

Interim WAG Guidance on Consultation on NHS Reviews

## **SHAPING HEALTH SERVICES LOCALLY – INTERIM REVISION**

### **GUIDANCE FOR ENGAGEMENT AND CONSULTATION ON CHANGES TO HEALTH SERVICES**

#### **CONTENTS**

##### **SUMMARY**

##### **SECTION 1: THE STATUTORY REQUIREMENTS**

##### **SECTION 2: CONTINUOUS ENGAGEMENT**

##### **SECTION 3: ENGAGEMENT AND CONSULTATION AROUND SERVICE CHANGES**

*Step 1 – Identify the Need for Change*

*Step 2 – Develop Options for Change with the Community*

*Step 3 – Plan the Consultation*

*Step 4 – Quality Assure the Consultation Arrangements*

*Step 5 – Consult on Options*

*Step 6 – Evaluate Outcomes*

*Step 7 – Give Feedback*

##### **SECTION 4: URGENT SERVICE CHANGES**

##### **SECTION 5: OBJECTIONS BY COMMUNITY HEALTH COUNCILS**

##### **SECTION 6: A TIMELINE FOR UNCONTESTED AND CONTESTED PROPOSALS FOR SUBSTANTIAL CHANGE**

##### **APPENDIX 1: FORMAT OF REPORT FOR CONTESTED NHS SERVICE PROPOSALS**

Interim WAG Guidance on Consultation on NHS Reviews

**SHAPING HEALTH SERVICES LOCALLY – INTERIM REVISION**

**Guidance for engaging and consulting patients, the public  
and stakeholders**

**SUMMARY**

1. This interim guidance updates and supersedes Shaping Health Services Locally (WHC (2004) 84), issued in 2005.
2. **This is an interim document and will have a limited life. It will be valid only from its publication date until the development and issue of new guidance which addresses the new NHS structures expected to be in place in 2009.**
3. The reason for the issue of this document now is the need to provide up-to-date guidance to the NHS and other stakeholders, taking into account developments since 2005, particularly the publication by the Welsh Assembly Government of One Wales<sup>1</sup>, the Goodwin and Williams reports on public consultation<sup>2</sup> and new Equality Legislation.
4. The most important point in this revised guidance is a clear need for a new approach in public/NHS relations, based on continuous public engagement, rather than perfunctory involvement around specific proposals; any such proposals should be discussed and prepared against the background of well-established two-way communication.
5. Other new elements are:
  - a. a two stage process around specific service changes, involving first active engagement with the public about why change is needed and what are the options, and then formal consultation around concrete proposals, the whole better managed; and
  - b. the introduction of clearly specified quality assurance controls around any proposals that are issued to the public, including a well-defined role for clinicians.
6. Because it is interim guidance, it focuses on what needs to be done, omitting detail on the broader legal and policy background. It should contain all that is needed to ensure that engagement and consultation meets the legal requirements and the expectations of the Welsh Assembly Government.
7. The Welsh Assembly Government will expect organisations in the reconfigured NHS to pay considerably more attention to continuous citizen/public engagement to ensure that all organisations are responsive to the needs and views of their citizens. A key aim is to ensure the promotion of equality of opportunity of involvement. This guidance will be fully reviewed to meet that objective.

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<sup>1</sup> One Wales: A progressive agenda for the government of Wales, 2007

<sup>2</sup> Independent Inquiry into the Processes on Consultation and Implementation of the Reconfiguration of General Surgical Services in Carmarthenshire, Dr Neil Goodwin CBE, 2007; Review of Public Consultation in Blaenau Ffestiniog undertaken by the Gwynedd Local Health Board in 2005, and a Review of Public Consultation in Prestatyn undertaken by the Denbighshire Local Health Board in 2005-6, Michael A H Williams LLM BA (Hons) FCIM MIOD, 2008.

Interim WAG Guidance on Consultation on NHS Reviews

**SECTION 1: THE STATUTORY REQUIREMENTS**

8. Section 183 of the National Health Services (Wales) Act 2006 requires Local Health Boards, with regard to services they provide or procure, to involve and consult patients and the public in:
- planning to provide services for which they are responsible;
  - developing and considering proposals for changes in the way those services are; and
  - making decisions that affect how those services operate.

Section 242 of the NHS Act 2006 extends this requirement to NHS Trusts.

