

Local Healthcare Bill Consultation - CIPFA's Response

03-04-2008

A Response To The Local Healthcare Bill Consultation Document

1.0 SUMMARY

1.1 CIPFA welcomes the opportunity to respond to the consultation document which includes suggestions for significant changes to the governance arrangements of Scotland's local NHS Boards.

1.2 CIPFA has a key interest in the governance of public sector bodies as good governance leads to good management, good performance, good stewardship of public money, good public engagement and ultimately good outcomes. CIPFA has been at the forefront of setting high standards of governance and worked with 'The Independent Commission on Good Governance in Public Services' to produce "The Good Governance Standard for Public Services" which identifies six principles of good governance :-

1. Focusing on the organisation's purpose and on outcomes for citizens and service users
2. Performing effectively in clearly defined functions and roles
3. Promoting values for the whole organisation and demonstrating good governance through behaviour
4. Taking informed, transparent decisions and managing risk
5. Developing the capacity and capability of the governing body to be effective
6. Engaging stakeholders and making accountability real

The Good Governance Standard for Public Services is available at http://www.cipfa.org.uk/pt/download/governance_standard.pdf.

1.3 CIPFA welcomes the recognition of these principles as noted in paragraph 2.5 of the consultation document however we believe that the proposals contained in the Local Healthcare Bill consultation document need to be assessed in terms of if and how they advance the six governance principles. Potentially the proposals could enhance principle 1 and 6 however there is no evidence presented in the consultation to illustrate how direct elections will advance these two principles.

1.4 Our response has focused on the spirit of the consultation rather than answering the specific questions.

1.5 In summary our views are :

1. That the good governance standard, including the principle of engaging stakeholders and making accountability real, should be embedded within the NHS Boards regardless of whether direct elections are implemented.

2. That the NHS Board as a whole should have the capacity and capability to carry out its role more effectively. In practice this means that individual NHS Board members, whether elected or not, should have a personal development plan, with appropriate training and development, to meet the requirements of their roles and responsibilities.

3. That clarity on the roles and responsibilities of individual NHS Board members, as well as those of the Board as a whole, is required to ensure good governance and public engagement.

2.0 DETAILED COMMENTS

2.1 Embedding Good Governance Principles

2.1.1 The Scottish Government's stated objective is to "encourage greater public and patient involvement in the planning and delivery of local NHS services in Scotland." This issue is one of the key principles of good governance. The fact that this aspect is seen as a current weakness indicates that governance arrangements in the NHS in Scotland need strengthening. This was certainly the finding of the Good Governance Standard generally throughout the public sector.

2.1.2 More than 450,000 people throughout the UK contribute as governors to a wide range of public service organisations and partnerships. Regardless of whether they are elected or not there is clear evidence that many have difficulties in fulfilling these responsibilities. To help them with their tasks there is an urgent and on-going need to be clear about the purpose of governance and the role of the governor. We believe the Good Governance Standard can provide that clarity. It shows how all of the principles should be applied, not just the issue of public engagement, if organisations are to live up to the Standard and provides a basis for the public to challenge sub-standard governance.

2.1.3 CIPFA considers that the manner in which Good Governance principles are being embedded in Scottish local authorities can act as a template for NHS Boards. The good governance principles as applicable to local authorities are laid out in "Delivering Good Governance in Local Government : Framework" (the Framework). In addition guidance notes have been developed ("Delivering Good Governance In Local Government : Guidance Notes For Scottish Authorities") which provide examples of evidence which can be used to demonstrate compliance with the principles. The evidence produced by an authority can help demonstrate the achievement of a number of aspects of the statutory duty of Best Value.

2.1.4 The Framework recommends that each local authority develops and reviews a local code of governance. The code is subject to continuous review with governance performance being self-assessed by the authority. The self-assessment should result in a self-produced improvement plan where required. As a result of this approach it is our belief that good governance is being embedded and the self-assessment and improvement plan give the governors clarity in terms of roles and responsibilities as well as a focus for improvement.

2.1.5 We believe that all public sector governing bodies (i.e. the board) should use the Good Governance Standard to review their own effectiveness and use it to provide clarity to board members about what their governance responsibilities are, in particular their role in ensuring engagement with stakeholders. NHS Boards are required at present, as part of the year end annual accounts process, to prepare a 'Statement on Internal Control', which includes a review of governance arrangements. It is vital that the board's attention is on the six principles throughout the year and not simply a year end focus.

