Engagement and Consultation Framework

The principles of involvement, engagement and consultation in Lancashire and South Cumbria

Joint Committee of the Clinical Commissioning Groups

READER'S NOTES:

1. **This document contains proposals for the coordination of engagement and public consultation involving substantial change within the Healthier Lancashire and South Cumbria Integrated Care System.**
2. **The content is subject to approval.**
3. **Full appendices will be added later subject to approval.**

Introduction

Purpose

The purpose of this document is to set out:

a) The proposed governance process for the coordination of, and support for, engagement and consultation concerning substantial change to services across Lancashire and South Cumbria.
b) The proposed principles and framework the Joint Committee of the Clinical Commissioning Groups (JCCCGs) should adopt on behalf of itself and to guide other partners, including the Integrated Care System (ICS).

Together the principles and framework are designed to ensure modern, inclusive and meaningful involvement, engagement and consultation with patients, public, staff and stakeholders.

For the purposes of clarity this document is principally intended to assist Clinical Commissioning Groups (CCGs), Integrated Care Partnerships (ICPs) and the ICS in the context of engagement and public consultation around substantial service change. It is not primarily intended to guide local, everyday patient and public engagement which should always be ongoing.

This document does NOT seek to address day-to-day, routine engagement activities that are undertaken by all NHS organisations.

This document DOES seek to address the activities and processes necessary for effective engagement and public consultation in the context of substantial service change.

It should be noted that this document provides GUIDANCE ONLY and the exact activities and processes should be determined by the needs of local people and communities potentially impacted by each service change programme.

Background

The partners across Lancashire and South Cumbria are committed to improving the health and wellbeing of their citizens. A cornerstone of this work is ongoing engagement with patients, public, staff, politicians and stakeholders.

In addition, however, the partners have identified several areas where there is a compelling need for significant change. Early engagement is already taking place in some of these areas, and further programmes of engagement or public consultation, led by the relevant CCGs, may be required.

Within Lancashire and South Cumbria, partnership working across organisations is being facilitated through a new ICS (the whole system of public sector organisations) with more local ICPs being established to join up local services better within those places, for instance across Morecambe Bay.

The table below shows public sector organisations within their ICPs and the totality of all the organisations below comprise the ICS

Organisations	Integrated Care Partnership
Greater Preston CCG Chorley and South Ribble CCG Preston City Council Chorley Council South Ribble Council Ribble Valley Council Lancashire Teaching Hospitals NHS Foundation Trust	Central Lancashire
Blackpool CCG Fylde and Wyre CCG Blackpool Teaching Hospitals NHS Foundation Trust Blackpool Council Fylde Council Wyre Council	Blackpool and Fylde Coast
West Lancashire CCG West Lancashire Council Southport and Ormskirk Hospitals NHS Trust	West Lancashire
University Hospitals of Morecambe Bay NHS Foundation Trust Cumbria Partnership Foundation Trust Morecambe Bay CCG Cumbria County Council North Lancashire Medical Services South Cumbria Primary Care Collaborative Blackpool Teaching Hospitals Barrow-in-Furness Council Lancaster City Council South Lakeland Council	Morecambe Bay
Blackburn with Darwen CCG Blackburn with Darwen Council East Lancashire CCG East Lancashire Hospitals NHS Trust Burnley Council Hyndburn Council Pendle Council Ribble Valley Council Rossendale Council	Pennine Lancashire
Lancashire County Council Lancashire Care NHS Foundation Trust NHS England NHS Improvement North West Ambulance Service Innovation Agency (Academic Health Science Network)	Overarching organisations (working across all of the ICPs)

The partners across Lancashire and South Cumbria have identified the following key objectives:

- To set out a clear direction of travel for the unified health and care system in Lancashire and South Cumbria as the Five Year Forward View has across England
- To achieve fundamental and measurable improvements in health outcomes by improving the clinical and social effectiveness of services focused on patient outcomes, effective use of resources and value for money.
- To reduce health inequalities across Lancashire and South Cumbria.
- To achieve parity of esteem for mental health and physical health across Lancashire and South Cumbria.
- To ensure greater focus on ill-health prevention, early intervention and self-care where this improves outcomes.
- To ensure that strategy and plans are created across Lancashire and South Cumbria to deliver effective and efficient integrated care services, in line with national requirements and timescales.
- To ensure change is supported by a clear evidence base or an evaluation structure where evidence is not available.
- To overcome organisational or professional boundaries that get in the way of progress; and integrate performance assessment processes across commissioners and providers in health and care services, to enable them to be held responsible for delivery of the sustainability and transformation agenda.
- To make maximum use of new technology when this will improve the quality of care provided.

To achieve these objectives, the partners must develop a robust, effective and consistent approach to engagement and consultation and the Joint Committee of CCGs has therefore commissioned this paper to provide such guidance.

It is important to note that in law it is essentially the local Clinical Commissioning Groups that hold the legal responsibility for ensuring that the public are involved in engagement and consultation for substantial service change, as well as ensuring it is conducted in a proper and appropriate manner. The Clinical Commissioning Groups carry the risks associated with any failures in this respect.

As an ICS we, on behalf of the public sector partners across Lancashire and South Cumbria, will facilitate the development of new models of care based upon the needs of local people and communities and it will need to engage clinicians and other care professionals, staff and wider partners such as local government. It cannot develop care coordinated and centred on the needs of patients and users without understanding what communities want and without the input of partners in local government.

NHS England guidance underlines the importance of involving people, communities and stakeholders in developing plans. It is the right thing to do to ensure such plans are robust and meet the needs of people and communities. ICP and ICS partners should work with the knowledge, skills and experience of people in their communities, working in co-production to improve access and outcomes.

