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▶▶ **REAL ACCOUNTABILITY**

Demonstrating responsiveness
and accountability

Guidance on the NHS duty
to report on consultation

putting people at the heart of care

DH INFORMATION READER BOX

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Foreword by David Nicholson

Never before has it been more important that the NHS redouble its efforts to consult, respond to and be accountable to people. This is for two main reasons. Firstly, it is essential that we learn the lessons from Mid Staffordshire NHS Foundation Trust and are able to demonstrate that we have listened to, and acted on, the concerns of patients and public. Secondly, the challenges facing public services in the next few years are considerable and, especially now, we must make sure that services are designed and remodelled around the needs and wants of people. Now is not the time to reduce our efforts or lose our focus on consulting people and communities.

The duty to involve the public under section 242 of the NHS Act 2006, and the associated policy and practice guidance *Real involvement*, raised the bar for the way NHS organisations are expected to involve and consult people and respond to the feedback received. As a result, more and more people across the country should feel better informed and supported to have a say about what really matters to them.

Most NHS organisations are making great strides in involving people, and many are using the feedback and insight into patients' needs and wants in order to inform improvements in health services. I want to build on this momentum and further strengthen the responsiveness and accountability of the NHS to people and communities.

The new duty to report on consultation places a legal duty on all primary care trusts (PCTs) and strategic health authorities (SHAs) to report annually on the influence people's views have had on their decisions. The first reports will be published by September 2010 and will provide important evidence of an organisation's responsiveness and accountability. The reports are an opportunity for SHAs and PCTs to demonstrate that they are increasingly looking outwards rather than upwards.

This guidance is intended to assist PCTs and SHAs in undertaking their obligations to report on consultation.

This is a good beginning and it is appropriate that we start with commissioners, but I do not want to stop there. I want to see this imperative bite equally strongly on NHS trusts and NHS foundation trusts. In the next year we shall put in place arrangements for the new Statement of Involvement, further strengthening the requirements on PCTs, NHS trusts and NHS foundation trusts to involve, respond to and be accountable to local people. We will be inviting Local Involvement Networks and overview and scrutiny committees to provide a commentary on the statements of involvement, and our aim is to see the first statements, including the commentaries, published in September 2011 and covering the year from April 2010 to March 2011.

The Statement of Involvement will introduce a more extensive and inclusive mechanism by which NHS organisations – providers and commissioners – will be more accountable for demonstrating responsiveness and accountability. In discharging their duties under the duty to report on consultation, I urge PCTs to start considering and preparing for the introduction of the Statement of Involvement.

These developments mark a significant step forward in demonstrating the responsiveness and accountability of the NHS, and I look forward to seeing the first reports on consultation next year.

▶ INTRODUCTION

About this guidance

The aim of this guidance is to assist primary care trusts (PCTs) and strategic health authorities (SHAs) to undertake their legal obligation to report on consultations carried out with regard to their commissioning decisions (as well as relevant decisions for PCTs).



Points to note

1. The duty to report on consultation about commissioning decisions is set out in the NHS Act 2006 under section 17A for SHAs and section 24A for PCTs. The duty requires PCTs and SHAs to report, at times directed by the Secretary of State, on consultation and the influence of the results of consultation on their commissioning decisions.
2. In addition to the duty to report on commissioning decisions, directions also create an obligation for PCTs to report on consultation about 'relevant decisions'. The meaning of relevant decisions is set out at page 16 in section 1 of this guidance.
3. The difference in the reporting duties for PCTs and SHAs is that a PCT must report on any consultation, carried out by any person, that influences the commissioning decisions or relevant decisions it makes. An SHA is required only to report on consultation which is carried out by the SHA itself that influences its commissioning decisions.
4. The meaning of 'commissioning decisions' is different for SHAs and PCTs. The different meanings are set out in the relevant sections of this guidance.
5. SHAs do not generally commission healthcare services, the only current exception to this being the nationally commissioned services commissioned by London SHA on behalf of the ten SHAs.
6. Section 1 of this guidance deals with the reporting duties that apply to PCTs; section 2 applies to SHAs.
7. This is not statutory guidance.

What and who this guidance is for

This guidance explains sections 17A and 24A of the NHS Act 2006, the detailed requirements of reporting that are set out in the directions made under those sections, and the reporting requirements created by the directions for PCTs in relation to relevant decisions. It provides practical help, advice and suggestions for PCTs and SHAs to use when preparing and publishing their reports. It also includes an example that illustrates how a PCT demonstrated its responsiveness and accountability to its community.