9. Regulation 18 of the Community Health Councils Regulations 2004 identifies the role of Community Health Councils in consultation, and the duty of an NHS body when considering any proposal for a substantial development of the health service in the area of a Community Health Council, or for substantial variation in the provision of such a service, to consult the Council.
10. This duty to consult does not apply:
- a. with respect to any proposal to establish or dissolve an NHS Trust or Local Health Board – there are separate arrangements in place for this; or
  - b. if the relevant NHS body believes that a decision has to be taken on an issue immediately in the interests of the health service or because of a risk to the safety or welfare of patients or staff; guidance on such a case is at Section 5 below.
11. Health Commission Wales (Specialist Services) (HCW), as an executive agency of the Assembly, is not covered by the statutory requirements which apply to NHS bodies; it will, however, act as if the requirements apply to it.
12. Proposals HCW may wish to make for changes to services it commissions should initially be discussed with its National Commissioning Advisory Board, before discussion with the appropriate Local Health Board(s), Community Health Council(s), and other stakeholders. HCW will follow the process for engagement as laid out in this Guidance, and take account of any other requirement that may be applicable to the Assembly.
13. While HCW will co-ordinate such consultation, prepare relevant material and information and attend public meetings, Local Health Boards will be expected to assist in making arrangements for, and provide support for, local consultation.
14. The consultation outcome will be reported to the National Commissioning Advisory Board; uncontested proposals will be adopted as the basis for commissioning.
15. Where there is opposition or alternatives are proposed, HCW will act in line with this guidance. If the matter is referred to the Welsh Assembly Government by a Community Health Council, in the case of a disputed proposal, an independent expert will be appointed to provide an evaluation of the proposal which would then form part of the Minister for Health and Social Services' consideration process.

Interim WAG Guidance on Consultation on NHS Reviews

## **SECTION 2: CONTINUOUS ENGAGEMENT**

16. The NHS must commit to a process of continuous engagement with its local population, not just when changes are at issue. It should aim to ensure that local people feel engaged with their NHS – that they understand its aspirations and achievements, and the difficulties it sometimes faces, and can influence decisions about changes in direction and specific services developments. It should aim to derive the maximum benefit from public engagement, to help it to provide relevant, high quality services, services the public want and value.

17. The experience of many NHS organisations, local authorities and the voluntary sector, which have successfully undertaken involvement and consultation over a number of years, is that on-going consultation can lead to clear benefits.

For the organisation the benefits include:

- enhanced relationship with the local community;
- increased credibility and reputation; and
- better design and planning of services .

For the community the benefits include:

- improved understanding and use of care services;
- more inclusive decision making; and
- better run services.

For individual and groups the benefits include:

- increased feeling of ownership of local health organisation;
- improved self-care; and
- improved treatment and care.

18. Where engagement is poor, these benefits can be lost and there are real costs. The Williams report cited among these:

- the cost of re-running a consultation in whole or part;
- public distrust of efforts to reform and improve the health service;
- public suspicion that the NHS merely wants to cut costs; and
- delay in, and even the impossibility of, necessary reforms.

19. It has become clear that the NHS can only make significant change if it has the trust and engagement of the local community: it must earn that trust. Any proposals for specific changes should be brought forward within the context of continuing, long-term, full and open engagement with the public and with patients, and in compliance with procedures that ensure that there is real engagement around the proposals themselves.

## Interim WAG Guidance on Consultation on NHS Reviews

20. Not only must the NHS have a policy of public openness and accountability, it must be seen to be open in practice. Involvement and consultation with patients, the public and all other stakeholders should be central to the development of health services. Resourcing and supporting this process along the various stages should be viewed as an integral part of the work of the NHS in Wales.
21. All NHS bodies should therefore develop a strong public information and engagement approach, based on honesty, a clear strategy, and positive leadership. All NHS bodies should have a general Engagement Strategy that can be applied to any occasion. This should ensure that the local population will be kept informed through a number of channels and their views sought at a very local level.
22. Although in some places the NHS has already adopted this approach, it is not universal. The NHS across Wales needs now to adopt a new approach in its relations with the public and patients, based on continuous engagement rather than ad hoc involvement around specific proposals. This will mean that any proposals should be prepared against the background of well-established two-way communication.
23. This approach should be strengthened and adapted for specific projects e.g. when specific service changes are at issue. Public information, through all forms of media, needs to take into account the likely reaction of different sections of the public to change. Public reaction to change needs to be treated with respect. Explanations to meet public comments and objections need to be thought through. An approach that suggests secrecy or arrogance will result in public anger and rejection.
24. It is good practice that a lead officer for public engagement should be identified by the Local Health Board or the Trust. The public engagement officer should work closely with all parties including the Regional Office of the Department for Health and Social Services (DHSS) to ensure that preparations are well thought out and there is an adequate plan to implement the public consultation.
25. Both for continuous engagement and in regard to specific consultations, NHS bodies must ensure that all local interests are addressed, and that responsibilities with regard to equality and diversity and the Welsh Language are met. Arrangements should address all geographical areas, cultural and linguistic needs and also ensure the involvement of children and young people. In addition, NHS bodies should also meet their responsibilities with regard to sustainable development and the Wales Spatial Plan. Planned consultation / engagement events should also be included in the NHS Equality Plans.
26. The Regional Offices of the DHSS will satisfy themselves that all NHS bodies have ongoing processes for sustainable public engagement about local health services, and both the processes and the areas for action arising from the engagement will be subject to performance management.
27. Healthcare Inspectorate Wales will also be monitoring the effectiveness of NHS bodies in taking forward their involvement and consultation responsibilities as part of its regular reviews.