Involving people, communities and stakeholders meaningfully is essential to effective service improvement and system transformation, from collectively identifying problems and designing solutions to influencing delivery and review. Effective communication and involvement throughout the process will help to build ownership and support for proposals to transform health and care and will also help identify potential areas of concern.

It is important that the ICPs in every area have an ongoing dialogue with patients, volunteers, carers, clinicians and other staff, citizens, the local voluntary and community sector, local government officers and local politicians, including those representing health and wellbeing boards

and scrutiny committees and local MPs.

It is essential that ICPs engage staff from constituent organisations, working through the internal communication channels available. In particular, it is important to engage clinicians who are powerful advocates and play an important role in communicating the need for change.

Coordinating engagement and consultation across the ICS

Role of the ICS and the CCGs

Clinical Commissioning Groups are legally responsible for ensuring that public involvement and consultation takes place through the practical and effective delivery of a public involvement or consultation programme. Such programmes are often delivered by a group of NHS organisations acting in concert (e.g. Committees in Common, Joint Committees of CCGs, a Sustainability and Transformation Partnership or an ICS) supported by external agencies which are often brought it to supply expertise and additional capacity.

In Lancashire and South Cumbria the ICS has full knowledge of all local strategies, plans and milestones. Using this knowledge, the ICS, as agents of the CCGs, will coordinate and apply strategic oversight to all engagement and consultation work concerning substantial service change within the ICS geography. However, legal responsibility for the delivery of such engagement and consultation will remain with the CCGs.

The benefits of the ICS co-ordinating consultation and engagement activities when they relate to large-scale change across boundaries are:

- It will help ensure consistent messaging and feedback.
- It will enable one central point of co-ordination.
- It will ensure a consistency of approach.
- It enables best use of scarce staffing resources.

At present the ICS central team does not have the necessary staffing capacity or, perhaps, the full range of necessary skills, to deliver large-scale engagement and consultation as a fully in-house NHS function. It will therefore need to engage support from a range of external agencies such as engagement specialists, legal advisors, response analysts etc.

CCGs will… ensure that all major engagement and consultation work undertaken in Lancashire and South Cumbria are effectively coordinated through the offices of the ICS to ensure consistency of messaging.

As an ICS we will… seek to develop or procure additional engagement and consultation support as necessary.

As an ICS we will… ensure that whenever external resources are engaged there will be a strong emphasis on learning and skills transfer to help develop the skills of in-house NHS staff.

As an ICS we will… establish effective relationships with appropriate legal advisers and others.

The ICS central team will… collaborate with ICPs to share good practice, offer guidance, and coordinate activities where appropriate.

Governance process

Public consultation on matters that involve substantial service change carries with it significant legal complexity and considerable risks, not least risk to reputation. To mitigate these risks it is necessary to ensure a standard, best practice approach to public involvement and consultation and to ensure Lancashire and South Cumbria-wide coordination.

To facilitate the effective coordination of all major consultation and engagement activity across Lancashire and South Cumbria, a single view of all such activity will be required. Appropriate governance will be required to manage this.

On behalf of the CCGs, as an ICS we will… establish a "Communications, Engagement and Consultation Strategy Board" with senior representation from each of the five Integrated ICPs and from NHS England/Improvement. This board will coordinate all engagement and consultation programmes involving substantial change that are undertaken within the ICS geography whether they be ICS-wide, ICP-based or local (see section on "Different types of change within the ICS"). The Communications, Engagement and Consultation Strategy Board will report to the Joint Committee of CCGs.

This board would not be overly bureaucratic, but it would help ensure ICS coordination alongside CCG legal leadership.

Different types of change

Engagement with patients, public, staff and stakeholders concerning the everyday delivery of health services is undertaken by health commissioners and providers as a matter of standard good practice. However, in addition, there are three distinct levels of "substantial change" that might require a significant engagement programme or even public consultation. These are:

- Lancashire and South Cumbria-wide service change or transformation
- ICP-wide service change or transformation
- Locality-led service change or transformation

Engagement or consultation concerning substantial change to services under any of these three headings should be considered by the Communications, Engagement and Consultation Strategy Board. It will consider and make recommendations as to the appropriate level at which engagement/consultation should be led/delivered. Key considerations include:

- Is there enough local capacity in the communication and engagement function to be able to take on this additional workload?
- Do the available in-house NHS communications and engagement staff have the necessary skills and experience to lead engagement activity?

Where the necessary engagement and consultation skills and experience are available from NHS staff they should be fully utilised. Certainly, knowledge of local stakeholders (such as Overview and Scrutiny Committees and other political interests) along with local relationships should be recognised as important criteria that are only likely to be available from local staff.

As an ICS we, on behalf of the Joint Committee of CCGs, will… use the "Communications, Engagement and Consultation Strategy Board" to assess the appropriate level for delivery of engagement and consultation (ICS, ICP or Locality).

Working with stakeholders across the system

There are many potential engagement partners in every health system. These include staff, patient representative groups, Healthwatch, third sector groups and voluntary groups. Their local knowledge and existing networks, as well as their independent status mean they can bring valuable extra resource and capacity to an engagement or consultation programme.

Specifically, local Healthwatch organisations are independent and support the principle of engagement and consultation without necessarily having a view on the consultation proposals. Their interest is in helping to ensure that people are informed, that they have opportunity to have their views and voices heard, and that decision-makers listen and take public views into account.

There are also a number of professional communicators and engagement specialists across the Lancashire and South Cumbria health system and it is important that we enable them to work closely together as a team. They have local knowledge and an understanding of the history of services, previous change programmes, knowledge of the local media, campaign groups and influential figures within their communities.

