

Adults Well-being and Health Overview and Scrutiny Committee



21st December 2009

A protocol for working together in relation to plans to make changes in health and social care services between Durham County Council; NHS County Durham and County Durham Local Involvement Network

Report of:

**Lorraine O'Donnell, Assistant Chief Executive
Rachael Shimmin, Director of Adults, Wellbeing and Health Service
Eunice Huntington, Portfolio-holder for Healthier Communities**

Purpose of the Report

1. The purpose of this report is to advise Adults Well-being and Health Overview and Scrutiny Committee of the protocol for working together in relation to plans to make changes in health and social care services. It has been developed jointly by Durham County Council; NHS County Durham and County Durham Local Involvement Network. The protocol will help to improve decision-making by all parties to the protocol and contribute to improvements in health and well-being for the people of County Durham.

Information

2. There is a clear need for the parties to this protocol to work closely together in relation to aspects of service change in the context of duties to involve that are placed on local government and the NHS, by statutory requirements placed on the Councils Scrutiny function, and the establishment of County Durham Local Involvement Network with powers and responsibilities of its own.
3. Overview and Scrutiny has a pivotal statutory function as a consultee in relation to proposals by the NHS to make 'significant developments' or 'substantial variations' to services and agree the extent of consultation undertaken by the NHS in these instances. Public involvement is a key role for the Council and the NHS and how effectively this is undertaken will help determine the position taken by the Adults Well-being and Health Overview and Scrutiny Committee when it responds to consultations by the NHS.
4. The protocol which is attached as Appendix 2 sets a framework and commitments for all parties to work together, and for the relationships and behaviours expected of each in relation to communicating with each other and with users, carers and the wider public in relation to service changes. An Action Plan is attached as Appendix 3 setting out key actions required to implement the protocol including regular six-monthly reviews.

5. The protocol has been developed jointly by a project group comprising all parties to the protocol in a process that started in January 2009. It should be noted that the Assistant Chief Executive's Overview and Scrutiny Unit, and the Adults, Well Being and Health Service Group are taking joint lead Corporate responsibility on behalf of the County Council.
6. The Assistant Chief Executives Corporate Management Team are considering the protocol on 16th December and any comments made will be reported to committee.

Recommendation

7. Adults Well-being and Health Overview and Scrutiny Committee are asked to note the content of this report and to support the approval and adoption of this Protocol.

Appendix 1: Implications

Finance

None

Staffing

None

Equality and Diversity

There will be a positive contribution in terms of supporting the effective and inclusive engagement of communities in the county in the development of proposals for service change.

Accommodation

None

Crime and disorder

None

Sustainability

None

Human rights

None

Localities and Rurality

None

Young people

None

Consultation

This protocol will help strengthen and support approaches to engagement, in a partnership context, that are being taken in the County.

Health

This protocol will support action to improve health outcomes in the County.

Appendix 2



A protocol for working together in relation to plans to make changes in health and social care services between:

- NHS County Durham
- County Durham Local Involvement Network
- Durham County Council
(Adults, Well Being and Health Service Group and Assistant Chief Executive's Office [Overview and Scrutiny Unit] taking lead responsibility)

This protocol has been developed by the above parties in recognition of the importance placed on working together effectively to plan and/or review changes in services that are provided to communities, that there are shared and mutual benefits of doing so, and in recognition of the legal duties and responsibilities placed on organisations in relation to instances of service change.

1. Purpose and outcomes

- 1.1 The **purpose** of this protocol is to establish a clear framework for action by each of the parties to this protocol in relation to plans, policies, strategies and reviews that will lead to changes in services for the people of County Durham. This framework will help to:
- Achieve effective working relationships across all parties.
 - Enable effective communication across all parties.
 - Improve and better co-ordinate the way in which we engage with users, carers and the wider public.
 - Enable collaborative and constructive working across all parties.
 - Improve co-operation between all parties to bring about the best outcomes for service users.
- 1.2 The **outcome** from this protocol will be improved decision making by the parties to this protocol in relation to service changes, which is evidence based and reflects the views of patients, users and the public. This will help contribute to improvements in health and well-being for the people of County Durham.