Interim WAG Guidance on Consultation on NHS Reviews

### **SECTION 3: ENGAGEMENT AND CONSULTATION AROUND SERVICE CHANGES**

28. Public engagement is a legal requirement. As indicated in paragraph 8 above, Local Health Boards and NHS Trusts have a duty to involve and consult patients and the public:

- not just when a major change is proposed, but in the ongoing planning of services;
- not just when considering a proposal but in developing that proposal; and
- in decisions that may affect the operation of services.

29. In managing the process of service change, NHS bodies should proceed through seven steps:

- Step 1 – Identify the Need for Change*
- Step 2 – Develop Options for Change with the Community*
- Step 3 – Plan the Consultation*
- Step 4 – Quality Assure the Consultation Arrangements*
- Step 5 – Consult on Options*
- Step 6 – Evaluate Outcomes*
- Step 7 – Give Feedback*

#### **Step 1 - Identify the Need for Change**

30. Services are provided to address the needs of the public. Any service and any change in service must be justified in terms of its effectiveness in meeting that objective. Proposals that change is needed should be based on clear evidence in the form of research findings, formal evaluation of need, and/or the need to conform with approved service standards. In addition, those developing proposals should recognise that listening and responding to those who *provide and* use services can be the catalyst for improving the way those services are delivered.

31. Services will be better designed and more acceptable to patients and the public if their views are understood and taken into account. Listening and responding is the key to improving and developing healthcare services. NHS bodies should:

- listen to what patients and the public need and want – by putting their voice at the forefront of planning service changes;
- work with patients and the public to plan and frame any changes – by facing together any difficult choices to be made;
- carry patients and the public with them – by explaining and communicating effectively at all stages; and
- produce a full range of easily accessible information, in a range of formats, as soon as possible in the early, pre-formal consultation stage to engage and inform the public and set the stage for future consultation.

## Interim WAG Guidance on Consultation on NHS Reviews

32. The process of involving and consulting should be genuine and transparent. There should be an open discussion with patients, public, NHS staff, interested voluntary and community organisations and other stakeholders at the beginning – before minds have been made up about how services could or should change. This discussion needs to continue right through the process. Involving and consulting should not be merely about meeting statutory requirements, but about on-going involvement, communicating effectively, developing constructive relationships and building strong partnerships.

### ***Step 2 – Develop Options for Change with the Community***

33. Change options should always be explored with the wider community before being set down as firm proposals. NHS organisations should ensure that Community Health Councils and other groups, including staff, are involved in the development of options or proposals to change services or develop new services. Involving Community Health Councils in the development of proposals will help to make the subsequent consultation exercise more genuine and transparent.
34. NHS bodies should work jointly with Community Health Councils, County Voluntary Councils, voluntary organisations and other stakeholders to agree:
- the process for developing options for service change, including the involvement of other interests and stakeholders;
  - the consultation process, method and timescale; and
  - the respective roles of the responsible NHS body, the Community Health Council, voluntary sector representatives and other key stakeholders in the consultation process.
35. There is a legal requirement, if the NHS body has under consideration any proposal for a ‘substantial’ development of the health service in the area of a Community Health Council, or for a substantial variation in the provision of such a service, for it to consult that Council. The meaning of ‘substantial’ is not defined in legislation as it is intended that the local health community should decide. Local NHS bodies should aim to reach a local understanding or definition with the Community Health Council(s) on this, informed by discussion with other stakeholders.
36. In considering whether the proposal is ‘substantial’, NHS bodies, the Community Health Council, Voluntary Sector and other local stakeholders should consider generally the impact of the change upon patients, carers and the public who use or may use a service. More specifically, they should take into account:
- Change in access to services – for example both reductions and increases on a particular site or changes in opening times for a particular clinic. Communities attach considerable importance to the local provision of services and local accessibility can play a role in improving health, particularly for disadvantaged and minority groups. At the same time, development in medical practice and the effective organisation of healthcare services may call for re-organisation including a relocation of services. There should therefore be discussion of any proposal that involves the withdrawal of in-patient, day patient or diagnostic facilities for one or more specialty from the same location;