Another important set of stakeholders are those with political interests including local authority staff and officers, local elected members, health overview and scrutiny committees and local MPs. It is imperative that throughout any engagement or consultation programme these political stakeholders are kept full informed and involved.

To ensure the NHS makes maximum use of its in-house communication and engagement professionals:

As an ICS we, on behalf of CCGs, will… establish Communications and Engagement Steering Groups in each of its ICPs. These will be delivery-focused groups that report in to the Communications, Engagement and Consultation Strategy Board which will provide assurance to the ICS board and the Joint Committee of the CCGs.

As an ICS we will… establish appropriate Terms of Reference for both the Communications and Engagement Steering Groups and the Communications, Engagement and Consultation Strategy Board.

Why engage and consult?

The NHS has a statutory duty to involve patients, the public, staff and other stakeholders in the development of health services. It is good practice to involve these stakeholders in the early stages of building any case for change. Involving communities and stakeholders in developing plans helps to ensure that service changes are robust and meet the needs of local people.

According to NHS England, "It is critical that patients and the public are involved throughout the development, planning and decision-making of proposals for service reconfiguration. Early involvement with the diverse communities, local Healthwatch organisations, and the local voluntary sector is essential… Early involvement will give early warning of issues likely to raise concerns in local communities and gives commissioners' time to work on the best solutions to meet those needs."

There are many benefits to the proactive provision of information along with effective engagement and consultation. These include:

- Developing a patient-focused service
- Encouraging greater public understanding and participation
- Increasing public awareness and education about NHS services
- Developing services that meet the needs of local people
- Improving relationships
- Generating new ideas
- Achieving cost efficiency and value for money
- Helping to plan, prioritise and deliver better services
- Improving health education and health outcomes
- Supporting the reduction of inequalities of outcomes and access.

In short, the NHS has a legal duty to involve and consult, this duty is underpinned by official guidance and experience suggests that effective engagement and consultation leads to better decision-making.

As an ICS we will… support CCGs to be proactive and take an inclusive approach to engagement and consultation to ensure that patients, public, staff and stakeholders are fully involved in the development of services from the earliest possible moment.

Definitions

Engagement and consultation can take different forms.

The term 'engagement' applies to two forms of communication:

- A continual process of building good relationships with partners and stakeholders through regular communications including face-to-face meetings. It should be a two-way dialogue of questions, answers and updates. Such activities should be planned, recorded and reviewed on a regular basis.

- An engagement programme can also be established for a set period during which a planned range of activities are undertaken. Typically, such programmes are focused on a specific issue or potential change and are often referred to as pre-consultation engagement.

'Public consultation' is a formal process lasting for a set period – usually 12 weeks – during which information is given and options for change are described in a public consultation document.

The JCCCGs will… be clear and honest with people that the results of public consultation are an important factor in health service decision-making.

The JCCCGs will… also be clear that the results of public consultation are not the only factor to be considered by CCGs in decision-making. Public consultation is not a vote on change nor is it a veto over any form of change.

The JCCCGs will… ensure that consultations demonstrate how different approaches have been considered and how public involvement has informed decision-making.

Legislation and best practice

There are a range of laws that govern public engagement and consultation in the NHS including:

- **The NHS Act 2006** (section 244) which requires commissioners to fulfil their duty to consult the relevant local authority in its health scrutiny capacity.
- **The Equality Act 2010** which requires all public authorities to have due regard to the public sector equality duty (section 149) when making decisions and.
- **The NHS Act 2006 (as amended by The Health and Social Care Act 2012)** which lays down duties in a wide variety of areas on NHS England (section 13) and on CCGs (section 14). These include duties as to improvement in quality of services (sections 13E and 14R), duties as to reducing inequalities (sections 13G and 14T), duties as to patient choice (sections 13I and 14V), duties with respect to public involvement and consultation (sections 13Q and 14Z2), duty with respect to variation in provision of health services (13P), duties to promote the NHS constitution (sections 13C and 14P) and duties as to promoting integration (sections 13N and 14Z1).
- **The Health and Social Care 2012 (as amended by The Health and Social Care (Safety and Quality) Act 2015)** which lays down duties concerning the importance of sharing information (251B).

There are also several key guidance documents including:

- Cabinet Office – Consultation Principles (revised January 2016)
- NHS England – Planning, assuring and delivering service change for patients (revised March 2018)

- NHS England – Planning for Participation (May 2015)

In addition, NHS England says it is good practice when undertaking public consultation and pre-consultation engagement to have:

- An effective public communication and media handling plan.
- A detailed plan for reaching all groups who will be interested in the change, including those that are hard to reach, and those groups protected under the Equalities Act 2010.
- Staff involvement plans.
- Clear, compelling and straightforward information on the range of options being considered.

It follows from the above that the ICS will need a range of skills at its disposal including:

- Public and stakeholder engagement
- Staff engagement
- Media communication
- Reputational and crisis management
- Digital communication
- Publications (writing, design, print, distribution etc.)
- Consultation quality assurance etc.

As an ICS we will… support CCGs to adopt best practice when conducting engagement or consultation exercises and will support them to seek guidance, as necessary, from legal advisers and other appropriate consultants.

The principles of good engagement

As an ICS we will… support CCGs to establish a common, simple and accessible style in all published engagement and consultation materials that is:

- Clear and concise
- Easy to comprehend
- Jargon free and expressed in plain English
- Available in different languages and formats on request

As an ICS we will… support CCGs so that their public engagement and consultation documents are:

- Consistent with the style of communication described above.
- Not excessively long
- Supported with more detailed online information if necessary.