This guidance will be of interest to chief executives and directors of commissioning and communication. It may also be of interest to overview and scrutiny committees (OSCs), Local Involvement Networks (LINKs), community groups and the many people who use the NHS.

Background

The duty to report on consultation about commissioning decisions is set out in sections 17A and 24A of the NHS Act 2006. A further duty on PCTs to report on consultation about relevant decisions is set out in the directions themselves.

For both SHAs and PCTs the duty is to report, when directed to do so by the Secretary of State, on consultations that:

- have been carried out;
- will be carried out; and
- are being carried out.

They must also report on the influence that the results of the consultation have on commissioning decisions and, in the case of PCTs, relevant decisions.

The difference in the reporting duties for PCTs and SHAs is that a PCT must report on any consultation, carried out by any person, that influences the commissioning decisions or relevant decisions it makes. An SHA is required only to report on consultation that influences its commissioning decisions which is carried out by the SHA itself.

Directions have been issued by the Secretary of State for both PCTs and SHAs. The directions trigger the duty under sections 17A and 24A of the NHS Act 2006 and provide further detail about what the reports must include. In addition, they create a duty on PCTs to report about consultation on relevant decisions.

The directions detail what must be covered by the reports, including:

- what period the reports must cover;
- the times when each organisation must prepare and publish a report;
- the matters to be addressed by the reports; and
- when and how a copy of each report should be made available.



Points to note about consultation

1. The duty to report under sections 17A and 24A of the NHS Act 2006 is limited to consultation exercises about commissioning decisions made by the PCT or the SHA. The further duty on PCTs created by the directions is limited to reporting on consultation about relevant decisions made by the PCT.
2. The requirements to report do not extend to any other form of involvement activity; for example, giving information is not consulting.
3. There is no one definition of 'consultation', but in essence it means the act of asking a person for their views on a proposal or issue, before a decision is taken.
4. Consultations may take different forms, depending on the circumstances. For example, consultation about a decision that affects only one person might involve a discussion with that person. Other proposals may require a full written public consultation, as envisaged by the Cabinet Office's Code of Practice on Consultation. There is no 'one size fits all', but the general rule is that those who may be affected by the decision should have an opportunity to give their views.
5. Whatever form a consultation takes, it must have the following four elements:
 - i. It must take place at a time when the proposal is still at a formative stage.
 - ii. The proposer must give sufficient reasons for any proposal to permit intelligent consideration and response.
 - iii. Adequate time must be given for consideration and response.
 - iv. The outcomes of consultation must be conscientiously taken into account in finalising any statutory proposals.
6. What constitutes 'adequate' time will depend on the circumstances in each case. It does not necessarily mean 12 weeks, as set out in the Cabinet Office of Code of Practice on Consultation. Although the Code has no legal standing, it is intended to **provide guidance for public bodies carrying out full, written public consultation**. If the code is not followed, the reasons for not doing so should be stated.

▶ SECTION 1

Section 24A of the NHS Act 2006, and directions to primary care trusts about reports on consultation with regard to commissioning decisions and relevant decisions 2009, explained

The duty to report on consultation is set out in section 24A(1) of the NHS Act 2006 as follows:

- “(1) Each Primary Care Trust must, at such times as the Secretary of State may direct, prepare a report –
- a) on the consultation carried out, or proposed to be carried out, before the making by the Primary Care Trust of commissioning decisions, and
 - b) on the influence that the results of consultation have on its commissioning decisions.”



Points to note

1. PCTs are required to report on consultations about commissioning decisions and relevant decisions.
2. Section 24A(2) of the 2006 Act defines ‘commissioning decisions’ as “decisions as to the carrying out of its functions under Parts 4 to 7” of the NHS Act 2006 (decisions about the commissioning of primary care). Relevant decisions are defined in the directions as decisions taken by the PCT in relation to its functions under sections 3 and 5 of, and Schedule 1 to, the NHS Act 2006 (decisions about the commissioning of secondary care and community health services).
3. This means that the reporting requirements cover any consultation about a decision made by a PCT about commissioning services under any part of the NHS Act 2006. The reporting requirements are the same for commissioning decisions as they are for relevant decisions.
4. A PCT is required to report on any consultation carried out by **any person** or organisation, such as an NHS trust or NHS foundation trust, in relation to the commissioning decisions it makes.

The duty to report on consultation about commissioning decisions is set out in section 24A of the 2006 Act and is triggered by directions made under that section. The duty to report on consultation about relevant decisions is set out in the directions themselves.

