

NHS Consultation and Public Involvement Requirements. A Summary



Strengthening Public Influence on Health

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The NHS patient and public involvement system consists of

- NHS duties to patients and the community, and
- Organisations external to the NHS, which hold it to account.

All apply to Foundation Trusts unless otherwise stated.

A. NHS DUTIES

1. Duty to consult and involve patients ('Section 11' duty of dialogue) on

- *planning of services*
- *planning of changes in how services are provided;*
- *decisions affecting operation of services¹*

Clearly, there is little NHS activity, other than actually treating patients, which does not fall within this duty. Proposals for service changes should be developed with patients or their representatives, so that by the time these come to formal public consultation, they can demonstrate benefit from the patient perspective.

Failure to comply with Section 11 could have legal consequences, as it is a legal requirement, although these consequences have yet to be tested in the courts. PCT Patients Forums (see below) monitor how well NHS performance on Section 11.

2. Duty to consult publicly on major changes with the Overview and Scrutiny Committee (OSC) of the local authority (see below). Changes affecting more than one area require consultation with all affected OSCs, who must form a Joint Scrutiny Committee to consider the plans jointly. The OSC may block such plans by referring them to the Secretary of State for decision, if it is not satisfied that

- The consultation is adequate in content or time allowed; or
- The planned change is '*in the interest of*' the local health service.'

Each OSC on a Joint Scrutiny Committee retains its individual right of referral.

A decision may be taken without consultation if the NHS identifies '*a risk to safety or welfare of patients or staff*'. However, the OSC must be notified in such a case and may refer such a decision to the Secretary of State if it considers the reasons given to justify this position to be inadequate.

Failure to consult on major change can (and has) lead to judicial review and the decision being overturned.

¹ Italicised quotes are extracts from the relevant legislation.

3. NHS Duty to handle complaints appropriately by making *accessible* arrangements for complaints to be dealt with '*speedily and efficiently*' and with courtesy and sympathy to the complainants. Contracts with private providers must ensure that similar arrangements apply for patients treated under the contract. This duty does not apply to Foundation Trusts.

Failure to comply with this requirement could be subject to legal challenge, but in any event, dissatisfied complainants can ask the Healthcare Commission to consider their complaint, even if it is against a Foundation Trust.

B. OUTSIDE ORGANISATIONS HOLDING THE NHS TO ACCOUNT

1. Patients Forums are made up of volunteer members appointed by the Commission for Patient and Public Involvement in Health (a function to be taken over by the NHS Appointments Commission). Forums have the legal right to enter all parts of the NHS and monitor services. They must seek the views of patients and carers in their service reviews. They also have the right to obtain information from the NHS.

The NHS Trust, PCT or Foundation Trust concerned must respond to the Forum's recommendations within 20 days. The Forum has wide powers of referral on any matter about which it is concerned, referring to the local OSC or '*such persons or bodies as it thinks fit*'.

2. Overview and Scrutiny Committees of local authorities are committees of elected local councillors. In addition to being consulted on major changes (see above), OSCs have the power to scrutinise '*any matter relating to planning, provision or operation of the health service*' within their area. The OSC has the legal right to obtain information from the NHS. It may also require attendance of an NHS officer for this purpose and the officer is legally obliged to attend. The NHS must respond to reports and recommendations from the OSC within 28 days.

Failure to respond to a request to provide information or respond to an OSC report, could have legal consequences.

3. Independent Complaints Advocacy Service (ICAS) is a statutory service supporting and representing patients wanting to complain about the NHS (but not Foundation Trusts). This service is currently contracted out to various voluntary sector organisations and managed by the Department of Health. The purpose of ICAS is to help patients through the NHS complaints system so patients are able to hold it to account.