As an ICS we will… support CCGs to ensure, as appropriate, that engagement and consultation information is available publicly both online and as hard copy in a variety of public venues such as GP surgeries, hospitals, libraries etc.

The NHS England five tests

The public has a right to expect that any proposals for change that are raised by the NHS are affordable in capital and revenue terms and satisfy the five tests of service reconfiguration.

The five tests are:

- Strong public and patient engagement.
- Consistency with current and prospective needs for patient choice.
- Clear, clinical evidence base.
- Support for proposals from clinical commissioners.
- Service change which proposes plans to significantly reduce hospital bed numbers should meet NHS England's test for proposed bed closures and commissioners should be able to evidence that they can meet one of the following three conditions:
    - Demonstrate that sufficient alternative provision, such as increased GP or community services, is being put in place alongside or ahead of bed closures and the new workforce will be there to deliver it; and/or
    - Show that specific new treatments or therapies, such as new anti-coagulation drugs used to treat strokes, will reduce specific categories of admissions; or
    - Where a hospital has been using beds less efficiently than the national average, that it has a credible plan to improve performance without affecting patient care (for example in line with the Getting it Right First Time programme).

Furthermore, there is also a requirement that service changes align with local Sustainability and Transformation Partnership (STP) plans or ICS plans, as outlined in NHS England's updated guidance document, "Planning, assuring and delivering service change for patients".

As an ICS we will… support CCGs to apply the five NHS England tests to their engagement and consultation work and ensure consistency with the STP.

The Gunning principles

The Gunning principles are key standards, enshrined in law, that apply to all public consultations in the UK. They emerged from a legal case in 1985 (R v London Borough of Brent ex parte Gunning).

During this case Stephen Sedley QC proposed a set of principles that were adopted by the presiding judge and later confirmed by the Court of Appeal. These principles are now applicable to all public consultations that take place in the UK. They are:

- **Consultation must take place when proposals are still at a formative stage:** Meaningful consultation cannot take place on a decision that has already been made. Decision-makers can consult on a single proposal or 'preferred option' (of which those being consulted should be informed) so long as they are genuinely open to influence. There is no requirement, and it would be misleading, to consult on adopting options which are not genuinely under consideration, or are unrealistic or unviable – but it may be necessary to provide some information about arguable alternatives.
- **Sufficient reasons must be put forward for the proposal to allow for intelligent consideration and response:** Those being consulted should be provided with sufficient information to enable them to understand what the proposal is, the reasons for it and why it is being considered. They should be made aware of the basis on which a proposal for consultation has been considered and will be considered thereafter, including any criteria to be applied or factors to be considered. This may involve providing information about (or at least making reference to) arguable alternatives and the reasons why they are not also being

considered. The level of detail provided will depend on the circumstances.

- **Adequate time must be given for consideration and response:** People must have enough time to properly consider and respond to the consultation. There is no automatically required timeframe within which the consultation must take place.
- **The product of consultation must be conscientiously considered:** Decision-makers must properly consider what they have heard during the consultation when the ultimate decision is taken.

These principles were approved by the Supreme Court in R (Moseley) v Haringey LBC (2014) which also suggested that decision-makers should prepare a long list of options and indicate why some options are not realistic to consult on and make sure the public is consulted on all realistic options.

As an ICS we will… support CCGs to apply the Gunning principles to their engagement and consultation work.

Planning for consultation

When to consult

NHS proposals that involve substantial service developments or variations to a service amounting to a substantial development or variation of the health service should normally be the subject of public consultation. There is, however, no clear definition of "substantial" or major change and it is generally a matter for discussion with local health and care partners along with the relevant local authority Overview and Scrutiny Committees as to whether a potential change will require public consultation or engagement and if so, for how long.

Each proposal for service change therefore needs to be considered and assessed on a case-by-case basis. Sometimes it may be obvious that consultation is necessary (for example, if a major service is proposed for closure and it is not being re-located) but other proposals may be less clear-cut. Examples of where major service is being proposed across the UK and have been subject to public consultation include:

- the South Tyneside and Sunderland Path to Excellence transformation programme looking at how maternity, paediatric and stroke services are organised;
- the Healthier Together consultation on A&E, acute and general surgery in Greater Manchester;and
- three NHS success regimes in Essex, NEW (Northern, East and Western) Devon and West, North and East Cumbria, which are implementing large-scale changes to a number of in-hospital and out-of-hospital services.

Some of the questions that will be considered when assessing the appropriate approach for a proposed service change are:

- What are the quality/safety benefits from the proposed change?
- What is the impact on patients/staff?
- What is the impact on other clinical and corporate divisions?
- Has there been any patient/user group engagement in developing the proposal?
- Is the proposal a temporary/time-limited or permanent service change?
- Does the proposal involve relocating a service to another site?
- How many patients would be affected?
- Where do the affected patients reside?
- What are the travel impacts for patients/carers/visitors?
- How is an assessment of equalities being undertaken? Are there financial or other non-clinical reasons for the proposed change?
- Which local authorities would have an interest in the proposals?
- What is the view of the local Health Overview and Scrutiny Committee?

Factors to be considered when determining the need for consultation or engagement include:

- Advice available from legal advisers.
- Advice available from system regulators and other consultants.
- Degree of local controversy (or likely controversy) around the issue.
- NHS risk appetite.

Service change proposals will also need to go through each stage of NHS England's assurance process, which helps to ensure proposals are robust and well thought through, risk is mitigated and there is consistency across the NHS commissioning system.