The directions come into force on 1 April 2010.

The directions set out in more detail what needs to be included in the reports.



Point to note

In the following section, the blue text is taken directly from the directions. The explanations are in black.

The requirements set out in the directions: what PCTs must do

The reporting requirements are set out in the directions as follows.

Direction 2(1) states:

“Each Primary Care Trust must prepare and publish a report –
(a) for the purposes of section 24A(1) of the 2006 Act; and
(b) on the consultation carried out or proposed to be carried out before the making by the Trust of relevant decisions and the influence that the results of the consultation have on those decisions,
within 6 months of the end of each financial year.”

Within six months of the end of each financial year, each PCT must prepare and publish a report on the influence that the results of consultations have had on the commissioning and relevant decisions it has taken. The report should also give information on consultations that have been carried out or are under way and those that are proposed to be carried out in the next financial year.

The financial year runs from 1 April to 31 March.

What period must the report cover?

Direction 2(2) specifies: “The report must cover the financial year preceding the year in which the report is published.”

The first report should cover the 12-month period from 1 April 2009 until 31 March 2010. Following that, a report should be published for each successive 12-month period.

Section 1: Section 24A of the NHS Act 2006, and directions to primary care trusts about reports on consultation with regard to commissioning decisions and relevant decisions 2009, explained

When must the reports be published?

Direction 2(1) states that the report must be prepared and published “within 6 months of the end of each financial year”.

The first report must be published by the end of September 2010, and following that by the end of each successive September.

What must be included in the report?



Points to note

1. See pages 6–7 for clarification of what constitutes a consultation in this context.
2. The examples highlighted in the following sections refer to a piece of work undertaken by NHS Derby City.

Direction 2(3)(a)–(f) specifies what must be dealt with in the report:

“The report must deal with the following matters –
(a) the persons who have been consulted during the financial year and the commissioning decisions and relevant decisions in respect of which those persons were consulted;”

The report should identify the people who were consulted, for example the patient groups, specific communities, organisations and NHS staff groups. It should also specify what issues or proposals people were asked to give their views on.

In 2008, NHS Derby City wanted to develop services to support health improvement in communities that had traditionally ‘switched off’ from health promotion messages. The PCT undertook a piece of community development work in an area of the city that had significant lifestyle and health inequality issues.

The neighbourhood board, partner agencies and more than 160 residents were involved in a co-production that enabled the community to talk to the PCT about what mattered to them.

Section 1: Section 24A of the NHS Act 2006, and directions to primary care trusts about reports on consultation with regard to commissioning decisions and relevant decisions 2009, explained

“(b) what information was provided to those persons in relation to the commissioning decisions and relevant decisions those persons were consulted about;”

The report should identify any information made available to people during a consultation. For example, if a written consultation document was produced the report needs to say so, and it may be included along with any other information provided via a web link to the report.

The community was given information about the health of local people and what the PCT wanted to achieve. People were also given information about the commissioning process and the difficulties the PCT faces when making decisions.

The activities were led by the residents, and the outcomes provided NHS Derby City with a more detailed understanding of how the community viewed these matters.

“(c) what matters relating to commissioning decisions and relevant decisions those persons were consulted about;”

The report should clearly set out what people were asked to comment on. Where specific questions were asked, they should be included in the report or made available via a web link to the report.

The community was asked to consider what the PCT could do to improve their health and what sort of services should be made available. The community's main concerns were poor diet and lack of exercise, so they decided to look at how best to tackle smoking and obesity and reduce alcohol consumption.

“(d) if a consultation carried out during the year has concluded by the time the report is prepared, the results of any consultation, including a summary of the differences between the views expressed by those consulted;”

Where a consultation has been completed within the financial year, the report should include a summary of the feedback obtained or received and the range of views expressed by different people, because this will help to show what really mattered to different groups in the community.

Initially the health of the community wasn't its main concern. People were more interested in getting the community together and talking on a regular basis. Safety and providing activities for children, young people and families were issues for the community.

As the work progressed, residents planned and ran a fun day at which they considered how to bring together their needs and wishes with the need to improve their health.

Local residents were part of a team that held workshops on health and commissioning to enable people to understand all the issues better. At a 'Dragon's Den' day the community listened to pitches from commissioners and providers and reached a consensus on the best health improvement model for the community.

"(e) details of any commissioning decision or relevant decision made following consultation including –
(i) what decision was made, and
(ii) the influence that the results of consultation had on that decision;"

The report should clearly set out:

- the commissioning decisions and relevant decisions taken by the PCT following a consultation;
- an explanation of how the views of the people who were consulted were taken into account when the decision was made;
- how feedback influenced the decision taken – whether anything was commissioned differently as a result of the feedback received; and
- the main issues considered on which it was not possible to act, and the reasons why.



