Keep our NHS Public - Briefing for councillors

Sweeping changes to the NHS have now come into force. As well as new responsibilities regarding public health, councillors have some opportunity to use existing Scrutiny arrangements and the new Health & Wellbeing Boards, to reflect constituents concerns about the NHS changes and to try and protect health services, and to highlight any issues publicly.

1. Councillors have no *direct* power over Clinical Commissioning Groups, although there are ways that councillors can increase their oversight of CCGs via the Health & Wellbeing Board and Scrutiny arrangements. It is important for councillors to use these powers effectively.
2. Many constituents will be aware that campaigners including 38 Degrees have been trying to get the CCG to improve the democratic safeguards in their constitution. Councillors are probably best off focusing on improving the democratic safeguards that the councils themselves have more direct control over.
3. A key demand from campaigners is that CCGs should not offer services to the private sector without consulting the public first (and ideally, commit to this in their constitution). Given the current debate about the Section 75 (NHS Privatisation) Regulations, it is unclear how possible this is. It is certainly desirable, as current requirements on consultation are weak. Councillors should push for such clauses, in the interests of helping the public to have proper input into significant health decisions (both through their elected councillors, and directly). Councillors who wish to prevent health privatisation can argue strongly (particularly via Health Overview and Scrutiny Committees) that decisions to invite private sector bids, are significant and warrant full public consultation before being taken.
4. Under regulations made under the Health & Social Care Act 2012, the government has weakened the requirements for local councils to have Health Overview and Scrutiny Committees. In future, councils will have to provide a scrutiny role but not necessarily through such a committee. Councillors should defend HOSCs which have been a useful check on bad decision making.
5. The government has also made it more difficult for the council Scrutiny function to refer matters to the Secretary of State, excluding decisions made on certain grounds (including Trusts going into administration). There are also moves afoot to set additional hurdles like full council votes, stricter time limits, and additional stages to go through first. Councillors should watch out for such moves and oppose them strongly and vocally where necessary.

6. Councillors can and should demand information from the CCG. In particular, councillors can ask:
    a. **which services are the CCG considering for review/potential change of provider in the near to medium future, whether through tendering or Any Qualified Provider.** NOTE - these are two slightly different processes, with AQP it's a process that gets private providers on a kind of shopping list for patients.
    Councillors would have to be very insistent and try and pin down detail on which services have been / are to be scoped / reviewed, what was the outcome of that review, how are decisions being taken about next steps, what stage is the process at (eg internal scoping, improvement plan, consideration of offering to alternative providers, expressions of interest, tender / AQP? To help focus questioning,

councillors can ask for the 'Draft Commissioning Intentions' which has to be discussed with the Health & Wellbeing Board.

b. Councillors should also ask, regardless of whether you get straight answers on this, **whether NHS options will be considered for any services currently under review, including taking this option without competitive tendering (which costs lots of money for both procurer and provider, apart from anything else!).** Given that there is currently a live battle over the extent to which commissioners could be forced to go out to competition, it would be important for councillors who want to defend the NHS, to take careful note of the answers, and any reasons given for not doing this. The government keeps promising that Clinical Commissioning Groups would be free to use competition only when they think it appropriate, but the regulations currently before parliament, appear to force them to use competition if there is more than one possible provider – something it will be hard to disprove.

7. Councillors should point out that they have **every right to be demanding in this area** as there is evidence of overwhelming public support for NHS services staying in the NHS, without tendering. 4 out of 5 people in opinion polls say they do not want any more markets in the NHS.

    a. **The main actual power councillors have** over CCGs, apart from demanding information and highlighting public concerns as above, is via **the Health & Wellbeing Board, and in particular, through its Health & Wellbeing Strategy**. Until clear structures of accountability are set up (see below) **the people who councillors need to quiz are probably the council leader and CCG chair who both sit on the HWB. Both individual councillors and their groups, and** the **Health Scrutiny Committee**, could and should then demand a response from them on these questions, either in writing or in person:

    b. Do the public have access to HWB meetings, minutes, and if not, why not? How is this acceptable and inclusive, don't they realise this is going to damage trust in doctors, what are their plans for the public inclusion in the strategy. If they have consulted, can they give a full report on the outcome of the consultation including all 'comments' that were given, and whether they feel it was well publicised, and what was the response rate? If the response rate was poor, why did the CCG and council personnel that were involved not learn the lessons from previous consultations, and what are they going to do to address this, ie to develop this strategy in a more genuinely inclusive way as a matter of urgency?

    Note – when asking questions about public involvement, councillors should not accept 'we've involved LINk/Healthwatch' as a good enough answer in itself. This is a minimalist approach and not good practice - certainly not when these organisations are themselves in a state of turmoil with LINks being closed down & Healthwatch taking over, and Healthwatch's powers even more constrained than LINks.

    c. **Democratic structures** - Will councillors on the HWB have to report back to the county /metropolitian borough and district council on decisions (both directly and

via HOSC)? How will the councils ensure there is space for discussion of these matters? Will HWB councillors also commit to feeding back to the public, and via the HOSC? How will the HWB determine that claims by providers of projected service improvement/cost savings, are correct and not unsubstantiated? Will HWB councillors have access to auditors? How will the HWB determine public involvement in future – **will it commit in its strategy to consulting the public before tendering or restructuring service provision**? (NOTE – just saying 'we'll do the legal minimum' is not good enough). Will the public be able to have some say over who is on the HWB?

8. Councillors should familiarise themselves with them H&WB strategy, and any options for its revision. It is a concern if such strategies focus excessively on '**personal responsibility', 'co-production', or 'asset based approaches',** which sounds empowering but could be code for cutting services. Such a focus individualises a problem, and places a greater burden on carers, patients (especially poor/vulnerable ones). It could be used as a justification for co-payment (ie charging fees).
9. Health & Wellbeing Boards are obliged to have regard to health inequalities. Councillors should be alert to strategies that appear to pay lip-service to inequalities. Such lip service is no replacement for a proper statement of collective responsibility for health, risk pooling, ie the principles the NHS was built on.
10. The other area that councillors are likely to have power on, is via **joint commissioning/health & social care integration**. It would be good to ask the HWB people (including CCG chair) what the approach is on joint commissioning and what work is underway or has been produced. Given that the pressures on local government (in terms of cuts and privatisation) are even worse than those on the NHS, such moves could in fact be a real Trojan horse for the NHS.

Further information is available here http://healthandcare.dh.gov.uk/hwbs-health-scrutiny-regulations-2013/