

Patient and Public Involvement in Health and Social Care



HEALTHWATCH AND PUBLIC INVOLVEMENT ASSOCIATION

Sir Simon Stevens,
Chief Executive,
NHS England,
Skipton House,
80 London Road,
London, SE1 6LH

January 27th 2020

Dear Sir Simon,

Engagement Process - Draft Service Specifications for the Implementation of the Primary Care Networks (PCNs)

We are writing to formally complain about your engagement process regarding the development of local primary care services.

The consultation started on December 23rd 2019 and finished on January 15th at 1pm, allowing 14.5 working days of public consultation and engagement. You have shown total disregard for your statutory duties, the NHS Constitution, Cabinet Office guidance and case law, which require you to provide adequate time for patients and the public to respond to this “engagement exercise”.

You have a statutory duty to involve the community in any transition and transformation of services, and in relation to determining local needs, by listening to service users and acting to ensure that their needs are met.

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You are required to show due regard to the following best practice guidelines:

- 1) To engage and consult for a genuine purpose 'not for the sake of it'. Allowing only 14.5 working days in the middle of the Christmas and New Year holiday period, when many people were on leave, demonstrates that this was not a genuine engagement process and that you had no real interest in gathering the views of stakeholders.
- 2) The short period for engagement demonstrates, we believe, that you had already determined your final view on the issues raised in the document and were not genuinely interested in the view of patients or the public.
- 3) You made no attempt to involve patients and the public using public meeting and events, new digital tools and open, collaborative approaches. There was no ongoing process, only a short so-called engagement process on a complex document which is 35 pages long. There appears to be a deliberate attempt to exclude the public.
- 4) Engagement and consultation should last for a proportionate amount of time. This engagement process did not give enough time for consideration and reduced and negated the quantity and quality of responses.
- 5) Engagement and consultations should be targeted and consider the full range of people, communities and voluntary bodies affected by the policy, and whether representative groups exist who can be important sources of advice and experience. In this case PPGs, Healthwatch, Keep Our NHS Public and many voluntary sector bodies should have been consulted. You should have ensured these bodies were aware of the engagement process and could assess the key issues raised in the document. The document should have been tailored to the needs and preferences of particular groups, such as older people, younger people or people with disabilities that may not respond to traditional consultation methods.
- 6) The engagement process should have taken account of the groups being consulted and stakeholders should have been engaged in a way that suited them, e.g. some charities would have needed more time to respond.
- 7) When an engagement process spans all or part of a holiday period, you should have considered how this affected the engagement process and taken appropriate mitigating action, such as prior discussion with key interested parties or extension of the consultation deadline well beyond the holiday period.

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You also have a duty to promote the NHS Constitution (1b Health and Social Care Act): “The NHS pledges to provide the public with the information and support needed to influence and scrutinise the planning and delivery of NHS services”.

We would like to remind you of the Secretary of State’s 4 tests for service reconfiguration (in the Operating Framework) which include requirements for:

- Strengthened public and patient engagement
- Consistency with current and prospective patient choice

You should also have shown regard to your Public Sector Equality Duty (PSED), which requires, when you are proposing changes that will affect people with protected characteristics, to have regard to the PSED (s149 (1) of the Equality Act 2010)

The needs of those with protected characteristics must be met before or at the time any policy is being considered. Courts refer to it as being an “essential preliminary” and not a “rear-guard action”. Therefore, you must:

- Remove or minimise any disadvantage that might be suffered by persons with protected characteristics.
- Take steps to meet the needs of those with protected characteristics.
- Undertake equality impact analyses in order to demonstrate compliance with the PSED, and evidence that people with protected characteristics have influenced the decision-making process of CCGs.

You are required to comply with NHS England’s Mandate, which includes the following priorities in relation to significant service changes:

- a) Carry out a strategic sense check by exploring the case for change and level of consensus for change and ensuring a full range of options are considered and risks identified.
- b) No decision to proceed with a particular option until the proposals have been **fully** consulted on.

Lastly you are required to show due regard to case law in relation to consulting and engaging patients and the public. We believe that *Gunning v Brent Borough Council* (1985) is significant in this case, where it was agreed the decision-maker’s discretion is not unbounded and cannot consult on a decision already made, because the outcome of the consultation is pre-determined and the process is therefore pointless.

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The way in which this engagement process was carried out suggests that a decision had already been made, and your process was 'for the sake of it'.

The following 'Gunning principles' must be adhered to in all matters in the NHS concerning significant changes in the provision of services:

- (i) consultation must take place when the proposal is at a formative stage;
- (ii) sufficient reasons must be put forward for the proposal to allow for intelligent consideration and response;
- (iii) adequate time must be given for consideration and response;
- (iv) outcome of consultation must be conscientiously taken into account.

We believe that the information provided above strongly suggests that you have a duty in law to genuinely engage the public in your PCN plans.

We therefore formally request that you initiate a new, full, adequate and appropriate consultation exercise on the Draft Service Specifications for the Implementation of the Primary Care Networks (PCNs), which properly involves patients and the public and follows Cabinet Office best practice guidelines.

Yours sincerely



Malcolm Alexander

Chair

Healthwatch and Public Involvement Association (HAPIA)

HAPIA2013@AOL.COM

07817505193

WWW.HAPIA2013.ORG