2.2 Engagement with Stakeholders

2.2.1 The consultation document details the developments undertaken to date to strengthen public engagement in the health service. The consultation document suggests that these have not had the full impact that was desired and that further improvement in engagement is sought. Perhaps what needs to be examined is how engagement with stakeholders is considered and reviewed by the board in its direction and control of the organisation they serve.

2.2.2 Adherence to Principle 1 of the Good Governance Standard means "focusing on the organisation's purpose and outcomes for citizens and service users." The governing body, i.e. the board, should make sure that there is a clear statement of the organisation's purpose and that it uses this as a basis for its planning. It should constantly review the decisions it takes, making sure that they contribute to the intended outcomes for citizens and users of services.

2.2.3 Good practice suggests that non-executive board members should be given a specific responsibility to ensure that information about users' experiences is collected, brought to the attention of the governing body and used in its decision making.

2.2.4 The Standard is clear that the governing body is responsible for ensuring engagement and equally for ensuring that the engagement is used in the board's decision making. In considering the governance capacity and capability of board members, and of the board as a whole, perhaps board members would benefit from training around these specific responsibilities.

2.2.5 The appointment of more councillors or lay members to NHS Boards members will not of itself improve engagement with stakeholders. This will be achieved through actions, initiated by the board, to support and embed good governance.

2.2.6 With reference to the possible use of Independent Scrutiny Panels to assist with public engagement we believe, as stated in our response to the Government's recent consultation paper on the matter, that the responsibility for public engagement should firmly remain with the health board. Internal scrutiny and the challenging of decisions are also part of good governance, and these should also remain the responsibility of the board.

2.2.7 It is our view that the consultation document does not make the case that direct elections will ensure increased public engagement. CIPFA believes that increased public engagement will follow from embedding the Good Governance Standard in NHS Boards and this is necessary irrespective of the proposals.

2.2.8 Governance roles and responsibilities are challenging and demanding, and governors need the right skills for their roles. Our focus is on the specification of the skills required to undertake those governance roles irrespective of the basis of appointment or election to the board. Any board member should have a skills review leading to a personal development plan, with appropriate training and development, to ensure that they can carry out their roles effectively.

2.2.9 In our view, in terms of board membership, there are three potential barriers to good governance which need to be addressed, regardless of whether direct elections are implemented. These are :

1. Any skills and experience gaps of the governing board
2. The dominance of executive members
3. A lack of clarity on roles and responsibilities. This applies both to the role and responsibilities of the individual board members as well as the duties and remit of the NHS Board as an organisation or governing body.

2.3 Scrutiny Arrangements

2.3.1 The Scottish Government's response to the Crerar report supported the concept of self-assessment by public organisations, including the use of service user feedback. CIPFA's view is that scrutiny is an inherent part of good governance and should be the responsibility of each NHS board. There should be scope for challenge in the board arrangements so that decisions can be seen to be based on sound information and are made in a transparent manner.

2.3.2 The consultation document (paragraph 2.7) refers to the "additional internal scrutiny that may be achieved by introducing direct elections". The paper however provides no evidence for this. Reference can though be made to various Best Value Audit reports on Scottish local authorities. Many of those that have been published to date have made adverse comment on the quality of internal scrutiny carried out. Perhaps this suggests that direct elections themselves are no guarantee of improving internal scrutiny. What is key to raising the standard of internal scrutiny are the skills of individual board members, whether elected or not, to engage in constructive challenge. If there are skills gaps then these can be addressed through training and development of board members.

2.4 Board Membership

2.4.1 The strength of a Board's governance depends on an appropriate mix of skills, viewpoints, abilities, knowledge and experience. Under the existing NHS Board arrangements, where vacancies arise on the board the skills needed can be identified and

recruitment or appointment undertaken on the basis of securing those skills. Direct elections to NHS Boards will remove this ability. A governing body with elected members must commit itself to developing the skills that it has decided its members need, so that they can carry out their roles more effectively.

2.4.2 Consideration should also be given to the balance of executive members on the board compared to non-executive members. Board decisions should be made in a transparent manner and should be the subject of appropriate challenge and debate. There needs to be sufficient numbers of non-executive members to enable them to challenge executive policy makers and decision takers.