As an ICS we, on behalf of the CCGs, will… ensure that every service change proposal will have a simple, formal approval process (operating through the Communications, Engagement and Consultation Strategy Board) that determines the appropriate level of engagement or consultation.

Engagement and consultation timetabling

Engagement and consultation should be carefully planned and timetabled with active public involvement and the co-production of solutions. A best-practice consultation exercise would typically involve the following phases:

Phase 1 Scoping and planning stage

- Ongoing public involvement
- Establish a case for change
- Gather the relevant document library
- Scope the consultation
- NHS England strategic sense check assurance (stage 1)
- Develop a narrative, key messages (Issues Paper)
- Map stakeholders
- Equality and impact analyses
- Plan pre-consultation engagement activities
- Identify and brief spokespeople

Phase 2 Pre-consultation engagement and consultation planning

- Pre-consultation engagement activity
- Options development and appraisal
- Update equality and impact analyses
- NHS England assurance checkpoint (stage 2)
- Develop consultation document and website
- Stakeholder Advisory Group
- Plan the consultation programme
- Tell people about it!
- Establish your logging and recording systems
- Publish your ideas and what you've heard to date

Phase 3 Consultation

- A mix of "traditional" and innovative activities
- Hard copy and electronic
- Take the consultation to people
- Be flexible and leave room for manoeuvre
- Achieve demographic balance

Phase 4 Post-consultation: analysis and decision-making

- Independent analysis
- Reflection and consideration
- Demonstration of impact
- Make informed decisions based on evidence
- NHS England post-consultation assurance (stage 3)
- Final consultation report and publish outcomes

As an ICS we will… support CCGs to adopt a common, phased approach to engagement and consultation as described above.

Impact assessments

Within each programme of work across the ICS, there must be consideration of the impact of change proposals on different population groups in terms of equality and human rights. Comprehensive health equality and inequality impact assessments should therefore be undertaken for every public consultation.

Impact assessments help the NHS meet its legal obligations to ensure that proposals do not unlawfully discriminate against individuals or groups, including those with protected characteristics. They play an important part in the design and content of consultation documents and activities and may also help identify any further assessment work that may be required (e.g. Travel Impact Analysis). Impact assessments are public documents and can and should be updated as options are developed during a consultation process.

Consideration should also be given to whether proposals have any impact on personal data which organisations hold and so require a Data Protection Impact Assessment to be undertaken in accordance with the General Data Protection Regulation and Data Protection Act 2018.

Following decision-making, an action plan to address and mitigate inequalities will be developed to ensure statutory bodies meet their duties to reduce inequalities of outcomes and access.

As an ICS we will… support CCGs to produce impact assessments for every public consultation.

Consultation high-profile issues

Certain issues arise during engagement and consultation exercises with a high degree of regularity. These are not necessarily the most important or most significant aspects of any given engagement exercise, but they often become the public touchstone issues that attract publicity.

- The closure of key buildings: Even if a health service is continuing to be delivered from another nearby location, the closure of a well-known (and perhaps much-loved) health facility can attract significant opposition. Community hospitals – which have often been in a community for many years and often have strong Leagues of Friends – can generate powerful sentiments.
- Travel times: There can be much misinformation over the time it takes to access services that are being relocated. This can revolve around the availability of public transport or the risk of traffic hold ups on busy roads. Members of the public sometimes express a preference for a poorer service that is near to hand rather than a better service that is further afield.
- Parking: The loss of parking facilities, or the fear of increased parking charges, are frequently cited as reasons for opposing change.
- Lack of clinical support: This is a concern that can prove fatal to any change programme. It is essential to establish, motivate and empower clinical support for change.
- Lack of information: It is frequently suggested that few members of the public know that an engagement or consultation exercise is taking place. It is essential to be able to demonstrate wide-ranging “reach” through metrics and statistics relating to media coverage, website visits, social media reach etc.
- Difficult questions: Health campaigners and politicians opposing change often try to overwhelm a health system with many detailed – and perhaps even unanswerable – questions. It is important to have a robust system that receives, logs and answers public questions.
- Key services: Certain services attract a disproportionate amount of publicity – often negative

publicity. Maternity services, children's services, A&E services and opening hours are examples of such issues.

As an ICS we will… ensure that all engagement and consultation exercises consider and respond to common high-profile issues.

Managing multiple consultations

There is a strong argument for holding related consultations concurrently wherever possible and appropriate. This helps ensure consistency of messaging and narrative, makes it easier to co-ordinate activities and improves the chances of raising public awareness.

It also saves time, public money and importantly, reduces the likelihood of consultation fatigue which would lessen the number of good quality responses in the form of feedback and attendance at events and activities.

The main drawback of holding all consultations at the same time, or under the same umbrella, is that a larger programme of preparatory work is required, and this necessitates more resource.

There is a chance that the public could be confused by multiple consultations taking place at the same time, though anecdotal evidence suggests that this also happens when consultation follows consultation.

If consultations are run concurrently, the NHS will need to guard against material interdependency of decision-making (e.g. one consultation making decisions which purposefully or inadvertently determine the outcome of another).

As an ICS we, on behalf of the CCGs, will… utilise the "Engagement and Consultation Strategy Board" to consider the merits of running consultation activity concurrently on a case-by-case basis.

Post-consultation

Challenges to consultation

The NHS Constitution says, “the NHS belongs to the people” and the Five Year Forward View says that at its best the NHS is, “of the people, by the people and for the people… [and] we need to engage with communities and citizens in new ways, involving them directly in decisions about the future of health and care services.”

To put it simply we have a strong public duty to engage and consult and to do so with honest intent. There is, however, a further practical reason for engaging and consulting properly.

