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**Scottish Health Council Response to Independent Scrutiny: the
Independent Examination of Proposals for Major Change in NHS services –
a Public Consultation**

February 2008

RESPONSE TO INDEPENDENT SCRUTINY: THE INDEPENDENT EXAMINATION OF PROPOSALS FOR MAJOR CHANGE IN NHS SERVICES – A PUBLIC CONSULTATION

Your Details

Please complete the details below.

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Are you responding: (please tick one of the boxes)	as an individual	
	on behalf of a group or organisation	x

Individuals

Do you agree to your response being made available to the public? (Please delete Yes/No as appropriate)	YES	
	NO	Your response will be treated as confidential
Where confidentiality is not requested , how would you like us to make your response available to the public? (Please tick one of the boxes)		Make my response and my name and address available
		Make my response available, but not my name or address

	Make my response and name available but not my address
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On Behalf of a Group or Organisation

The name and address of your organisation will be made available to the public.	YES
Are you content for your response to be made available?	
Can we contact you again about your response?	YES

Independent scrutiny of NHS Boards proposals for major changes in local NHS services

Please write your response here (please continue on a separate sheet of paper, if necessary.)

<p>Question 1: Do you agree that an expert panel is the most effective way to provide independent scrutiny? If not, what would be your preferred choice?</p> <p>Yes we agree that an expert panel is the most effective way to provide independent scrutiny for the reasons provided in the consultation paper.</p>
<p>Question 2: Do you agree that the role of the panel should be to assess the safety, sustainability, evidence-base and value for money of NHS Boards proposals for major changes to local NHS services?</p> <p>Yes we agree that this sets out the essential issues that should be assessed.</p>
<p>Question 3: Do you agree that the chair should be a lay person appointed by Scottish Ministers?</p> <p>This depends on the definition of 'lay'. If this term means someone who is not a professional within the Health Service and/or a clinician then we would agree. However it may be appropriate for the chair to be a professional in some other discipline – e.g. finance, health economics, transport, demographics etc.</p> <p>By its very nature, the work of the Panel will cover contentious and contested areas, and the Chair will need to have the skills, experience, and ability to probe and challenge, to take on this very demanding role.</p>
<p>Question 4: Do you agree that the panel should have a lay majority among its members?</p>

Once again this depends on what is considered 'lay', but if this means non-clinician or non-NHS then our answer would be yes. The Panel will need to clearly demonstrate that they are able to incorporate and represent the public view, and this should be done primarily through ensuring the public interest is well represented in the make up of the Panel.

That said the role of the Panel is to provide assurance to the Board, the public and Ministers that all viable options have been considered and assessed against the criteria of financial viability, clinical feasibility and patient focus. It is therefore essential that the Panel has among its members the technical and professional skills to probe and challenge Board proposals robustly and credibly across all these areas.

Lay members may come from a wide range of backgrounds. The emphasis should be on achieving the appropriate combination for the task in hand.

There should also be acknowledgement of geographical considerations – for example if a Panel is looking at issues involving island services, every effort should be made to ensure a proportion of its members are drawn from an island setting, where the knowledge, challenges and experiences that people face may be of value to the scrutiny of options.

Question 5: Do you agree that the panel should assess the evidence and options during the process of public engagement prior to consultation, and provide a commentary on these that would be available to the Board and to Ministers in reaching decisions?

Yes. Our findings from those processes of consultation we have monitored so far indicate that if the process of option development has not carried public trust or confidence then the position is irrecoverable. For this reason we think that the appropriate time to have a commentary from an independent scrutiny panel would be before the plans go to formal consultation.

A further issue would be at which point in the engagement/option development process a Panel would be established. Ideally the Panel would be able to monitor and feedback during the engagement process. However this may not be practical. It may not be evident at the beginning of a process that it may require independent scrutiny, and the need for a Panel may only become apparent once the Board has developed its proposal. Equally, there could be cases which may appear to require independent scrutiny at an early stage, but as the proposal is progressed the case for a Panel becomes weaker. If an independent scrutiny panel is established for every instance of potentially major service change this could be costly and a poor use of resources.

Therefore in practice it may commonly be the case that a Panel is set up towards the end of an engagement process. This will mean that Boards would always need to operate on the presumption that a process may be subject to scrutiny at

a later date. This factor alone may mean that in practice fewer cases require independent scrutiny.

Question 6. Do you have any other comments on how independent scrutiny should be carried out, or on the guidance on "Informing, engaging and consulting the public in developing health and community care services" at Annex 3?

One problem may be encountered in defining what cases should be considered for independent scrutiny. Sometimes this may be because of the level of controversy, but that in itself is not a very fair or objective measure. We would suggest that the following issues would need to be considered when a proposal is being suggested for independent scrutiny:

- Does the proposal run counter to the 'presumption against centralisation'?
- Does the proposal involve emergency or unscheduled care?
- Does the proposal mean significant extra travel for some patients?
- Does the proposal involve contentious or emerging technologies?
- Does the proposal involve complex evidence issues that could be open to challenge/dispute?
- Does the Scottish Health Council consider that, regardless of how well the engagement process has been conducted, there remains a substantial amount of community concern about the proposals?
- Is there concern that there may be further options or alternatives that need to be considered?

Question 7 Do you have any other comments on either the consultation process or your preferred choice?