2. Making changes in health and social care services and consultation

Where a service change is a 'significant development' or a 'substantial variation' in service

- 2.1 Parties to this protocol agree that changes to services that are being proposed in plans, policies, strategies, or are the subject of review, will be dealt with in line with the provisions of this protocol.
- 2.2 Parties to this protocol recognise that NHS commissioners and providers are required to consult and involve patients and the public if a proposal or a decision would have an impact on the manner in which health services are delivered to users of those services, or the range of health services available to those users – the statutory duties are set out in more detail in Appendix 1 (A1.2).
- 2.3 Parties to this protocol recognise that duties are placed on local government to consult and involve patients and the public in the development, planning and provision of services – the duty is set out in more detail in Appendix 1 (A1.4).
- 2.4 NHS bodies will consult Durham County Council's Adults, Well Being and Health Overview and Scrutiny Committee on proposals for changing the provision of health services. See Appendix 2 for an explanation of when a change in service is a 'significant development' or 'substantial variation' requiring scrutiny to be consulted (A2.1) and the process for doing so (A2.4). The key elements of this process are:
 - The involvement of patients, users and the public in the development of the proposals.
 - Early notification to Durham County Council's Adults, Well Being and Health Overview and Scrutiny Committee of the development of a proposal.
 - Reaching an agreement with the scrutiny committee that is based on the provision of adequate information in relation to the service change.

3. Working together: relationships and behaviours

- 3.1 All parties recognise that they share the common objective of ensuring that the public of County Durham, including service users and carers, have a voice in determining the priorities and shape, and the quality and outcomes, of health, well-being and social care services and will work together to achieve this, and meet the commitments for engagement set out in section 5 below.
- 3.2 All parties to this protocol recognise and respect the legitimate and important contribution that other parties can make to the development or review of plans, policies and strategies for changes to the services provided to communities in County Durham.
- 3.3 All parties commit to communicate with each other in a timely manner, to co-operate and where possible to collaborate, in relation to engagement and

consultation on service changes. All parties will meet the commitments set out for effective communication in Section 4 and to statutory responsibilities and powers placed on them that are set out in Appendix 3.

- 3.4 All parties to this protocol commit to working together to review the effectiveness of this protocol on a six monthly basis through the organisations represented on the on joint project group that developed the protocol. Reviews will take account of legislative changes or relevant guidance that impact on this protocol.
- 3.5 All parties to this protocol commit to take steps to ensure that it becomes embedded within their own organisations, and externally with those whom it commissions to provide services for it, and commit to advocating for it and promoting it.

4. Working together: communication

To achieve the purpose and outcomes of this protocol:

- 4.1 All parties will develop and maintain clear lines of communication with each other and nominate a senior member of staff as the principal point of contact for communicating issues relating to plans for service changes, or other aspects of this protocol. The principal contact will be of sufficient seniority within each organisation in order for issues to be communicated between organisations to achieve strategic-level awareness and linkages and to ensure information is cascaded appropriately.
- 4.2 All parties to this protocol will seek to communicate information with each other in a way that enables each organisation to carry out its functions effectively. Partners to this protocol will reserve the right to define what constitutes relevant information in the context of forward and strategic planning within their own organisation however the basis of this protocol is a presumption that information is to be shared.
- 4.3 Parties to this protocol will endeavour to share information relating to circumstances where changes to services are to be made – as set out in Section 2.
- 4.4 All parties are committed to keeping each other informed of proposed public or user/carer engagement and consultation plans and activities.
- 4.5 Information will be communicated in plain language, in an appropriate format and exclude the use of jargon, acronyms, concepts, and so on that are not generally understood by partners and/or our local population.
- 4.6 Information will be communicated in a timely way ensuring adherence to good practice/existing compacts and agreements or legislative timescales on consultation.
- 4.7 Each party will confirm with other parties before claiming their endorsement or support for plans, policies, strategies and reviews, for example in relation to press releases being issued.

- 4.8 Each party will share draft reports where appropriate with other parties to this protocol in order to ensure accuracy.
- 4.9 Each party will make minutes and agendas of relevant meetings publicly available.
- 4.10 Each party to this protocol will ensure that it pro-actively communicates this protocol to achieve 3.5 above.

