

Have your say

Consultation on the Draft Regulations for Local Involvement Networks (LINKs)

You will be aware that the Department of Health have only just published the draft regulations for LINKs and I hope you will find this analysis helpful. Having reviewed them carefully the Commission believes that they will not provide the underpinning foundations that are required to progress PPI and so make a discernable difference to the health and social economy that society needs.

Two Key General Points:

- The regulations are a fundamental part of the LINKs process – they determine how LINKs will work. Parliament is being asked to agree to legislation before the end of October 2007, yet the regulations will not be published until early 2008. How can Peers and MPs determine if the legislation is fit for purpose without knowing how it will operate in practice? We know from experience that the 'devil is in the detail' and the detail in these regulations is profoundly important.
- The stripped down "LINKs explained" section on page 6 really does demonstrate starkly how feeble and ineffective LINKs will be. Their role as summarised is essentially passive and their powers not much more than those available to every citizen. If citizens feel increasingly powerless, what difference can LINKs really make using, in effect, the same powers?

Responding to requests for information made by a LINK

- Pages 10 through 13 simply state that LINKs will have no additional powers to seek information over and above those available to basically any citizen. That is to say there are no LINKs specific information powers. Additionally there is no power of enforcement. It is quite common now for a Trust to fail to reply within 20 days and, in effect, no sanction that can be applied. It is known that LINKs will have very limited budgets and will be unable to meet the costs imposed on FOI requests by providers. These costs can be used as barriers to access.
- There is a particular issue here that is masked by misleading terminology. In spite of the general use of the phrase, there is no such thing as a "LINKs budget." The money that will be given to local authorities is to provide Host contractor budgets. By the time that has been used to set up the support organisation, there will be very little spending money left for the LINK. So costs, such as those for FOIA

requests, could become quite significant in relation to a small budget. LINKs could find themselves having to decide between seeking fundamental information and having signers at meetings or paying carer expenses. These are not acceptable choices and are somewhat at odds with the Government's stated view that LINKs will be better at inclusion.

- There should be specific LINKs information powers and these should provide for shorter deadlines, make provision for the quality of the information given and should exempt LINKs from the charging regime within the FOIA.

Responding to reports and recommendations made by a LINK

- This is a more appropriate section and in particular it is positive that responses to LINK reports should include explanations of why their recommendations are not being adopted. However, the section is pretty light on what a LINK can do if it is unhappy with the responses it gets and why does this section only refer to Commissioners? There are bound to be reports about service providers, but these appear to then be bounced to commissioners – if there is one. Why isn't there a duty on providers to respond also? The complexity of children's services is understood, but it is important that excluding LINKs does not result in fragmentation of public scrutiny.
- There should be a duty placed on providers to respond to LINKs reports. It should be a formal requirement that reports on children's services produced by third parties are shared with LINKs. It should be made clear where LINKs can go if they are unhappy with the response to a report or feel that it has not been taken seriously enough. The 20 day timescale is acceptable for a full response, but this should not be misused by commissioners and providers. If a proper response will take more than 20 days then commissioners and providers should be required to negotiate this with LINKs rather than waiting 20 days and sending a holding response.

Duty of services – providers to allow entry by LINKs

- This section seems more concerned with barring access rather than letting LINKs in. We know that DH has real issues with the whole lay inspection issue. They tried to remove it from the PPI Forum legislation but Parliament thwarted them, they tried to remove it from LINKs legislation but were forced to make a "concession". This section illustrates how thin that concession is.

- It is important that patient and service user confidentiality and privacy is paramount, but it appears that DH has no confidence that the public can be trusted to exercise any discretion in this matter at all.
- The section talks misleadingly about “rights” – although in fairness this is chiefly in the context of describing when they do not exist. To be clear, LINKs have no rights of access. A duty is placed on service providers to allow access and the control of this lies almost entirely with providers. There some interesting consequences of this. Apparently it is for a provider to decide if an individual’s privacy or dignity will be compromised by a LINK visit. Not the individual. LINKs will not be able to visit “someone’s home”, which is understandable, but does that include a residential care facility for people with dementia who are unable to speak for themselves? LINKs will not be able to visit non-communal areas. Again completely laudable, but does that mean that LINKs will be able to visit shiny public areas at the expense of poor quality individual living areas? Does this mean that LINKs will only be able to talk to residents in public areas under the case of staff and proprietors?
- LINKs can be invited in by residents. What happens if a resident wants to issue an invitation but the proprietor/manager disagrees? What happens if the residents have conditions that mean that they will never be able to issue invitations? The recent report on dignity in care would suggest that this is a burning issue.
- LINKs will not be able to enter premises when health and social care are not being provided. So does this mean that they will not be able to look at premises prior to a new contract starting up? Or inspect a building that is being refurbished by a provider or that has been cleared following an incident?
- LINKs will not be able to enter premises if the provider thinks that the authorised representative is not acting “reasonably and proportionately.” They cite the Principles of Good Regulation in support of this. This is classic civil service language. On the one hand they say that LINKs cannot inspect because they are not regulators. On the other they use regulator behaviour guidelines to control what access LINKs will have. Members of the public do behave differently to statutory regulators. They are not creatures of the system; they ask simple questions and sometimes are appalled and angered by what they find. This is part of the power of public engagement and these regulations are seeking to sanitise it. In effect they give complete freedom to the ‘300 pound gorilla’ on the door to decide who gets in.

- ! • The requirement for CRB checks is accepted, but it is worth noting that instead of the current single organisation carrying out these checks for Forum members, there will be up to 152 organisations carrying them out for LINKs members who wish to do visits.
- ④ • We have already referred to the worry that DH's intention is that legislation will be passed months before the regulations are published. This concern is compounded by the fact that these regulations will also be subject to a Code of Conduct. This will be a critical document and there is no indication of when it will be produced.
- There is no power of enforcement. Who decides if a provider is behaving unreasonably and does something about it? In the current system there is also no power of enforcement, but CPPIH can and does intervene to resolve disputes. In the new system presumably this role will fall on the Host contractors? What happens if the Host also has other contracts with social service and health care providers, perhaps even the one with whom the LINK is in dispute? How robust will the Host be in defending the LINK in those circumstances?
- ✗ • LINKs need to have specific rights of access enshrined in law. The reasons for refusing access need to be carefully defined and the public's ability to practice discretion needs to be recognised. There needs to be clear guidance on where LINKs can go if they feel they are being treated unreasonably. The important difference between regulators and concerned citizens needs to be acknowledged and valued. There should be an assumption of permissiveness towards access. It is telling that in the response form on page 21 that the question asked is, "Are there any further premises that should be exempted?"
- Given recent concerns about the quality of health and social care given to older people are these regulations fit for purpose? Having read them, would the relative of an older person in care feel that their family member was now safer? In terms of the issues that really matter to the public, does this new system represent progress on the current one?

LINKs referral to an Overview and Scrutiny Committee (OSC)

The relationship between the local OSC and LINK will be crucial. They should be strategic allies and partners. This section really provides no basis for this. It is accepted that much of this relationship will be developed at local level. However, there are legitimate issues of concern about how OSCs will deal with conflicts of interest, for example when the LINK makes a referral about local authority social service provision. The regulations should make provision for a national code of conduct that governs the relationship between LINKs and OSCs. LINKs should also have the right to refer directly to the Secretary of State.