## Interim WAG Guidance on Consultation on NHS Reviews

- Patient group or groups affected - for example changes may affect the whole population (such as changes to A&E), or a small group (patients accessing specialist services). If change affects a small group it may still be regarded as substantial, particularly if patients need to continue accessing that service for many years (e.g. renal services). There would need to be an informed discussion about whether this is the case and the level of impact that is considered substantial; and
- Methods of service delivery, changing the way a service is delivered may be substantial – for example moving a particular service into a community setting rather than its being entirely hospital-based. The views of patients and user groups will be essential in such cases. Parties may differ over what is substantial. It is important that those involved set individual changes against the larger local context. The potential for conflict will be reduced where there has been full involvement by patients and the public during step 1.

37. The public engagement officer should develop and agree, with all parties to the consultation, a strategy that covers all stages in the change process.

38. The public engagement officer should also develop media contacts to maximise the potential of ensuring that the proposed changes are properly, honestly, and clearly described in the media. Information should not be suppressed: the public is entitled to receive clear information about its local hospital and health services.

### ***Step 3 - Plan the Consultation***

39. It is essential that involvement and consultation are adequate, both in terms of time and content, and are in proportion to the scale of the issue in hand. Part of the involvement process may be to discuss with stakeholders the most appropriate arrangements for further involvement. This could, for example:

- Identify how to involve / engage the local community;
- identify where more effort is needed to involve other parts of the community;
- help to determine whether formal consultation is needed and
- identify what is needed to enable full participation from the whole community, i.e. suitable locations, format of documents, times of meetings, language requirements and so on.

40. The NHS body planning the engagement should seek the views of opinion formers and the leaders within the community such as Members of Parliament, Assembly Members, local and community councillors, staff and unions, patient groups and relevant voluntary groups representing a cross section of older people or those who may be affected by possible changes.



## Interim WAG Guidance on Consultation on NHS Reviews

41. A number of issues should be considered right at the start, because they will impact on decisions to be taken at various stages throughout the consultation process. These include:
- what is the respective responsibility of each of the local NHS organisations?
  - has there been any previous consultation carried out on the same or a previous related or similar issue, e.g. for local authority services?
  - who should be consulted, on what and how?
  - what resources are available and needed?
  - how will any conflict/complaints be dealt with?
  - how will the outcome feed into the decision making process?
  - when and how will decisions be made?
  - how will results be fed back to patients and the public who have been involved, either directly or indirectly?
  - what evaluation of the consultation is going to be undertaken, and how?
  - what is the timetable for both the involvement and consultation process?
  - what is the impact on associated services?
42. Engaging the public is a difficult task. NHS bodies without experience of organising successful public consultations should work closely with the Assembly Government when planning their approach. Time and effort at this stage will be of benefit throughout the whole consultation and implementation period.
43. When major health service changes are anticipated, the Local Health Board(s) and/or Trust(s) should consult the public about the Terms of Reference and Membership of a Task and Finish Group before it is established. Careful preparation of the brief for the Group is essential. It is essential that this group can be regarded as an independent consultative/advisory body. Advertising for public involvement, explaining the need for the Task and Finish Group and asking for expressions of interest in membership of the group will help counter any:
- accusations that such a group is exclusive as opposed to inclusive;
  - public distrust of this group;
  - suspicion concerning the Local Health Board's / Trust's ability to manipulate it.
44. When contemplating major changes, one option is to engage the services of independent mediators or consultants with experience of conducting public engagement. This has to be at the beginning of the consultation process. To ensure that the consultants are accepted as impartial, a public/patient interest group or community group should be involved in their appointment.

