

ANALYSIS OF CONSULTATION RESPONSES: SUMMARY

FURTHER MEASURES TO IMPROVE THE PROVISION OF PRIMARY CARE SERVICES

1. SUMMARY

This is a summary of the consultation responses to the Scottish Executive consultation on introducing further measures to improve the provision of primary care services in Scotland which took place between 15 March and 18 June 2004. It covers the main comments received, together with a selection of comments made by single or small numbers of respondents. The replies from all those respondents willing to have them made public can be found at <http://www.scotland.gov.uk/library5/health/fmipcs-00.asp>

Respondents

Responses to the consultation were received from 59 respondents. A further 9 replies were received which are not included for various reasons, including returning responsee information forms without attaching a letter. A further 8 responses were received after the closing date of 18 June. Half of the 59 respondents were individuals, mostly general medical practitioners. The organisations which responded were wide ranging and included professional representative organisations, regulatory bodies, NHSScotland Bodies, Local Health Councils and 2 local authorities.

Overall

The overall tone of the responses (37 out of 59) was generally supportive of the measures proposed, including the future roles envisaged for the NHS Tribunal and NHS Boards. In a number of cases, these respondents raised questions or made additional points. Four respondents did not support the measures. The remaining respondents commented only on specific aspects of the paper.

New ground for disqualification by the NHS Tribunal of “unsuitability by reason of professional or personal conduct”

This proposed new ground attracted the attention of many respondents. Some were of the view that there were areas of professional or personal conduct which warranted referral to the Tribunal on this ground. A number expressed concern that the ground appeared too broad and open to interpretation; although respondents, in the main, thought this could be overcome with further modification of the definition of this ground or by the provision of examples and/or appropriate guidance. It was suggested that practitioners who had made an error should not be referred to the NHS Tribunal automatically as unsuitable but that each case should be subject to proper analysis and appropriate corrective action.

Extending proposals to list applicants in addition to existing practitioners

Respondents were supportive of the principle of applying the sanctions identified to those who are new applicants to an NHS Board list in addition to existing practitioners. There was comment however that this might place an extra administrative burden on NHS Boards and on the NHS Tribunal.

Removal of the local disqualification sanction

There was general agreement with the proposal to remove the NHS Tribunal's sanction of "local disqualification" and retain "national disqualification". One respondent commented that there should be clarification on whether a disqualification is intended to be permanent or whether there might be the possibility of re-instatement after rehabilitation. Another suggested that there should be a mechanism in place to ensure that practitioners who have been subject to conditional disqualification more than once are dealt with immediately.

Grounds for Suspension

Respondents expressed considerable interest in the proposed changes to the grounds for suspension by the NHS Tribunal and the introduction for the first time of local suspension by NHS Boards on similar grounds. The consultation proposed replacing the existing "fraud" ground with a future ground of "in the public interest". Concerns were raised that this ranged too widely and could be open to misinterpretation; although again respondents suggested that guidance and examples could help to overcome this.

On the issue of suspension in general, a few respondents sought clarification regarding payments to suspended practitioners and timescales for action or requested a power to appeal against suspension. There was concern about protecting practitioners' reputations from damage. Several respondents asked that, where a practitioner was cleared and the suspension was lifted, this fact should be made generally known.

One respondent asked that the wording of the ground should be "or otherwise in the public interest" and one that, where fraud is suspected, all payments should be stopped but the practitioner should be allowed to continue practising. There was comment about the need to ensure a continuation of service delivery during suspension but also that no exceptions to suspension should be made simply to avoid disruption of local services. One respondent believed that NHS Boards should have the power to suspend a practitioner on a UK-wide basis; one sought clarification on the difference between suspension and disqualification and another asked for information on comparative sanctions in other sectors. One respondent suggested that suspended individuals should be able to bring an NHS Board before the NHS Tribunal in the case of inappropriate suspensions.

Mandatory Duty Placed on NHS Boards to Refuse Entry to or Remove Practitioners from Lists

Nearly half of all respondents commented on these proposals.

There was general support for placing Boards under a mandatory duty to refuse entry to, as well as to remove from, their lists those GPs and dentists convicted of murder in the UK and to extend these duties to cover other family health service practitioner groups. A number of respondents, however, opposed the proposal to extend this duty to those convicted of murder outside the UK, giving as the reason that these convictions might be unsound.

¹Only a small number of respondents expressed their direct support for the proposal to empower Boards to refer practitioners convicted of a criminal offence where appropriate to the NHS Tribunal. Most were concerned that mandatory refusal of entry to/removal from lists might be widened to all criminal convictions and in particular, convictions for minor offences and those committed overseas and some requested the preparation of guidance/examples on the categories of offences that would justify mandatory action by Boards. A number also suggested that, rather than placing a mandatory duty on Boards, such cases could be referred to the Tribunal. One respondent suggested that, in carrying out their mandatory duty, Boards should take account of criminal convictions by courts in the EU, the Commonwealth and possibly the USA.

Additional requirements placed on Family Health Service Practitioners/Provision of information to NHS Boards

A number of respondents stated that they supported the additional information requirements to be placed on family health service practitioners wishing to join or remain on lists; they supported the harmonisation of types of information to be given by practitioners to NHS Boards; and they supported the common approach for all practitioner groups to the listing requirements. Some commented that there should be some kind of ongoing monitoring at regular intervals for those on a list. A few were opposed to requiring any additional information.