5. Working together: engaging with users, carers and the wider public in relation to changes in services

- 5.1 All parties to this protocol acknowledge the principle of putting patients, carers and local people at the centre of everything we do through embedding patient carer public engagement activity at all levels and as part of everyday practice.
- 5.2 All parties to this protocol recognise that they have both joint and separate approaches to engaging with service users/carers, members of the public or its own members. Wherever possible all parties will ensure that such health, well-being and social care engagement activity is jointly planned and co-ordinated within the joint/partnership and individual frameworks of the parties, to ensure maximum coverage and capacity, to avoid duplication and 'consultation fatigue' and to ensure appropriate quality and outcomes.
- 5.3 Where appropriate significant health, well-being and social care issues arising from engagement activity is shared with other parties to this protocol.
- 5.4 All parties to this protocol will carry out engagement and involvement activity in such a way that requirements of the Duty to Involve set out in Appendix 1 are met.

6. Signatories

We the undersigned commit our organisations adhere to the content of this Protocol:

NHS County Durham:(DATE).....

County Durham

Local Involvement Network:(DATE).....

Durham County Council:

.....(DATE).....

Adults Wellbeing and Health Service Group

.....(DATE).....

Assistant Chief Executive's Office (Overview and Scrutiny Unit)]

Appendix 1 – Duties to involve

A1.1 Formal duties to involve have been placed on NHS organisations and local government to embed a culture of engagement and empowerment within these organisations.

A1.2 Section 242 of the NHS Act 2006 (formerly Section 11 Health and Social Care Act 2001) came into force on 3 November 2008 and applies to NHS organisations. It places a statutory duty on both commissioners and providers of services to make arrangements to consult and involve patients and the public in:

- planning of the provision of services;
- the development and consideration of proposals for changes in the way those services are provided, and
- decisions affecting the operation of services.

A1.3 The duty applies if implementation of the proposal, or a decision (if made) would have an impact on the manner in which the services are delivered to users of those services, or the range of health services available to those users.

A1.4 Part 7 section 138 of the Local Government and Public Involvement in Health Act 2007 came into force on 1 April 2009 and applies to local government (and is in addition to any other existing legislative requirements). It places a duty on local authorities to take those steps they consider appropriate to involve representatives of local persons (anyone affected by or interested in a particular local authority function) in the following ways:

- influencing or directly participating in decision making;
- providing feedback on decisions, services, policies and outcomes;
- co-design/work with authority in designing policies and services;
- co-produce/carry out some aspects of services for themselves
- work with the authority in assessing services (including co-option on scrutiny committees).

A1.5 Under the Local Government and Public Involvement in Health Act 2007 Local Involvement Networks have been established. County Durham Local Involvement Network (LINK) is charged with facilitating proactive involvement of service users and local people across health and social care organisations in the County. It will gather information from communities which it can pass on to commissioners, providers and Durham County Council's Adults, Well Being and Health Scrutiny Committee for the purpose of improving their accountability and responsiveness to users. LINKs also have statutory powers that are set out in Appendix 3.

Appendix 2 – Significant development and substantial variations in services and statutory consultation

A2.1 Under Section 244 of the NHS Act 2006 (formerly Section 7 of the Health and Social Care Act 2001), local NHS bodies have a statutory duty to consult local Overview and Scrutiny committees on any proposals for significant development and substantial variation of health services. Significant development and substantial variations in services are not defined in regulations (see examples from Case Law in A.2.4 below), however this protocol outlines an approach to assessing if a proposal is considered significant or substantial – see *Process for assessing if a proposal is a Significant Development or Substantial Variation in service A2.4 below*.

A2.2 Formal consultation is required where there is a significant development and substantial variation in service. The Adults, Well Being and Health Overview and Scrutiny Committee will seek to reach agreement with the NHS over the timing and extent of formal consultation taking into account that:

A2.2.1 Whilst Cabinet Office guidelines recommend that full consultations should last a minimum of twelve weeks and this will be normal practice, guidance supporting Overview and Scrutiny committees provides for some flexibility in the length of time a consultation will last.

A2.2.2 Agreement to vary the scope of consultation will depend on:

- the extent to which patients, users and the public have been involved in the development of proposals for change or variation of services, and the general duties to involve - set out in A1.2
- supporting information provided in relation to the key criteria (A2.4.4) as part of the process of assessing a proposal (A2.4) below.