## Interim WAG Guidance on Consultation on NHS Reviews

45. The voluntary sector can make an important contribution to effective engagement and consultation. Services provided by illness/condition specific organisations help people to engage with their care on a better-informed basis. Self-help groups, such as carers groups, and support groups for people who may have a rare condition and feel isolated from mainstream services, address health issues in communities. Many voluntary organisations are therefore able to identify and represent the views and priorities of users and carers. In shaping services locally, it is important that the voluntary sector is involved and engaged at an early stage to bring its contribution and to support an enhanced role for patients and the public in the decision-making process. The Welsh Assembly Government will expect that NHS bodies will link into the Building Strong Bridges Health and Social Care Facilitators, as well as local and national voluntary sector health and social care networks.
46. In line with the principles for consultation, if a substantial development or substantial variation of health services is being proposed that will affect residents in England, the relevant overview and scrutiny committee of any relevant local authority in England should also be consulted for comments.
47. Consultation around complex and contentious issues can be difficult and NHS bodies should ensure that they can manage the task confidently and competently. They should also ensure that they have the capability and capacity to handle the process well and, if in doubt, seek to bolster their resources. They should study and learn from others who have more experience. In managing the process, the Welsh Assembly Government will expect that:
- Trust Clinicians, such as the Medical and Nursing Directors, will lead and advocate the proposed change;
  - The NHS body leading the consultation will work in partnership with their counterparts in their local Trust or Local Health Board; and
  - NHS bodies will invest sufficient resources to manage the process from start to end effectively, openly and transparently.
48. The role of Community Health Councils needs to be carefully considered. Their primary task is to assess the impact of proposed changes on the NHS, not to take a partisan role. In that context the NHS should:
- ensure that arrangements for consultation realistically reflect the resources available to Community Health Councils and do not overstretch them; and
  - do not put the Community Health Council in a false position, for example through seeking to persuade the Community Health Council to chair a hostile public meeting on behalf of a Local Health Board.

## Interim WAG Guidance on Consultation on NHS Reviews

49. Individually and collectively, Community Health Councils should:

- reassess their capability and capacity to assess public opinion and the training and resources available to them to act through long and complex consultations;
- review whether, when faced with major changes in service, they are able to call on additional resources to engage staff or consultants experienced in engaging the public and representing public opinion;
- prepare for, and arrange visits to, facilities faced with closure and listen to the views of the public, clinicians and staff at the hospital; and
- assess whether they have the expertise and resources to undertake different kinds of consultation, such as street surveys, and analyse the results, and, if not, consider options for employing others experienced in this work.

### ***Step 4 – Quality Assure the Consultation Arrangements***

50. At the end of the preparatory phase, the NHS and non-NHS stakeholders and organisations involved in formulating proposals for consultation should take stock and decide if they are content to move forward to the public consultation phase. Ensuring that there is a process for pausing and taking stock should be the responsibility of the NHS Trust or Local Health Board leading the consultation.

51. Consultation documents should:

- explain why change is necessary;
- include a clear vision of the future service;
- in the case of changes relating to District General Hospitals, demonstrate complementary changes in community services;
- set out clearly evidence for any proposal to concentrate services on a single site;.
- include the evidence of support from clinicians for any proposed change;
- in the case of changes prompted by clinical governance issues, show how these have been tested through independent review;
- include a number of realistic options - the NHS needs to ensure that, if a preferred option is specified, this will not be seen as a 'fait accompli';
- give a clear picture of the financial implications of the different proposals;
- spell out who will be affected by the proposed changes and how their interests are being protected; and
- be available in a range of formats, such as "Easy Read", large print or audio.

52. Proofing the documents and consultation arrangements will be a role for the Regional Offices. They should look for support from people with direct experience of planning, managing and participating in consultation events, such as senior managers from NHS and public service organisations, Community Health Council chief officers and members, trade union representatives, voluntary organisations and members of the public, from across Wales and possibly elsewhere. Drawing on this support, they will review consultation proposals. To ensure a proper standard is met this should be done within pre-agreed timescales.

## Interim WAG Guidance on Consultation on NHS Reviews

53. This proofing will not require all stakeholders to agree what is proposed, but they should look for assurance:
- about how the proposed public consultation process would be undertaken;
  - that all options for change are seen to be receiving equal consideration;
  - that there will no surprises emerging from the local NHS during the consultation, such as unannounced additional information, analysis or changes of view; and
  - that there has been adequate engagement of the public and stakeholders in developing the proposals.
54. Should the majority of stakeholders involved in the pre-public consultation phase not be content about moving to the public consultation phase then the NHS body, if it cannot address the concerns, should assess the risks of proceeding to public consultation. This should be led by the chair and chief executive, who should also be mindful of managing upwards by informing, and if necessary seeking advice from, the Regional Office.

### **Step 5 – Consult on Options**

55. Whenever possible, the need for service change will be stated in local strategic plans and in Local Health, Social Care and Well-being strategies. Preparation of these strategies is a joint responsibility of the Local Health Board and its partner Local Authority and there is a statutory requirement for consultation. Where it is considered that the strategy document describes a proposed substantial change in sufficient detail and has received a positive response from the consultation process, the Local Health Board and Local Authority should seek the agreement of the Community Health Council, in view of its responsibility under Regulation 18, that no further formal consultation would be necessary.
56. The value of large public meetings needs to be weighed, as they may not be the best method to debate complex issues effectively. A range of different ways of sharing views will be needed.
57. In deciding who should take the lead role in consulting on options, it should be recognised that: -
- this is not a core function of Community Health Councils and additional resources would need to be provided to them by the NHS body in most cases;
  - the NHS body should provide appropriate personnel to support the consultation process by attending meetings, providing briefings etc. to fully explain the options;
  - the independence of Community Health Councils should not be compromised; their actions in carrying out a consultation exercise and their right to respond to it should be seen as two separate activities; and
  - at the end of the consultation period, the Community Health Council should have the opportunity to consider all comments received and record its own observations on them.