Controversial consultations are often referred to the Secretary of State for Health and Social Care by local authority Health Overview and Scrutiny Committees. The Secretary of State generally refers such cases on to the government’s Independent Reconfiguration Panel (IRP) for further consideration. This can lead to a delay in the implementation of transformational change or even to the Secretary of State ordering that a consultation programme be completely rerun.

Perhaps the biggest risk is that of a judicial review of the public decision. The legal costs of defending a judicial review can run into many hundreds of thousands of pounds – which may not be recoverable even in the event of a legal victory – and since such reviews can take years to get to court, the cost of not implementing transformational change can itself run into many millions of pounds and can delay the implementation of patient improvements.

Therefore, it is advisable to ensure that engagement and consultation are conducted properly and subject to independent quality assurance, as well as NHS England’s thorough assurance process.

A public consultation is not necessary for every ‘minor’ change in the way a hospital functions or health services are arranged or provided. However, any proposal that will lead to a ‘substantial’ or major change in the way that local health services will be provided could become the subject of consultation.

It is also the case that, if an NHS commissioner or provider trust will be proposing ‘substantial’ changes to how health services are provided, it is the commissioner’s obligation to carry out a consultation and make decisions on any significant service change after the consultation period, therefore the consultation must be commissioner-led.

If the relevant local authority ultimately disagrees with the decision of the NHS body, or the process undertaken to reach the decision, it is entitled to refer the matter on to the Secretary of State where:

- the authority is not satisfied that consultation (with it) on any proposal has been adequate in relation to content or time allowed;
- in a case where a decision had to be taken without time for consultation due to patient and/or staff safety or welfare issues, the authority is not satisfied with the reasons for the urgency;
- the authority considers that the proposal would not be in the interests of the health service in its area.

As an ICS we, on behalf of the CCGs, will… ensure all engagement and consultation are conducted properly and subject to quality assurance to mitigate the risk of challenge.

Decision-making

This is the final stage of a public consultation process. Views and opinions gathered during a consultation must be properly analysed and fully considered. Any decisions taken must take these views into account. A final report must then be widely publicised explaining the consultation process and the outcomes. This also marks the last stage of NHS England's assurance process – post-consultation assurance.

As an ICS we will… support the CCGs to follow best practice in decision-making post consultation by considering all views and opinions gathered, documenting how these have been taken in to account along with any associated decisions.

Appendices

Appendix 1: Hard to reach and seldom-heard groups

NHS and public-sector organisations have a legal duty to ensure any service change does not negatively impact those groups protected under the Equality Act 2010. The following characteristics are protected characteristics:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

Through engagement and consultation, the NHS must also demonstrate that it is meeting the expectations of the Public Sector Equality Duty. This requires public organisations to have due regard for the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities.

Special consideration should therefore be made to engage the following groups:

- Black and minority ethnic groups
- Non-English speaking groups
- Youth, children and young families
- Older people (particularly those over 80)
- Those with nil access to the internet
- Deprived communities
- Low income groups
- The homeless and rough sleepers
- Refugees and asylum seekers
- Offenders, detainees and prisoners
- Drug users
- Those with learning difficulties
- Mental health service users
- The physically disabled
- The hearing impaired
- Those with sight impairments

Appendix 2: Stakeholders

Within any given healthcare system, there will be a myriad of stakeholders, all of whom require different degrees and forms of communication and engagement at different times. The list below demonstrates the breadth of stakeholders which the NHS should seek to inform, engage or consult when making change.

- Local Overview and Scrutiny Committees
- Local Councillors & officers
- Local authority planners
- Local authority offices (i.e. DASS)

- Local MPs
- Local/national political organisations/pressure groups
- National health committees (e.g. Health Select Committee, all party health group etc.)
- Ministers

- The public generally
- Public organisations (e.g. residents associations)

- Third sector groups including voluntary organisations and community groups
- Charities

- Local businesses
- Business organisations (e.g. rotary, lions, chamber of commerce etc.)