Point to note

An organisation has to consider all the responses it receives that are relevant to the consultation, even though it may not be able to act on every issue raised as this may not be possible for a number of reasons, for example clinical safety.

PCTs should be prepared to account to people for the decisions they make. They may wish to use the report to explain the range of factors they had to take into account when making a decision, and should be prepared to explain how they reached each decision in an open and transparent way. Where PCTs are unable to change their plans in order to respond to, or take account of, local views and concerns, they should be prepared to set out what the local concerns were and why they were unable to act on them when they made the decision. Additionally, where issues or concerns emerge that relate to or have implications for specific sectors of the population, for example people with learning disabilities, and there is or may be an equality aspect, PCTs should be prepared to explain how they have responded to them and taken them into account.

NHS Derby City had initially considered commissioning a traditional model of services, such as smoking cessation clinics, that would help people who thought they were ready to make changes.

The community created and chose a model that would offer access to everyone rather than just to those people who were ready to make changes in their lives. The model is based on meeting and offering support to each other through a 'time bank' approach, which doesn't rely on money but on sharing skills for credits in the community. This whole-lifestyle service is being developed into a commissioning proposal that can be rolled out across the city by the public health directorate.

The PCT believes that the community's approach will reach a wider audience and that as it is accessible and attractive to everyone it will be more successful than the traditional model the PCT had originally considered.

- "f) the consultations which are proposed to be carried out, or are being carried out, in the financial year following the year covered by the report, including information as to –
- (i) the persons who it is proposed will be consulted or who are being consulted, and
 - (ii) the matters on which it is proposed those persons will be consulted or are being consulted."

The report should set out consultations that are being planned for the forthcoming year and any that are in progress. In each case, the report should cover who the PCT is proposing to consult or is consulting and what the PCT wants to find out.

Where must a copy of the report be made available?

Direction 2(4) specifies where the report must be made available:

“The Trust must make a copy of the report available –

- (a) on the Trust’s website; and
- (b) to inspect at each office of the Trust.”

The report must be made available on the PCT’s website and a copy must be available for reference at every PCT office. It would be good practice, and helpful, for:

- information on where the report can be found to be prominent on the PCT’s website;
- the PCT to consider printing a copy for people who have difficulty accessing the internet;
- a PCT that decides not to publish a dedicated report on consultation to make it clear where the different elements of the report can be found, such as in its annual report; and
- supporting documents such as consultation documents referenced in the report to be made available through a link on the website.

In whichever document the report is published, all reports on consultation must fulfil the requirements of the duty under section 24A of the NHS Act 2006 and the directions to PCTs (see ‘What must be included in the report?’ on pages 10–13).

For how long must the report be made available?

Direction 2(4) also specifies that the report must be available “for a period of at least one year from the date the report is published or until such a time as the report for the following year is published, whichever is the longer period.”

The report must be available on the website and in each of the PCT’s offices for at least one year from the date it was published, and must remain there until it is replaced by the following year’s report. Where the following year’s report is not yet available, this may mean that it remains there for longer than a year.

What does this mean for specialised commissioning groups?

Each PCT that is a member of one of the ten specialised commissioning groups (SCGs) that act as formal joint committees in commissioning specialised services across the area of the SHA has an obligation to report on consultations undertaken to inform commissioning decisions that relate to specialised services.

When individual PCTs are preparing their reports, they may wish to include information obtained from the SCG.

What does this mean for practice-based commissioners?

In their reports on consultation, PCTs must include consultations undertaken by practice-based commissioners that have informed their commissioning decisions.

What does this mean for integrated commissioning?

Where a PCT has a shared approach to commissioning a health service and there is an agreed process for delegating commissioning decisions, the PCT must report on any consultation that has been undertaken either by the PCT or by a partner organisation in relation to the service.

Frequently asked questions



Q: What are 'commissioning decisions'?

A: Commissioning decisions are the decisions made by a PCT about commissioning services in relation to carrying out its functions under sections 4–7 of the NHS Act 2006 (decisions about the commissioning of primary care services).

This does not cover decisions about commissioning services made by PCTs under other parts of the NHS Act 2006 (secondary care and community health services), which is why the duty to report also covers relevant decisions (see explanation of relevant decisions below).

Both commissioning decisions and relevant decisions are subject to the same reporting requirements.