## Interim WAG Guidance on Consultation on NHS Reviews

58. The Community Health Council has an important role during consultation, and Regional Offices of the DHSS should oversee and support them. If the Community Health Council considers that there are other options to the proposal to be consulted upon by the responsible NHS body it should inform the NHS body at the earliest stage. The NHS body and the Council should work with the County Voluntary Council, voluntary organisations and other stakeholders to agree:
- the process for considering options to an original proposal for substantial service change, including the involvement of other interests and stakeholders
  - the consultation process, method and timescale; and
  - the respective roles of the responsible NHS body, the Community Health Council, voluntary sector representatives and other key stakeholders in the consultation process.
59. The responsible NHS body should maintain responsibility for the consultation process for any options to its proposal, unless there is agreement that this should fall to the Community Health Council. In this event the responsible NHS body should agree the appropriate support to be provided to the Council to assist the consultation process, in fully explaining the options e.g. by attending meetings, providing briefings etc.
60. At the end of the consultation period, the Council should have the opportunity to consider all comments received and record its own observations on them.
61. Where proposals are contentious, the evidence base should be open and agreed; where flaws or gaps are identified, new information will be sought and fresh public consultation will be embarked upon.
62. If the Community Health Council agrees to the proposals in the consultation, the NHS body may proceed to implement its proposals subject to any other approvals or consents that may be required. The Welsh Assembly Government, local Assembly Members, the local council(s) and local Members of Parliament should be informed of this and a notice inserted in the local press informing the public that the proposals are to be implemented following Community Health Council agreement. In normal circumstances it is considered that this stage should be reached within 4-6 weeks after the end of the public consultation period.
63. Where a Community Health Council is not satisfied that proposals for substantial changes to health services would be in the interests of the health service in its area or believes that consultation on any such proposal has not been adequate in relation to content or time allowed, it may take further action as set out in Section 5 below.

## Interim WAG Guidance on Consultation on NHS Reviews

### ***Step 6 - Evaluate Outcomes***

64. NHS bodies should consider with Community Health Councils how well the consultation process worked and whether it met the expectations of those who participated in it, for example:

- Were people clear about what they were being asked to comment on?
- Was it clear how the results of the consultation would feed into decision-making and how feedback would be given to participants and the wider community?
- Were timescales realistic and clear to those involved?
- Did the method chosen meet the needs and expectations of participants?
- Were the right people involved?
- Did they reflect the composition of the target population?
- Were they supported effectively to participate, e.g. were venues and timings appropriate?

### ***Step 7 - Give Feedback***

65. There is less potential for cynicism or mistrust if the consultation process is open and transparent and NHS bodies give feedback to stakeholders about the results of consultation. People who have taken the time and effort to give their views deserve to be kept in the loop about the outcome of the consultation and about next steps. This encourages people to feel that the consultation process is genuine and their views have been taken into account and in what way.

Interim WAG Guidance on Consultation on NHS Reviews

**SECTION 4: URGENT SERVICE CHANGES**

66. As indicated in paragraph 10, special arrangements apply where a NHS body believes that a decision has to be taken on an issue immediately in the interests of the health service or because of a risk to the safety or welfare of patients or staff; in such a case, the relevant NHS body may not be able to consult in due form but has to notify the Council immediately of the decision taken and the reason why no consultation has taken place.
67. If this occurs, good practice is that:
- a. the NHS body should make every attempt to inform all relevant interests of the new arrangements prior to the change;
  - b. the NHS body should provide information to the Community Health Council about how patients and carers have been informed about the change to the service, and what alternative arrangements have been put in place to meet their needs as part of good practice; and
  - c. the service provider must initially lead all discussion and action.
68. If dissatisfied with the reason given for not undertaking a formal consultation, a Community Health Council may report in writing to the Welsh Assembly Government which may require the NHS body to carry out a consultation, or further consultation with the Council, as it considers appropriate. These arrangements apply whether the case is one of substantial change or not. Where further consultation is then required, the relevant NHS body shall, having regard to the outcome of such consultation, reconsider any decision it has taken in relation to the proposal in question. Only Community Health Councils have this right to refer matters to the Welsh Assembly Government; procedures to be adopted in such cases are set out in Section 5 below.
69. To avoid difficulties arising over such emergency decisions, NHS bodies should take precautionary action as follows:
- a. Contingency plans should be prepared for services viewed as at high risk and shared at an early date with relevant NHS organisations, the Community Health Council, the County Voluntary Council (for the Voluntary Sector) and the local authority where relevant. All contingency plans should have a risk assessment undertaken for options; and
  - b. Information that services may be at “high risk” should be shared with the relevant Community Health Council(s), Local Health Board(s), County Voluntary Council (for the Voluntary Sector) and the local authority where relevant at the earliest possible stage. Risk analysis should be comprehensive and weighted appropriately.
70. In responding to unforeseen service change the Trust and Local Health Board should take urgent steps to bring the change process in line with the requirements that normally apply and put in place a comprehensive consultation strategy. The expectation would be that service changes should be dealt with as public business on the Board agenda of the relevant NHS body.