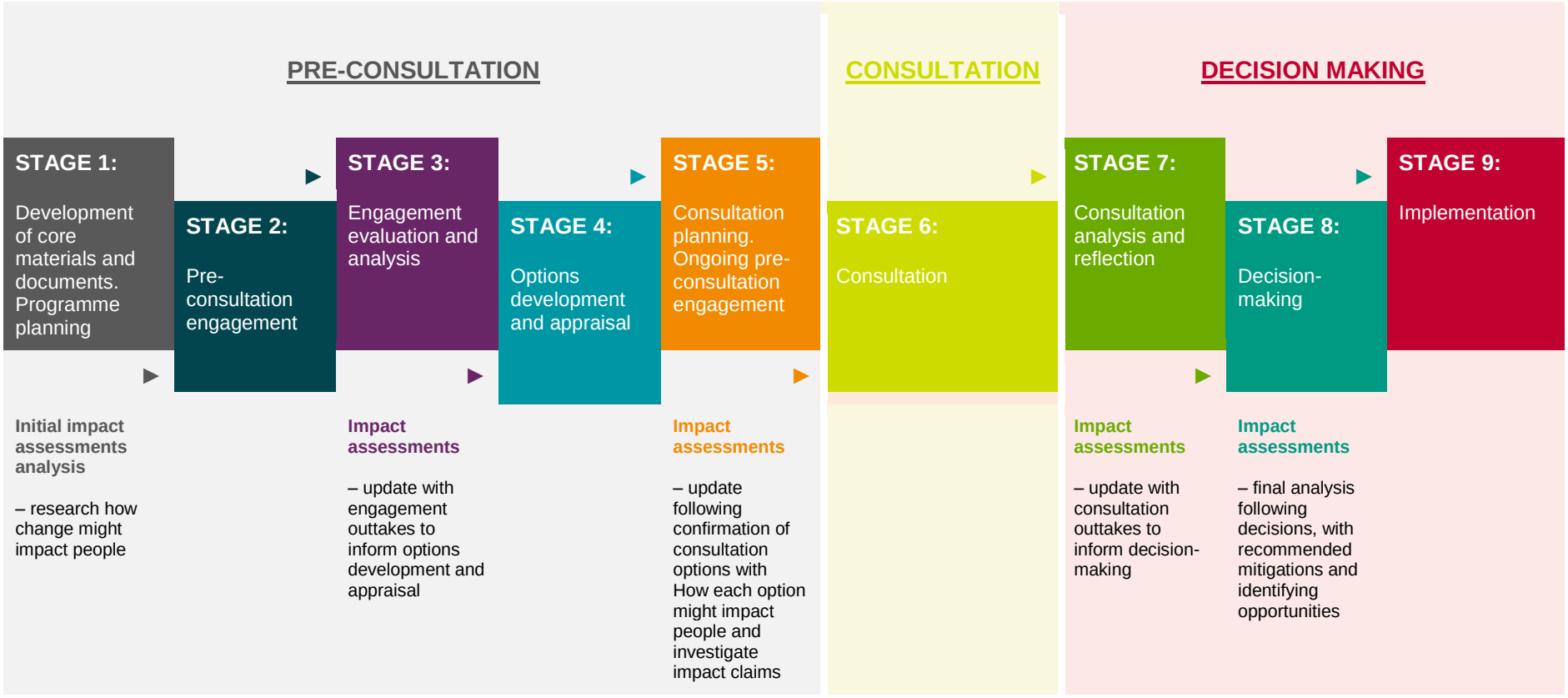
- Patients / service users
- Patient groups, Patient Engagement Forums and other patient networks
- Carers
- Relatives
- Hospital visitors

- NHS staff
- Trade Unions (including royal colleges)
- Potential staff (esp. in shortage areas)
- Local authority staff (e.g. social care staff)
- GPs and other independent contractors (e.g. pharmacists, dentists etc.)

- Media (including local newspapers, radio and TV, prof/trade press, national media)

- Board members of own NHS organisation (executive directors, non-executive directors and chairs)
- CCGs, trusts, NHS England, NHS Improvement, clinical senates etc.
- Board members of NHS partner/neighbouring organisations (executive directors, non-executive directors and chairs)

Appendix 3: Stages of consultation and engagement



Appendix 4: Engagement and consultation activities

There are many activities which can be used to engage with different audiences and which may be relevant depending on the nature of the change being considered. Some allow for an in-depth understanding of the experiences of particular subsections of society, whereas other forms can gauge the views of a demographically representative sample of the population. All have their own purpose and audience and careful consideration should be made to determine whether the form of activity meets the intended purpose.

The table below details just some of the ways to gather the views and experiences of stakeholders and the public.

Activity	Audience	Purpose
Public meetings	Self-selecting public	To inform and engage with members of the public who are interested in local health services.
Focus groups	Specific groups	To understand the experiences of subsections of society (i.e. those groups with a protected characteristic).
Deliberative events	Specific groups	To work through a particular issue in-depth with a particular group (i.e. service users, a demographically balanced cohort of the population etc.).
Telephone polling	Non self-selecting members of the public	To understand the views of a demographically representative cohort of the population (approx. 1000) on questions (such as those posed in a consultation document).
Questionnaires	Members of the public	To understand the views of those who are interested (for example, a questionnaire response form in a consultation document).
Online surveys	Members of the public/specific groups	To understand the views of either the public or specific group (i.e. members of staff).
Stakeholder events	Stakeholders	To update stakeholders (i.e. third sector, local authorities etc.) on the process being undertaken and provide interim feedback.
Citizens Juries	General public/other stakeholders	To encourage the NHS and those with different opinions to present their cases to a jury of the public. This allows positive, in-depth engagement with campaign groups and others.
Budget planning	Stakeholders	To help stakeholders to understand the nuanced financial issues at play in a particular service change.
Mobile engagement vehicle/Mobile marketplace events	Members of the public	To raise awareness, inform and engage with members of the public around changes being proposed. Representatives can help explain the change programme and encourage the public to express their views.

Appendix 5: Consultation case studies

The West, North and East Cumbria Success Regime

As one of the country's most challenged health regions, the Success Regime brought extra resources and focus to Cumbria to help the NHS work closely with communities and healthcare providers, such as hospitals and GPs, to find out what was needed to ensure high quality, continuously improving and sustainable services.

This saw a wide-scale pre-consultation engagement programme, followed by a 12-week statutory consultation focused on significant potential changes to services including emergency and acute care, maternity and children's services, stroke services, emergency surgery, trauma and orthopaedic services, and community hospital inpatient beds.

In March 2017 North Cumbria CCG's governing body considered the output from the public consultation, along with a number of other factors, and made a series of decisions to improve healthcare locally.

The decision was referred to the Secretary of State for Health who upheld the decisions made. In its advice to the Secretary of State, the Independent Reconfiguration Panel said:

> *"The Panel's view is that what has been done and achieved in the two years leading up to this referral has many commendable features. These include the approach taken to engaging interested parties, the efforts made to seek out and use external expertise and evidence, the consultation process including how issues raised have been analysed and addressed, and the collaboration with the HSC through the local variation protocol, including the use of dispute resolution. As a consequence, a coherent set of service changes has emerged that provides the opportunity to move forward with purpose."*

North Staffordshire and Stoke-on-Trent Clinical Commissioning Groups "My Care, My Way – Home First"

Services in North Staffordshire have been based around beds with too many patients admitted into hospital when they could stay at home and be treated within the community. Clinical evidence suggested that there were better ways to provide care and deliver better outcomes for many people currently admitted to hospital.