Q: What are 'relevant decisions'?

A: Relevant decisions are decisions made by a PCT about the commissioning of services under sections 3 and 5 of, and Schedule 1 to, the NHS Act 2006. That is, any decision about the commissioning of secondary care and community health services, such as hospital accommodation, nursing services and ambulance services.

The reporting requirements cover both commissioning decisions and relevant decisions, which means that all decisions made by a PCT in relation to carrying out its functions under any part of the NHS Act 2006 are subject to the same reporting requirements.



Q: Does a PCT have to report on consultations undertaken by an NHS trust or NHS foundation trust?

A: Yes. A PCT is required to report on consultations carried out or proposed to be carried out by any person or organisation in relation to the commissioning decisions it makes. For example, where an NHS trust or NHS foundation trust has undertaken a consultation and the feedback has influenced a PCT's commissioning decisions, the PCT should report on that consultation.



Q: Who is the report for?

A: The report is a public document that may have many audiences, including patients and the public.



Q: Does the report need to be made available in any particular style or format?

A: No. The PCT can determine the format for the report, but should take into account that it ought to be in a style and format that can be easily understood and accessible to all concerned; for example, to people who have learning disabilities or non-English-speaking people.



Q: PCTs produce annual reports; can the report on consultation be included in the annual report, or does a separate report need to be produced?

A: There is no expectation or requirement that a PCT must publish a separate report on consultation in order to comply with the reporting duty. It may make sense to use an existing report, such as the PCT's annual report, as the vehicle for publishing this information. Wherever the report on consultation is published, it must include all of the information required by the directions as set out in this guidance (see 'What must be included in the report?' on pages 10–13).



Q: Where a PCT has commissioned an independent analyst to prepare a report on the responses received during a consultation on a major service reconfiguration, and has published that report in a newsletter or an e-bulletin together with the subsequent steps and decisions taken, does it also need to report separately on that consultation?

A: Where a PCT is planning to publish a report from an independent analyst as part of its duty to report on consultation, it must make sure that the report covers all the information requirements set out in the directions and this guidance (see 'What must be included in the report?' on pages 10–13).



Q: Where a PCT has published action plans as part of its strategic commissioning plans and these plans evidence involvement activity, does the PCT have to publish a separate report on consultation?

A: The only requirement is for a PCT to publish a report on its website of consultations undertaken in relation to its commissioning decisions. It would be helpful to indicate where that report can be found, and especially helpful if a stand-alone document is not being published.



Q: Does the report need to be signed off by the PCT board?

A: As the report is a public document, it must go through normal governance processes.

Section 1: Section 24A of the NHS Act 2006, and directions to primary care trusts about reports on consultation with regard to commissioning decisions and relevant decisions 2009, explained



Q: What happens if a PCT does not report on consultation or put the report on its website?

A: This would mean that the PCT is in breach of its statutory duty.



Q: Does the duty to report on consultation apply to care trusts?

A: A care trust must already be a PCT or an NHS trust. If it is a PCT, then the duty will apply. The duty does not apply to NHS trusts.

▶ SECTION 2

Section 17A of the NHS Act 2006, and directions to strategic health authorities about reports on consultation with regard to commissioning decisions 2009, explained

The duty to report on consultation is set out in section 17A of the NHS Act 2006 as follows:

- “(1) Each Strategic Health Authority must, at such times as the Secretary of State may direct, prepare a report –
- a) on the consultation it has carried out, or proposes to carry out, before making commissioning decisions, and
 - b) on the influence that the results of consultation have on its commissioning decisions.”



Points to note

1. Section 17A(2) sets out the meaning of ‘commissioning decisions’ for SHAs. These are decisions made by an SHA as to the carrying out of its functions for the purpose of securing the provision of services as part of the health service.
2. An SHA is required to report only on consultations it has carried out or will carry out itself.
3. SHAs do not generally commission healthcare services, the only current exception to this being the nationally commissioned services commissioned by London SHA on behalf of the ten SHAs.
4. Nationally commissioned and funded services are for those very rare diseases and interventions where the annual national caseload is under 400 and the provider centres are limited to those designated by ministers.

The duty to report is set out in section 17A of the NHS Act 2006 and is triggered by directions that come into force on 1 April 2010.



Point to note

In the following section, the blue text is taken directly from the directions. The explanations are in black.

The requirements set out in the directions: what SHAs must do

The reporting requirements are set out in the directions as follows.

Direction 2(1) states:

"Each Strategic Health Authority must prepare and publish a report for the purposes of section 17A(1) of the National Health Service Act 2006 within 6 months of the end of each financial year."