Interim WAG Guidance on Consultation on NHS Reviews

**SECTION 5: OBJECTIONS BY COMMUNITY HEALTH COUNCILS**

71. A Community Health Council may refer proposals to the Minister for Health and Social Services (the Minister) in writing if it is not satisfied that:
- a. a consultation regarding a substantial change has been adequate in relation to content or the time allowed; or
  - b. the reasons given for not carrying out a consultation in the case of an immediate change are adequate; or
  - c. proposals for a substantial change to health services would be in the interests of the health service in its area.
72. These referral powers relate only to consultation with Community Health Councils by the NHS and not to consultation with other stakeholders. Section 183 of the National Health Services (Wales) Act 2006 [in relation to Local Health Boards] and section 242 of the National Health Service Act 2006 [in relation to NHS Trusts] require more wide-ranging involvement and consultation, but there is no referral power in relation to that wider duty.
73. The power of referral to the Minister should not be used lightly and local resolution must be sought wherever possible.
74. If the Community Health Council has an issue under a or b of paragraph 71 above, it should submit a constructive and detailed response to the consulting NHS body. The NHS body should extend to the Community Health Council all reasonable assistance in formulating a response.
75. The consulting body should formally and fully consider the objections raised. If it cannot satisfactorily resolve the Community Health Council objections, it should inform the Regional Office of the difficulty, and the Regional Office should use its best endeavours to bring about an agreement. Only if this fails, and the Community Health Council maintains its objections, should the matter be referred to the Minister.
76. If the Community Health Council objects to a substantial change proposal, it should submit a constructive and detailed response to the consulting NHS body. The NHS body should extend to the Community Health Council all reasonable assistance in formulating a response.
77. The consulting body should formally and fully consider the objections raised. If the original proposals are modified to meet Community Health Council objections, there is no need for the NHS body to consult again on the modified proposals. The proposal may then be implemented.



## Interim WAG Guidance on Consultation on NHS Reviews

78. Only if the matter remains unresolved and the Community Health Council remains dissatisfied with the consulting body's response to its objections, should the matter be referred to the Minister. In these circumstances, the Minister will expect the following steps to have been observed before receiving a referral:
- the Community Health Council should notify the appropriate Regional Director of the Health and Social Care Department of its intention to refer the matter to the Minister, making clear its grounds for objection;
  - on receipt of the notification the Regional Office will ask the consulting body to supply the information contained within Appendix 1; and
  - the Regional Office will then facilitate a meeting between the Community Health Council and the consulting NHS Body to ensure that all possible avenues have been explored in seeking agreement. It will involve other relevant parties if appropriate.
79. In referring a matter to the Minister, the Community Health Council should make clear the grounds on which it has reached its conclusion.
80. Where an objection is made to the Minister by a Community Health Council, a copy of the letter to the Minister must be provided by the Council to the NHS body responsible for the consultation and the appropriate Regional Office at the earliest opportunity. The receipt of the letter will trigger a report from the Regional Office to the Minister with all the relevant facts obtained through the information supplied at Appendix 1 and the subsequent meeting. The advice from the Regional Office will include a clear recommendation to the Minister based on its assessment of the facts.

Interim WAG Guidance on Consultation on NHS Reviews

**SECTION 6: A TIMELINE FOR UNCONTESTED AND CONTESTED PROPOSALS FOR SUBSTANTIAL CHANGE**

81. The timeline has been prepared to help parties in determining the outcome of substantial proposals within a reasonable time period. It should be used as a guide and every effort must be made to deal with proposals as quickly as possible at each stage of the process.
82. Following the principles of this guidance and in accordance with section 183 of the National Health Services (Wales) Act 2006, section 242 of the National Health Service Act 2006 and Regulation 18 of the Community Health Council Regulations 2004, it is envisaged that discussions between the responsible NHS body, the Community Health Council and other stakeholders would have taken place prior to a formal consultation being held and the following timeline should be considered in that context.