In 2014, the CCGs developed and proposed a new model of care, '*My Care My Way – Home First'*. In July 2015 the Stoke-on-Trent City Council's scrutiny committee expressed concern that proposed bed closures at a Longton Cottage Hospital, based on the model of care, would be made without consultation.

A consultation was conducted in 2015 by the CCGs on the model of care, but it did not consult on the closure of the beds at Longton Cottage Hospital and other community hospitals, which was to be consulted on at a later date. A decision to implement the new model of care, along with temporary closures of community hospital beds, was then taken by the CCGs.

While the scrutiny committee expressed a support in principle for the new model of care, the decision taken by the CCGs was referred to the Secretary of State, citing that the model of care depends on the closure of hospital beds, which was not part of the consultation. They also cited a lack of "meaningful consultation and full impact assessment".

The Secretary of State agreed with the scrutiny committee. In its advice to the Secretary of State, the Independent Reconfiguration Panel said:

“The Panel agrees with the committees concerns at the time that the consultation ‘has not been carried out in a meaningful and transparent way. The new model of care has already been introduced which calls into question the validity of the consultation and the questions being asked are not about the new way of working, only mitigation. The Overview and Scrutiny Committee do not expect consultation to be carried out in this way’.

The Committee and City Council demonstrated great patience with the NHS’s changes of direction and confusion about engagement and consultation until their concerns about the future of community beds and hospitals were brought to a head by further closures. Because the CCGs have not responded effectively to the issues raised with them, have not made the case for change, and have not consulted about changes to services, those holding them to account, in particular NHS England, are open to criticism.”

Appendix 6: Stakeholder Reference Group – sample Terms of Reference

Preamble

The Stakeholder Reference Group (SRG) has been set up to help ensure appropriate stakeholder involvement in the development of local health services.

Work being undertaken by [X] may result in formal public consultation at some point in the future. The membership of the SRG will comprise a number of representatives from different communities of interest in the local area including patient groups, community groups, voluntary groups etc. who indicate that they wish to be involved in the programme.

Members will be encouraged to bring the views of their communities to the table rather than their own personal views. They will also be encouraged to share the thinking of the SRG with their respective communities between formal SRG meetings.

Objectives

The SRG will offer advice, views, suggestions or opinions on:

- The plans for public engagement, including pre-consultation engagement and any subsequent consultation activities that may be undertaken.
- The language, tone and style of public consultation materials including, for example, consultation documents and leaflets.
- Which seldom-heard groups should be consulted and what forms of consultation would be most appropriate for these groups.

(Note: People in seldom-heard groups face multiple barriers affecting access to public consultations. The term 'seldom-heard groups' refers to under-represented people who use or might potentially use health services and who may be less likely to be heard by decision-makers.)

Principles

The programme is committed to a best practice, transparent approach which engages and involves local people and communities at every step of the programme. NHS England recommends an approach based on co-production with patients and the public.

Our communications and engagement will follow the five principles of:

1. Transparency: information about the programme will be freely available online
2. Inclusivity: we will seek to involve local people and stakeholders at every stage
3. Listening: considering all feedback, publishing it and responding to it
4. Partnership: all partners in the programme will work to an agreed protocol
5. Meeting best practice: we will meet and where possible exceed our legal responsibilities under the Health and Social Care Act and the Equality Act.

Matters for consideration

Advice, views, suggestions or opinions from SRG will take full account of the following established criteria:

- Engagement and/or consultation should include some traditional activities (e.g. drop in events) and some more innovative activities.
- Engagement and/or consultation should be proportionate (i.e. neither excessive nor modest in scale).

- Consultation communication should be clear, concise and as easy to comprehend as possible.
- Documents intended specifically for the public should be jargon free and couched in plain English.
- Any public consultation document should be accessible and not too long.
- Any more detailed information should be published on the consultation website.

Process

- The SRG will meet every four to six weeks through to the end of any public consultation period.
- Meetings of the SRG will be supported by [X} which will provide secretariat support, circulate agendas and take minutes for approval by the SRG.
- Any advice, views, suggestions or opinions expressed by the SRG will be presented to the [X]
- [X] will respond to any SRG recommendations in writing in order to establish a clear two-way audit trail.

Outputs

The SRG has an extremely important role in being an independent voice in any potential changes to services.

The SRG will be encouraged to submit advice, views, suggestions or opinions on how high quality, safe and sustainable healthcare services can be delivered to local people in the years ahead.

It might also include how the programme can work as effectively as possible with its residents. Through the process outlined above, this feedback will inform into the development of the emerging thinking of the programme and the resulting scenarios.

Constitution, decision-making and behaviour

Members act as ambassadors for the programme and representative of their organisation. They are responsible for engaging with colleagues within their constituent organisation.

Where possible, the Group will reach consensus in deciding recommendations and will act in an advisory capacity. The Group will have no powers other than those included in this Terms of Reference.

Members will be expected to provide information as required to support accurate analysis and decision making.

Members will be expected to respect different views, speak through the independent Chair and allow everyone to have their say.

Attendance is by invitation only. It is not a meeting in public, nor a public meeting. There will be no recording, audio or visual, at the meeting.

Conclusion

The role of the SRG is to offer advice, views, suggestions or opinions on the matters described in these terms of reference.

Consideration of any options for change that may be taken to public consultation in due course is a matter for local health commissioners. Individual members will be free to express their own personal views.