A2.3 It should be noted that the Adults, Well Being and Health Overview and Scrutiny Committee may decide that it does not wish to be formally consulted on proposals because in its opinion they do not constitute a significant development or substantial variation in service. It may deem a proposal is significant or substantial and still not want to be formally consulted on proposals because it feels the NHS has demonstrated adequate engagement and involvement with patients, the public and other stakeholders in the formulation of the proposals (in line with the process set out in A2.4 below).

A2.4 In line with NHS County Durham's Process for Considering Service Configurations the commissioner (NHS County Durham) will lead consultation where there is considered to be a 'whole system impact' (where the proposal may impact upon a persons experience of healthcare across the whole healthcare system) and the provider organisation will lead consultation where this is not the case.

A2.4 Process for assessing if a proposal is a Significant Development or Substantial Variation in service

For NHS bodies this protocol presumes that a change in service should be presumed to be a significant development or substantial variation in service unless it is agreed that it is not and the agreement of Adults, Well Being and Health Overview and Scrutiny Committee must be sought in determining this.

A change in service could vary in scope from a change in a local service to a major hospital reconfiguration – but it is how patients/service users and the public experience or access the service that needs to be central to considerations within this process.

Examples from Case Law where proposals have been considered ‘significant developments’ or ‘substantial variations’ in services’:

- A relocation of patients from one hospital to another where a hospital or ward is closing.
- A ‘temporary’ ward or hospital closure has been deemed substantial if it is considered likely to become permanent (but not if it is actually only temporary).
- The removal of a service from a local community.

NHS County Durham will take the following steps in order to determine if a service proposal is a Significant Development or Substantial Variation in service.

A2.4.1 Step 1: Pre-notification activity

NHS County Durham will undertake such activity as is necessary in order to provide information in respect of the Key Criteria (A4.2.4 below), and the Further Information (A4.2.6 below) prior to notification to the Adults, Well Being and Health Overview and Scrutiny Committee of a proposal to change a service.

A key element of this supporting evidence and information is the extent to which patients, users and the public have been involved in the development of proposals for change or variation of services, and the general duties to involve - set out in Appendix 1 above - have been met by the NHS and the local authority.

A2.4.2 Step 2: Early notification

NHS County Durham will make early notification to the Adults, Well Being and Health Overview and Scrutiny Committee during the development of a proposal within the context of ongoing dialogue between all parties and to avoid delays in considering a proposal.

The notification should include a *statement of whether the proposal **is, or is not,** considered substantial or significant* and on what basis this assertion is made taking into account the key criteria set out in A4.4 and any further supporting information.

This early notification should be made by NHS County Durham as commissioner.

The Local Involvement Network should also be advised as part of patient, carer and public involvement as part of the duty to involve.

In relation to Key Decisions affecting Durham County Councils Adults Wellbeing and Health Service – these are communicated through the Council's Forward Plan.

A2.4.3 Step 3: Reaching agreement

It is recognised that the *agreement of Adults, Well Being and Health Overview and Scrutiny Committee must to be sought* in order to determine if a proposal is significant or substantial. Agreement will depend on whether:

- the above steps have been followed;
- the supporting information is sufficient to enable the committee to properly assess if a proposal is significant or substantial;
- further information is required;

The Adults, Well Being and Health Overview and Scrutiny Committee will formally respond to the notification indicating:

- if it agrees with the statement about the significance or substantial nature of the proposal; or
- if it disagrees with the statement about the significance or substantial nature and on what grounds, and what further action it feels should be taken.

If NHS County Durham does not agree to that further steps are required then the Adults, Well Being and Health Overview and Scrutiny Committee will consider what action it wishes to take in line with its powers under legislation.

It should be noted that the Adults, Well Being and Health Overview and Scrutiny Committee may decide that it does not wish to be formally consulted on proposals because in its opinion they do not constitute a significant development or substantial variation in service. It may deem a proposal is significant or substantial and still not want to be formally consulted on proposals because it feels the NHS has demonstrated adequate engagement and involvement with patients, the public and other stakeholders in the formulation of the proposals.