Interim WAG Guidance on Consultation on NHS Reviews

**Timeline for uncontested and contested proposals for substantial change**

KEY MILESTONES IN THE TIMELINE	Suggested timeline from end of consultation period	
	Agreed proposal	Contested Proposal
[Standard period for a formal written consultation should be 12 weeks.]		
<ul style="list-style-type: none"> <li>The NHS body should aim to conclude and decide upon the analysis of responses within 4 weeks from the end of the consultation period.</li> </ul>	4 weeks	4 weeks
<ul style="list-style-type: none"> <li>If the NHS body can conclude from the analysis (and any discussions with the Community Health Council arising from the responses) that there is agreement to the proposals, <b>implementation may proceed from week 5.</b></li> </ul>	5 weeks	
<ul style="list-style-type: none"> <li>If no conclusion is reached by the fourth week, but there is a <u>reasonable prospect of agreement</u> to the proposals by the Community Health Council with some minor modification, the NHS body may allow up to a <b>further month</b> to do any further work necessary to achieve this outcome. <b>Under these circumstances, implementation may proceed from week 9.</b></li> </ul>	9 weeks	
<ul style="list-style-type: none"> <li>If a Community Health Council wishes to contest the proposal(s) it must signal its intent to the Regional Office (copied to the consulting body) <b>no later than 6 weeks after the end of the consultation period</b>, depending upon the circumstances described above.</li> </ul>		6 weeks
<ul style="list-style-type: none"> <li>The NHS body must submit a Report to the Regional Office <b>within one week of the request by the Regional Office.</b> (The report should be provided in the format outlined in Appendix 1)</li> </ul>		7 weeks
<ul style="list-style-type: none"> <li>The Regional Office will convene a meeting <b>within a month</b> in normal circumstances <b>of receipt of the information.</b></li> </ul>		11 weeks
<ul style="list-style-type: none"> <li>A referral should be received by the Minister <b>within one week of the Regional Office meeting</b> (copied to the consulting body and the Regional Office).</li> </ul>		12 weeks
<ul style="list-style-type: none"> <li>The Regional Office will provide the Minister with advice and a recommendation <b>within a month</b> in normal circumstances <b>of receipt of the referral letter.</b></li> </ul>		16 weeks
<ul style="list-style-type: none"> <li>The Minister's ability to decide upon contested proposals will be largely determined by the sufficiency of the information provided. The nature of individual consultations will also determine the approach taken by the Minister in reaching a decision, but the parties concerned should be prepared to provide further information on request. Under normal circumstances, the Minister will aim to reach a decision <b>within 4 weeks of receipt of all relevant information</b></li> </ul>		20 weeks

Interim WAG Guidance on Consultation on NHS Reviews

**APPENDIX 1**

**FORMAT OF REPORT FOR CONTESTED NHS SERVICE PROPOSALS**

The following outlines the basic information required by the Regional Office for proposals contested by Community Health Councils to substantial changes to local NHS services. This Report should be completed by the consulting NHS body when notified by the Community Health Council that it is contesting the proposal.

1. Organisation details:
  - Name of the decision-making NHS body/bodies and a contact name; and
  - The name of the contesting Community Health Council with a contact name.
2. Background about the proposal(s):
  - Brief description of the proposal(s);
  - Rationale for change; and
  - Description of the services and specialties affected by the proposal(s).
3. The basis upon which the Community Health Council has objected:
  - content of the consultation or that sufficient time has not been allowed; or
  - that the reasons given for not carrying out consultation are inadequate; or
  - that the proposals are not in the interests of the health service in its area.
4. Brief description of why the Community Health Council has objected.
5. List of stakeholders involved.
6. Supporting documentation – include copies of all documents relevant to the consultation. The documents should be indexed with a covering note that briefly describes the relevance of each. Examples of supporting documents may include (but may not necessarily be restricted to):
  - Initial appraisal;
  - Development of options;
  - Consultation documents (full and summary);
  - Analysis of responses;
  - Minutes/notes of relevant meetings;
  - Financial appraisals;
  - Supporting consultancy work;
  - Official notification from Community Health Council;
  - Supporting report(s) or other material supplied by the Community Health Council;
  - Material provided by other relevant stakeholder groups; and
  - Relevant Assembly Government policy documents.
7. Confirmation that all information provided in this report has been shared with the Community Health Council and that the Council accepts that it provides a factual assessment of the matter.