates for their communities, and would encourage NHS boards to recognise the authority of councillors to act as advocates for local communities in such situations. There may be a case for giving councillors more formal powers to require information and responses from Boards on behalf of their individual constituents or in relation to the collective interests of their constituents.

5 Should we develop further the role of the Scottish Health Council to bring about more effective engagement and involvement? If so, what additional responsibilities could the council take on and what would the benefits be?

The role of the Scottish Health Council has developed since its creation in 2005, and is continuing to develop. The action plan for health, *Better Health Better Care*, makes a commitment to developing a participation standard for NHS boards, and for boards to carry out an audit against this standard.

The SCC is in favour of strengthening the role of the Scottish Health Council in the area of developing and supporting effective public involvement, and we hope that this will be endorsed by the independent evaluation of the Council which is due to be carried out this year.

6 How could the Public Partnership Forums associated with Community Health Partnerships encourage greater public engagement?

The Scottish Health Council has commissioned research into how well the Public Partnership Forums are operating at present, but the results are not yet available and so it is premature to comment on the effectiveness of the forums in relation to public engagement.

However, since the forums have been set up and supported by Community Health Partnerships, they do not have any independent resource or sphere of activity independent of the CHPs. As presently constituted it is not realistic to expect the PPFs to be in a position to proactively encourage greater public engagement.

7 How could local Community Planning Partnerships best ensure improved public engagement with NHS planning?

The SCC supports the use of the National Standards for Community Engagement developed by Communities Scotland, and sees a role for community planning partnership in promoting the use of these standards. Community planning partnerships are also well placed to ensure that, where possible, resources which can be used in relation to public engagement are shared. For example, where local authorities have established citizen panels or similar bodies, these should be used by other agencies such as NHS boards.

8 What other measures could be introduced to increase effective engagement and involvement of the public with the NHS in Scotland?

The SCC would like to see more effective patient and public engagement at the level of national policy making, and is submitting a paper describing the need in this area in more detail.

Section 2 Should NHS boards have directly elected members in order to bring about greater patient and community involvement in planning and delivering local health services?

Direct elections to NHS boards are presented in the paper as being an aspect of “patient, carer and community involvement in the delivery of health care services”. However, we would not see direct elections to NHS boards as being primarily an aspect of patient or public involvement, but more to do with the governance of NHS boards.

The SCC is aware that New Zealand and Sweden have directly elected members on their health authorities. We would be interested to see evidence about the impact this has had on the way in which decisions are taken in these countries, particularly in relation to whether this results in services responding better to the needs and interests of patients and local communities.

We do, however, believe that service users and members of local communities may be confused about the role of NHS board members if some of them are elected. There may be a perception that directly elected members on NHS boards are there to represent their local communities. This misunderstanding already exists about local authority representatives on NHS boards, while the reality is that these members share exactly the same role, duties and responsibilities as other members of the board.

It is possible that the introduction of direct elections to NHS boards would create tensions between local authorities and NHS boards, with both these

organisations claiming to be able to represent the interests of particular communities.

For these reasons, we do not feel that the case has yet been made that introducing direct elections to NHS boards will result in any significant improvements in the services available to people in Scotland.

Specific questions on Section 2

The series of questions in the consultation paper demonstrate very clearly the difficulties and pitfalls associated with introducing direct elections to NHS boards. We have answered the questions purely to demonstrate the difficulties they present.

Electoral processes (questions 9 – 15)

While the SCC is opposed to the introduction of direct elections to NHS boards, we would also point out that a system of direct elections is not consistent with setting out eligibility criteria for candidates, or for having systems to promote equality and diversity. In direct elections, anyone can stand for membership and it is for the electorate to decide who is best qualified to be elected.

It would be impossible to exclude someone on the basis of their political allegiance, and so it would be inevitable that voters would be influenced by this factor. Party politics would be introduced to NHS board decision making in a situation in which the responsibility of boards is to put into effect policy decisions taken by the Scottish Ministers and the Scottish Parliament.

While everyone on the electoral roll should be entitled to vote, it seems highly likely, based on the trends in voting patterns, that there would be a very low rate of voting in such elections. The only exception to this might be if there was a particular local issue which local communities felt strongly about. This might result in a situation where people were elected to boards because of their stance on one particular issue rather than because of their general qualification to be an NHS board member.

Nothing is said in the consultation paper about whether there would be the possibility of holding by-elections, or about whether there might be circumstances in which a board would feel impelled to resign and trigger a new election.

Balance of members in NHS boards (questions 16 – 18)

We do not support the introduction of elected members to NHS boards, and have no opinion on what proportion of members should be elected.

Electoral wards, voting systems and remuneration (questions 19 – 24)

We do not support the introduction of elected members to NHS boards, and have no opinion on these questions.

Piloting of elections (questions 25 – 29)

The SCC does not support the idea of elections or of piloting different ways of electing members of NHS boards in different parts of Scotland.

Accountability of NHS boards, and consistency (questions 30-32)

The SCC believes that people who use NHS services in Scotland expect the NHS to provide a consistent, national service for all across Scotland. While boards should have discretion about how they achieve national priorities in their local areas, we believe that most people in Scotland would not support an NHS which set its own local priorities.

The consultation paper itself demonstrates the fundamental tension between introducing direct elections, and continuing to have a consistent, national NHS service across Scotland. The paper suggests that there might need to be legally binding requirements about priorities and performance standards. This runs directly counter to the normal intention of democratic elections, which is to give elected members the authority and legitimacy to make decisions about services.

Costs (question 33)

The SCC does not consider that the cost of introducing elections to NHS boards can be justified.