

Consultation and involvement

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Involvement for a successful STP

Consultations on changes to health and social care are often approached with great trepidation. Common questions range from; are we required to consult if there are no realistic alternatives? How upfront do we need to be about the need to reduce spending? Won't patients just oppose every reconfiguration?

The key is to engage early and often. The traditional consultation exercise, where service users are asked to respond to survey questions about options A, B and C, must not be the beginning and end of the story. Legally and pragmatically, engagement must be commenced at an earlier stage, through conversations with service users, carers and those delivering care. Often the pressures of time and money mean this kind of exercise is not carried out. However this is a false economy and risks legal challenge.

Proposals for substantial service change are likely to require formal consultation as well, but that should be a continuation of the engagement story rather than the beginning. In this way engagement can be the heartbeat of your STP rather than a burden.

Service reconfiguration in STPs - who consults?

Local authorities, NHS foundation trusts, NHS trusts, CCGs and NHS England all have duties to involve the public in their arrangements for health and social care services. NHS bodies must also consult local authority Overview and Scrutiny Committees on substantial proposals.

In the context of STPs, NHS England guidance¹ encourages joint public involvement to "reduce the burden on patients and the public" - each stakeholder organisation doesn't need to run its own consultation, but they do all need to make sure that these are happening.

NHS England's guidance for NHS bodies is that:

[...]where joint exercises are developed, local partners will need to: ensure clarity about roles and responsibilities between the different organisations involved; ensure they understand and have taken account of the governance and assurance requirements for their constituent organisations of the STP, and have reflected these requirements in their timetable; consider how the constituent organisations should discharge their involvement duties with regard to the changes that are being consulted on; and ensure consistent messages about the case for change and the options for change that are being proposed.¹

But we need to save money! Will the public ever agree?

A survey of 99 CCG chairs and accountable officers found that 31% said their STPs were likely to lead to the closing or downgrading of A&Es in the near future, a move opposed by the Royal College of Emergency Medicine².

These changes will be controversial and will generate substantial public opposition. Even textbook involvement will not win over everybody. However, the better your engagement, the more likely it is that people - even those who do not agree with any final decision to reorganise - will accept that it has been taken legitimately, and that public concern has been considered. Moreover, if and when the judicial review does land, claimants' first port of call will be to pick holes in the engagement process. It is vital that this is defensible if the reorganisation is to proceed.

Here are some top tips to make it happen:

- Make sure you engage meaningfully before the decision is taken.
- Actively persuade people it's a good idea. Seek out as much patient involvement as you can, rather than reacting to it later.
- Although it is not always obvious, what service users and what those holding the purse strings want are often the same: avoiding hospital visits, preventing rather than treating ill health and using technology to self-monitor rather than relying on healthcare professionals.
- Involve patients in design and decision-making committees.

- Engage local stakeholders such as the Local Medical Committee, Local Healthwatch, any Royal Colleges and, if possible, local MPs.
- Have a regular refresh so stakeholders have up-to-date information and are kept in the loop about the process.
- Be open! If finances are part of the challenge then say so.
- Be open to change - don't feel the need to defend every aspect of your STP if someone points out a way to improve it.
- Be transparent about decision-making - publish information as you go along.
- Make sure people know about what's going well, not just what needs improvement.
- Budget for resources to carry out your engagement. The increased size of STP footprints should make this easier, but you still need to plan for a suitably skilled and resourced team to carry this out.
- Pay special attention to your formal consultation arrangements. Although these are but part of the process, they are still the part most likely to be challenged, and you must ensure the following, in order to meet the well-known 'Sedley' or 'Gunning' principles:
 - the consultation must be at a time when proposals are still at a formative stage;
 - you must give sufficient reasons for any proposal to enable intelligent consideration and response;
 - you must give adequate time for consideration and response; and
 - you must demonstrably and conscientiously take consultation responses into account before taking your final decision.

Case study

In a major service reconfiguration programme on which DAC Beachcroft advised, the design of the project ensured patient representation on decision-making committees. This provided a great deal of extra legitimacy to the process, as patients were intrinsic to the decision-making process, rather than just being consulted.

Stakeholders may well already be aware of patients or patient groups with an interest in the proposals. Why not get them on board at an early stage rather than waiting for them to complain when presented with a done deal? Or avoid the risk of being said to have 'tame' patients on your side by asking Local Healthwatch to nominate representatives.

¹ <https://www.england.nhs.uk/wp-content/uploads/2016/09/engag-local-people-stps.pdf>

² <http://www.nationalhealthexecutive.com/Health-Care-News/emergency-department-closures-in-one-third-of-stps-will-put-lives-at-risk>

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