Standing pool of experts/chairs

We note that the Government is considering establishing a standing pool of Panel Chairs and agree that this is probably the most practical course. This could meet on a regular basis to develop protocols, share good practice and provide advice on whether particular cases should be subject to scrutiny. There may be some cases where the Pool of Chairs (or standing Panel) may decide that a case referred to it would not benefit from scrutiny. This would have the merit of de-politicising the decision to use independent scrutiny – however this would also mean by the same measure that the Cabinet Secretary could only request that the Chairs consider a referral, as opposed to instruct that a Panel be set up.

In addition to a pool of Panel Chairs, the Government may want to consider, given the time commitment and personal commitment required for being a Panel

Member, widening this and creating a standing pool of Chairs and Members.

Remuneration

Careful consideration needs to be given to the appropriate level of remuneration. This needs to be set at the right level that achieves a balance between providing fair compensation for what is a demanding task, and not appearing excessive or close to 'consultancy' rates. It may be the case that the expectation should be clear that those who volunteer to participate in a Panel are doing so not for financial considerations, but out of genuine interest and a desire to be of service. Consideration should be given to whether the Chair of the Panel should receive remuneration at a higher level than the other Panel members, and/or recognition that the contribution of the Chair in terms of time is likely to be higher than that of other Panel members.

Perhaps there should be an expectation that where Panel Members are employed by the NHS then they would not receive a fee.

Role of Panel and issue of public engagement

The role of the Panel should be clearly defined as to assess the substance of the proposals that have been developed, as opposed to the process of engagement that the Board has used – as the engagement process is already assessed by the Scottish Health Council.

Panels will need to be fully aware of public views on the proposals they are scrutinising. However NHS Boards are expected (and have a legal duty) to involve the public in the decision-making process, and it is important that everyone is clear where the boundaries lie. An Independent Scrutiny Panel is not a decision-making body, but is producing a commentary on the Boards' proposals.

From our experience of providing a secretariat to two 'ad hoc' panels to date, there is a strong expectation from MSPs and Councillors that Panels should hold public meetings in their own constituency/Council areas, and from community groups that the Panel can hold individual meetings with these particular groups. Whilst these expectations and demands are understandable they cannot be met if the Panels are to operate efficiently and expeditiously, and seen to be independent.

We also note that there has been confusion at some of these meetings, where the Panel is discussing and presenting information materials that in fact represent the views or position of the Board, rather than its own view. The fact that the Panel is holding a public meeting and then explaining/presenting proposals which are not its own to members of the public does not help clarify

the role of the Panel or the proper boundaries between its role and the role of the Board.

We would therefore suggest that whilst it may be appropriate for the Panel to meet with particular groups or individuals at their own discretion, there should be no expectation on the Panels to engage in formal public meetings or formal public engagement exercises. The responsibility for public engagement needs to be understood to clearly lie with the Boards.

Comments on Annex 3 “The independent examination of proposals for major change in NHS Services - INFORMING, ENGAGING AND CONSULTING THE PUBLIC IN DEVELOPING HEALTH AND COMMUNITY CARE SERVICES”

The Scottish Health Council welcomes this new guidance but would like to see it published as a stand alone formal document to clarify its status.

It would be helpful if the guidance contained a reference to the Independent Scrutiny Process, and in particular its role in relation to option development for major service change.

It would be helpful if this guidance could clarify whether proposed changes to National Services (e.g. where this is being led by the Scottish Government) are also subject to this guidance.

The guidance should contain a reference to the ‘Participation Standard’ that was announced in the Better Health Better Care Action Plan, to be developed in 2008, and how this relates or will relate to the guidance, and also the Scottish Health Council’s role in developing good practice guidelines to accompany this guidance.

**NHS COMPLAINTS PROCEDURE -
COMPLAINTS REGARDING PUBLIC CONSULTATION**

Citizens' Advice Scotland has brought to our attention a question which had been raised during a training session on the provision of the Independent Advice and Support Service to complainants.

This specifically relates to Part 3 (paragraph 35) of the NHS Complaints Procedure and one particular area within the definition of "what the Procedure does **not** cover" which reads:

'Members of the public, including patients, may raise concerns with NHS organisations, which those organisations need to address, but which do not fall within the scope of the NHS Complaints Procedure. The organisation should ensure that there are other appropriate management processes in place to deal

with these concerns, which might include:

- *matters which are/have been subject to an NHS consultation process ... "*

The Scottish Health Council's view is that, in the event of a complaint regarding the outcome of a public consultation process, for example, about decision(s) taken by an NHS Board, the complainant should be advised to write directly to the relevant NHS Board.

In the case of a complaint about how the consultation process itself was conducted, however, the complainant should also be advised to write to the relevant NHS Board with a copy to the relevant local office of the Scottish Health Council. Alternatively, a complaint of this nature may be sent directly to the Scottish Health Council.

If the Scottish Health Council receives a complaint of this nature, we will ensure that it is shared and discussed with the appropriate NHS Board. Equally, NHS Boards should ensure that complaints received on the subject of the consultation process itself are shared with the local office of the Scottish Health Council.

We would ask that the Scottish Government considers including information in the guidance along the lines of the above.

Thank you for taking the time to participate in this consultation. We will acknowledge receipt of your response.

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