A2.4.4 Supporting information - the key criteria

Department of Health guidance, and good practice, indicates that in deciding whether a proposal is significant or substantial, the following key issues should be considered:

- a) changes in accessibility of services;
- b) impact of the service on the wider community and other services, including economic impact, transport and regeneration;
- c) number of patients affected, changes may affect the whole population of a geographical area or a small group. If a change affects a small group of patients it may still be 'substantial', especially if patients need to continue to access that service for many years;

- d) changes to methods of service delivery, e.g. moving a particular service into a community setting from an acute hospital setting.
- e) is the proposal likely to be considered controversial to local people' i.e. where historically services have been provided in a particular way or at a particular location;
- f) are there changes to governance where NHS bodies relationships with the public or Scrutiny may change.

In addition, further supporting information should be considered for inclusion see below (see A2.4.6).

A2.4.5 Criteria for key decisions which the Executive of the Council

Criteria for key decisions by Durham County Council's Executive are similar to the criteria set out in a) to f) above (which may require public consultation), and will require the Adult, Well Being and Health Service Group to report to the Executive, are those likely:

- To have a significant impact on the amenity of the community or quality of service provided by the Council to a significant number of people living or working in the locality affected;
- To be perceived as being in conflict with any plan, policy or strategy approved by the Council, or
- To be perceived as being in conflict with one or more of the Council's strategic objectives/priorities for improvement or
- To have significant budgetary implications.

A2.4.6 Further supporting information:

Criteria for assessment	Yes/No /N/A	Comments/supporting evidence
<p>Case for Change</p> <p>1) Is there clarity about the need for change? (e.g. key drivers, changing policy, workforce considerations, gaps in service, service improvement).</p> <p>2) Has the impact of the change on service users, their carers and the public been assessed?</p> <p>3) Are supporting local health needs assessments or health equity audits available?</p> <p>4) Do these include:</p> <ul style="list-style-type: none"> a) Demographic considerations? b) Changes in morbidity or incidence of a particular condition? c) Health equality considerations? d) Potential reductions in care needs? (e.g. falling birth rates) e) Comparative performance? <p>5) Has the evidence base supporting the change proposed been defined? This should cover both with national service improvement programmes (e.g. NSFs, modernisation agenda) and the development of clinical best practice, to enhance service quality or the patient experience?</p> <p>6) Have the clinicians affected contributed to the development of the proposal?</p> <p>7) Is any aspect of the proposal contested by the clinicians affected?</p>		
<p>Impact on Services Users</p> <p>8) Will there be changes in access to services as a result of the changes proposed?</p> <p>9) Can these be defined in terms of:</p> <ul style="list-style-type: none"> a) waiting times? b) transport? (public and private) c) travel time? d) other? <p>10) Has the impact be on vulnerable people using these services now and in the future been assessed (this should include an</p>		

<p>Equalities Impact Assessment)?</p> <p>11) Does the proposal extend the choice available to the population affected?</p> <p>12) Does the proposal improve the quality of care provided to service users?</p> <p>13) Have the service users affected contributed to the development of the proposal?</p> <p>14) Is any aspect of the proposal contested by the service users affected?</p>		
<p>Engagement and Involvement (Duty to involve)</p> <p>15) Were key stakeholders involved in the development of the proposal?</p> <p>16) Is there information regarding the involvement of:</p> <ul style="list-style-type: none"> a) Service users, their carers or families? (including hard to reach) b) Other service providers in the area affected? c) The Local Involvement Network? d) Staff affected? e) Other interested parties? <p>17) Is the proposal supported by the key stakeholders?</p> <p>18) Is there any aspect of the proposal that is contested by the stakeholders? If so what action has been taken to resolve this?</p>		

<p>Options for change</p> <p>19) Are a range of options identified to deliver the intended change?</p> <p>20) Were the risks and benefits of the options assessed when developing the proposal?</p> <p>21) Have changes in technology, including new drugs been taken into account?</p> <p>22) Has the impact of the proposal on other service providers been evaluated?</p> <p>23) Will the proposal impact on the wider community and if so has the impact been evaluated (e.g. transport, housing environment)?</p> <p>24) Have the workforce implications associated with the proposal been assessed?</p> <p>25) Have the financial implications of the change been assessed in terms of:</p> <ul style="list-style-type: none"> a) Capital? b) Revenue? c) Affordability? e) Risks? <p>26) Will the change contribute to the delivery of national/local targets?</p>		
--	--	--