Within six months of the end of each financial year, each SHA must prepare and publish a report on the influence that the results of consultations it has undertaken have had on the commissioning decisions it has taken. The report should also give information on the consultations that are under way and those that the SHA proposes to carry out in the next financial year.

The financial year runs from 1 April to 31 March.

What period must the report cover?

Direction 2(2) specifies that "The report must cover the financial year preceding the year in which the report is published."

The first report must cover the 12-month period from 1 April 2009 until 31 March 2010, and following that a report should be published for each successive 12-month period.

When must the reports be published?

Direction 2(1) states that the report must be prepared and published "within 6 months of the end of each financial year".

The first report must be published by the end of September 2010, and following that by the end of each successive September.

What must be included in the report?

Direction 2(3)(a)–(f) specifies what must be dealt with in the report:

“The report must deal with the following matters –

- a) the persons who have been consulted during the financial year by the Strategic Health Authority and the commissioning decisions in respect of which those persons were consulted”

The report should identify the users, organisations and others, such as NHS staff, who were consulted during the period of the financial year. It should also specify what issues or proposals people were asked to give their views on.



Point to note about consultation

See ‘Background’ on pages 6–7 for clarification of what constitutes a consultation in this context.

“b) what information the Authority provided to those persons in relation to the commissioning decisions those persons were consulted about”

The report should identify any information made available to people during a consultation. For example, if a written consultation document was produced, this may be included, along with any other information, via a web link to the report.

“c) what matters relating to commissioning decisions those persons were consulted about”

The report should clearly set out what people were asked to comment on. Where specific questions were asked, they should be included in the report or made available via a web link to the report.

“d) if a consultation carried out by the Authority during the year has concluded by the time the report is prepared, the results of any consultation, including a summary of the differences between the views expressed by those consulted”

Where a consultation has been completed within the financial year, the report should include a summary of the feedback obtained or received and the range of views expressed by different people, because this will help to show what really mattered to different groups in the community.

“e) details of any commissioning decision made following consultation including –
(i) what decision was made, and
(ii) the influence that the results of consultation had on that decision”

The report should clearly set out:

- the commissioning decisions taken by the SHA following a consultation;
- an explanation of how the views of the people who were consulted were taken into account when the decision was made;
- how feedback influenced the decision taken – whether anything was commissioned differently as a result of the feedback received; and
- the main issues considered on which it was not possible to act and the reasons why.



Point to note

An organisation has to consider all the responses it receives that are relevant to the consultation, even though it may not be able to act on every issue raised (this may not be possible for a number of reasons, for example clinical safety).

An SHA should be prepared to account to people for the decisions it has taken. It may wish to use the report to explain the range of factors that it had to take into account when making a decision, and should be prepared to explain how it has reached each decision in an open and transparent way. Where an SHA has been unable to change its plans to respond to, or take account of, local views and concerns it should be prepared to set out what the concerns were and why it was unable to act on them when it made the decision. Additionally, where issues or concerns emerge that relate to or have implications for specific sectors of the population, for example people with learning disabilities, and there is or may be an equalities aspect, SHAs should be prepared to explain how they have responded to them and taken them into account.

- “f) the consultation which the Authority proposes to carry out, or is carrying out, in the financial year following the year covered by the report, including information as to –
- (i) the persons the Authority is proposing to consult or is consulting; and
 - (ii) the matters on which the Authority is proposing to consult or is consulting.”

The report should set out any consultations that are being planned by the SHA for the forthcoming year and any that are in progress. In each case, the report should cover who the SHA is proposing to consult or is consulting and what the SHA wants to find out.

Where must a copy of the report be made available?

Direction 2(4) specifies where the report must be made available:

“The Authority must make a copy of the report available –

- (a) on the Authority’s website; and
- (b) to inspect at each office of the Authority.”

The report must be made available on the SHA’s website and a copy must be available for reference at every SHA office. It would be good practice, and helpful, for:

- information on where the report can be found to be prominent on the SHA’s website;
- an SHA to consider printing a copy for people who have difficulty accessing the internet;
- an SHA that decides not to publish a dedicated report on consultation to make it clear where the different elements of the report can be found, such as in its annual report; and
- supporting documents such as consultation documents referenced in the report to be made available though a link on the website.

In whichever document the report is published, all reports on consultation must fulfil the requirements of the duty under section 17A of the NHS Act 2006 and the directions to SHAs (see ‘What must be included in the report?’ on pages 22–23).