Appendix 3 – Responsibilities and powers of organisations

A3.1 Local Involvement Network powers to refer to Overview and Scrutiny

Powers to refer health and social care issues to Adult Well Being and Health Overview and Scrutiny Committee:

- The LINK can refer a matter relating to health and social care services* to an overview and scrutiny committee of a local authority.
- The overview and scrutiny committee must acknowledge receipt of the referral within 20 working days (beginning on the date the referral was made).
- The committee must then decide on whether any of its powers are exercisable in relation to the matter referred.
- If the committee is of the view that it does have powers that are exercisable in relation to the matter, it must decide whether or not to exercise that power in relation to the matter.
- If the committee does decide to exercise those powers in relation to the matter, it must take into account any relevant information provided by the LINK.
- The committee must keep the referrer (i.e. the LINK) informed of its actions in relation to the matter.

* *Local Authority (Overview and Scrutiny Functions) Regulations 2002 (SI 2002 No 3048) [following the Health and Social Care Act 2001]*
Local Involvement Network Regulations 2008 (SI 2008 No 528) [following and the LGPIH Act 2007] – amends regulations in SI 2002 No 3048.

A3.2 Overview and Scrutiny may refer to the Local Involvement Network

The Adults Well Being and Health Overview and Scrutiny Committee may make requests to the LINK to investigate issues and to support its own investigations. In considering whether to make such a request the OSC will take account of the LINKs remit and powers under legislation. Requests will be made in writing to the LINK who will acknowledge receipt of requests.

Requests will be considered by the LINK Management Committee. In deciding whether to accept the request the Management Committee will consider the resources available to respond to the request; and existing commitments under its workplan. The LINK will keep OSC informed of action being taken regarding the request.

A3.3 Local Involvement Network – Powers to enter and view social care service premises

The LiNk has policies and procedures in relation to enter and view that are shared all parties to this protocol. The LiNk has appointed authorised representatives to enter the premises of health and social care service providers that are publicly funded. Children's social care services are exempted from this duty to allow access (Local Government and Public Involvement in Health Act 2007).

LiNk representatives will possess the necessary skills and undergo a Criminal Records Bureau check in line with section 113A of the Police Act 1997. The LiNk will make publicly available a comprehensive and accurate list of all authorised representatives.

A3.4 Local Involvement Network – Powers to request information

The Local Involvement Network may request information from any health or social care commissioner or provider subject to exemptions of the Local Government and Public Involvement in Health Act 2007.

There is a 20 working day rule for response to LiNk requests for information except where it is agreed to be waived for reasons of practicality. Where requests for information have been received but not responded to, the LiNk reserves the right to refer matters to the regulator or Overview and Scrutiny Committee. However, this will only happen after all other options have been exhausted.

A3.5 Scrutiny powers to refer to Secretary of State

The Adults Well Being and health Overview and Scrutiny committee may refer to the Secretary of State matters relating to:

- Adequacy of public consultation – the OSC can report to the Secretary of State where it is not satisfied that consultation in relation to an NHS proposal for a substantial development of the health service or a substantial variation in the provision of a service. Further consultation may then be required by the Secretary of State.
- Circumstances where an OSC considers that the proposal would not be in the interests of the health service in the area where this can be reported to the Secretary of State to make a decision.

A3.6 Scrutiny powers in relation to Durham County Council's Executive

Where policy issues are concerned, including consultations about substantial changes in relation to health services it will report matters to the Council's Executive for information – for social care matters reports are presented to the Council's Executive for consideration.

Appendix 3

Action Plan

Specific actions required to meet commitments contained within the Protocol

Action	Task	By whom	By when	Ref
Review the effectiveness of this protocol on a six monthly basis	Hold review meetings	DCC NHSCD LINK	June 2010	3.4
Ensure that it becomes embedded within their own organisation	Staff awareness/ training Incorporate in appropriate Strategies/ Documents	DCC NHSCD LINK		3.5
Ensure that it becomes embedded with those whom it commissions	Staff awareness/ training Incorporate in appropriate Strategies/ Documents/ Contracts/SLAs	DCC NHSCD		3.5
Nominate a senior member of staff as the principal point of contact for communicating issues relating to plans for service changes, or other aspects of this protocol.	Staff member nominated & communicated to other parties to protocol	DCC NHSCD LINK	Dec 2009	4.1