For how long must the report be made available?

Direction 2(4) also specifies that the report must be available “for a period of at least one year from the date the report is published or until such a time as the report for the following year is published, whichever is the longer period.”

The report must be available on the website and in each of the SHA’s offices for at least one year from the date it was published, and must remain there until it is replaced by the following year’s report. Where the following year’s report is not yet available, this may mean that it remains there for longer than a year.

What does this mean for SHAs?

SHAs do not generally commission health services. The only SHA that currently commissions services is London SHA, as it is responsible for nationally commissioned services. Therefore at present this is the only SHA that is required to prepare and publish a report on consultation.

Nationally commissioned and funded services are those for very rare diseases and interventions. The list of services that are nationally commissioned is set out in the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002. There are currently 40 nationally commissioned services; examples include heart and lung transplant, rare cancer services and secure forensic mental health services for young people.

The SHA responsible for this function must report on the consultations it has undertaken or is planning to undertake in relation to those commissioning decisions.

Frequently asked questions



Q: What are 'commissioning decisions'?

A: Commissioning decisions are the decisions an SHA makes when it secures the provision of services as part of the health service.



Q: The SHA produces an annual report; can the report on consultation be included in the annual report, or does a separate report need to be produced?

A: There is no expectation or requirement that an SHA must publish a separate report on consultation in order to comply with the reporting duty. It may make sense to use an existing report, such as the SHA's annual report, as the vehicle for publishing this information. Wherever the report on consultation is published it must include the information required by the directions as set out in this guidance (see 'What must be included in the report?' on pages 22–23).



Q: Does the report need to be signed off by the SHA board?

A: As the report is a public document, it must go through normal governance processes.



Q: Is there a requirement to publicise the report?

A: The report is a public document and it would be good practice and helpful to provide information on where it can be found in a prominent place on the SHA's website. References to where it can be found could also be made in the SHA's annual report.



Q: What happens if an SHA doesn't report on consultation or put the report on its website?

A: This would mean that the SHA is in breach of its statutory duty.

APPENDICES

Appendix 1

Directions to Primary Care Trusts about Reports on Consultation with regard to Commissioning Decisions and Relevant Decisions 2009

The Secretary of State gives the following Directions in exercise of the powers conferred by sections 8, 24A(1) and (3), 272(7) and (8) and 273(4) of the National Health Service Act 2006(a).

Application, commencement and interpretation

1. —(1) These Directions apply to Primary Care Trusts
- (2) These Directions shall come into force on 1st April 2010.
- (3) In these Directions—
 - “the 2006 Act” means the National Health Service Act 2006;
 - “financial year” means—
 - (a) a period of 12 months ending on 31st March 2010, and
 - (b) each successive period 12 of months ending with 31st March;
 - “relevant decision” means a decision by a Primary Care Trust as to the carrying out of its functions for the purpose of securing, by arrangement with any person or body, the provisions of services under sections 3 to 5 of, and Schedule 1 to, the 2006 Act(b).

Reports on consultation about commissioning decisions

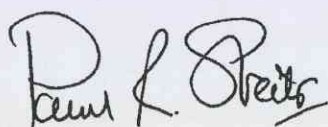
2. —(1) Each Primary Care Trust must prepare and publish a report—
 - (a) for the purposes of section 24A(1) of the 2006 Act; and
 - (b) on the consultation carried out or proposed to be carried out before the making by the Trust of relevant decisions and the influence that the results of the consultation have on those decisions, within 6 months of the end of each financial year.
- (2) The report must cover the financial year preceding the year in which the report is published.

(a) 2006 c.41. Section 24A was inserted by section 234(2) of the Local Government and Public Involvement in Health Act 2007 (c.28).

(b) Schedule 1 to the 2006 Act has been amended by sections 143 and 160 of, and paragraph 6 of Schedule 4 to, the Health and Social Care Act 2008 (c.14).

- (3) The report must deal with the following matters—
 - (a) the persons who have been consulted during the financial year and the commissioning decisions and relevant decisions in respect of which those persons were consulted;
 - (b) what information was provided to those persons in relation to the commissioning decisions and relevant decisions those persons were consulted about;
 - (c) what matters relating to the commissioning decisions and relevant decisions those persons were consulted about;
 - (d) if a consultation carried out during the year has concluded by the time the report is prepared, the results of any consultation, including a summary of the differences between the views expressed by those consulted;
 - (e) details of any commissioning decision or relevant decision made following consultation including—
 - (i) what decision was made, and
 - (ii) the influence that the results of consultation had on that decision;
 - (f) the consultations which are proposed to be carried out, or are being carried out, in the financial year following the year covered by the report, including information as to—
 - (i) the persons who it is proposed will be consulted or who are being consulted, and
 - (ii) the matters on which it is proposed those persons will be consulted or are being consulted.
- (4) The Trust must make a copy of the report available—
 - (a) on the Trust's website, and
 - (b) to inspect at each office of the Trust, for a period of at least one year from the date the report is published or until such time as the report for the following year is published, whichever is the longer period.

Signed by authority of the Secretary of State for Health
5th November 2009



Paul Streets
Member of the Senior Civil Service
Department of Health

Explanatory Note

(This note is not part of the Directions)

These Directions make provision about reports made by Primary Care Trusts on consultation carried out before it makes decisions relating to the commissioning of health services. In particular, it requires Primary Care Trusts to prepare and publish reports which cover both commissioning decisions relating to primary care services, pursuant to section 24A of the National Health Service Act 2006 (c.41) and decisions as to the provision of other health services. Provision is also made for the matters to be addressed in such reports.

Direction 2(2) specifies the times at which the Primary Care Trust must prepare and publish a report.

Direction 2(3) specifies the matters that the report must address. This includes information about who has been consulted and what they were consulted about, details of any commissioning decisions made and details about proposals for consultations to be carried out or being carried out.

Direction 2(4) makes provision about when and how a copy of the report should be made available.

Appendix 2

Directions to Strategic Health Authorities about Reports on Consultation with regard to Commissioning Decisions 2009

The Secretary of State gives the following Directions in exercise of the powers conferred by sections 17A(1) and (5), 272(7) and (8) and 273(4) of the National Health Service Act 2006(a).

Application, commencement and interpretation

1. —(1) These Directions apply to Strategic Health Authorities.
- (2) These Directions shall come into force on 1st April 2010.
- (3) In these Directions “financial year” means—
 - (a) a period of 12 months ending on 31st March 2010; and
 - (b) each successive period of 12 months ending with 31st March.

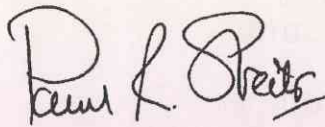
Reports on consultation about commissioning decisions

2. —(1) Each Strategic Health Authority must prepare and publish a report for the purposes of section 17A(1) of the National Health Service Act 2006 within 6 months of the end of each financial year.
- (2) The report must cover the financial year preceding the year in which the report is published.
- (3) The report must deal with the following matters—
 - (a) the persons who have been consulted during the financial year by the Strategic Health Authority and the commissioning decisions in respect of which those persons were consulted;
 - (b) what information the Authority provided to those persons in relation to the commissioning decisions those persons were consulted about;
 - (c) what matters relating to the commissioning decisions those persons were consulted about;
 - (d) if a consultation carried out by the Authority during the year has concluded by the time the report is prepared, the results of any consultation, including a summary of the differences between the views expressed by those consulted;
 - (e) details of any commissioning decision made following consultation including—
 - (i) what decision was made, and
 - (ii) the influence that the results of consultation had on that decision;

(a) 2006 c.41. Section 17A was inserted by section 234(1) of the Local Government and Public Involvement in Health Act 2007 (c.28).

- (f) the consultations which the Authority proposes to carry out, or is carrying out, in the financial year following the year covered by the report, including information as to—
 - (i) the persons the Authority is proposing to consult or is consulting; and
 - (ii) the matters on which the Authority is proposing to consult or is consulting.
- (4) The Authority must make a copy of the report available—
 - (a) on the Authority's website; and
 - (b) to inspect at each office of the Authority, for a period of at least one year from the date the report is published or until such time as the report for the following year is published, whichever is the longer period.

Signed by authority of the Secretary of State for Health
5th November 2009



Paul Streets
Member of the Senior Civil Service
Department of Health

Explanatory Note

(This note is not part of the Directions)

These Directions make provision as to the timing and publication of, and about matters to be addressed in, reports made by Strategic Health Authorities under section 17A of the National Health Service Act 2006 (c.41) on commissioning decisions.

Direction 2(1) specifies the times at which the Strategic Health Authority must prepare and publish a report and direction 2(2) specifies the period that the report must cover.

Direction 2(3) specifies the matters that the report must address. This includes information about who has been consulted and what they were consulted about, details of any commissioning decisions made and details about proposals for consultations to be carried or being carried out.

Direction 2(4) makes provision about when and how a copy of the report should be made available.



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