Respondents generally supported the provision of enhanced disclosures, although there was some acknowledgement of problems with the procedure for obtaining these from Disclosure Scotland and the need for clarification on both lines of responsibility and who would pay for the disclosures. Many respondents agreed that there should be the requirement to inform Boards about adverse or current proceedings in a court or by professional regulatory or licensing bodies and in general also agreed that practitioners should declare financial interests and gifts over a specified value. A common view was that the level of interests and gifts declared should be set at a sensible level and the system chosen to make the declarations should not be overly bureaucratic. It was also suggested that the system should be open and easy to verify at Board level and that practitioners should be required to report critical incidents in the course of their practice and also to declare any interests in private practice. A few respondents opposed declaring any gifts and a small number also sought clarification on how the information provided would be used and confidentiality maintained.

¹ A number of respondents misunderstood the proposal to replace the current **mandatory duty** on NHS Boards to remove from their lists those GPs or dentists only convicted of a criminal offence by a UK court and sentenced to imprisonment for 6 months or more with a **discretionary power** which would allow NHS Boards to seek disqualification from the Tribunal, where they think it appropriate, of a practitioner falling within any of the family health service groups who is convicted of a criminal offence. The proposal was that, where a Board decides, because of the nature of the offence, to refer a case to the NHS Tribunal, disqualification would be sought on one or more of the grounds set out in the consultation – “fraud”, “prejudice to efficiency” and “unsuitability by reason of professional or personal conduct”. A large number of respondents believed that, instead, the proposal was to extend mandatory refusal of entry to and mandatory removal from lists to practitioners who had any type of criminal conviction, including very minor ones.

Professional Regulatory Bodies

One issue raised by some respondents, which was not mentioned in the consultation paper, was the need for interaction with the professional regulatory bodies. Some commented that there was a need to exchange information and asked at what stage information, including information on enhanced disclosures, should be given to these bodies.

² Some respondents suggested that cases should be referred to regulatory bodies and not under new arrangements to the NHS Tribunal in Scotland so that cases are dealt with in the same way throughout the UK. There was comment that the measures proposed were one of several types of action a practitioner might face; a few respondents suggested that the decisions of the Tribunal and of the professional regulatory bodies must be consistent and there was a suggestion that practitioners should not be referred to court, to the Tribunal and to the regulatory body for acts or failures to act in the course of treating patients.

Other Issues Raised

Comments were made about the importance of considering how to deal with practitioners working elsewhere if judged unfit to practice, for example, working in a different NHS Board whilst suspended; working elsewhere in Scotland or the UK; or working outwith primary care. It was also felt that the position of trainees and students should be considered. One respondent believed the jurisdiction of the NHS Tribunal should be extended to the secondary care sector, a few that it should be extended to nurses and other allied professions and one that the Tribunal should be able to give a practitioner a warning. There was a view that private sector care by family health service practitioners should be policed. There were comments about the costs of the proposals and the need to avoid unnecessary Tribunal referrals.

One respondent commented on the fact that, for GPs, some of the proposals were different from those agreed and set out in current Regulations. A small number of respondents believed that there should be one list, rather than lists held by Boards. There were suggestions that the proposals could not apply equally to both practitioners and bodies corporate and that there should be a distinction between fraud conducted by a body corporate and fraud conducted by an employee alone, with the body corporate subject to referral only for the first type of fraud. There was comment that there should be a substantive right of appeal against decisions on de-listing. A small number of respondents sought some clarification on the current Tribunal referral “prejudice to efficiency” ground.

Late Responses

The 8 late responses contained comments which were broadly similar to ones raised by the 59 respondents whose views are reflected in the above analysis. These respondents were mostly supportive, and stated their agreement with the changes proposed for the NHS Tribunal, NHS Boards and the arrangements affecting Family Health Service Practitioners.

² A few respondents did not seem aware of the current NHS Tribunal regime in Scotland nor of the fact that there are Tribunals elsewhere in the UK.

List of Respondents Who Replied by Closing Date of 18 June 2004

General Practitioners (18 responses)

- Dr David M Sinclair
- Dr C Urquhart, Culloden Surgery, Inverness
- Dr Hal Maxwell
- Dr G G Barker, Kirkcaldy Health Centre
- Dr Julian S M Toms, Portree Medical Centre, Isle of Skye
- Dr Alec Millar
- Dr D M Syme, Laggan Leigheas, Perthshire
- Dr Angela Dixon
- Dr Sally Godward, Dunvegan Medical Practice, Isle of Skye
- 9 individuals who either did not consent for their names to be made public or did not return a Respondee Information Form.

Other Individuals (13 responses)

- J G S Brown
- Nick Walls
- J E Russell
- W Hunter Watson, Aberdeen
- 9 individuals who either did not consent for their names to be made public or did not return a Respondee Information Form.

Professional Representatives (8 responses)

- Guild of Healthcare Pharmacists
- British Medical Association
- General Optical Council
- Optometry Scotland
- British Dental Association
- General Medical Council Scotland
- Scottish Pharmaceutical General Council
- Royal College of Physicians of Edinburgh

NHS Bodies (9 responses)

- NHS Fife, Primary Care Department
- NHS Lanarkshire, Primary Care Operating Division
- NHS Shetland
- NHS Argyll and Clyde
- NHS Lothian
- NHS Scotland Counter Fraud Services
- NHS Education for Scotland
- NHS Scotland Central Legal Office
- NHS Tribunal

Local Health Councils/patient interest groups (5 responses)

- Tayside Health Council
- Borders Local Health Council
- Argyll & Clyde Health Council

- Hamilton Mental Health Issues Group

Other Groups (6 responses)

- Moss Pharmacy
- Scottish Committee of the Council on Tribunals
- South Lanarkshire Council
- Medical Protection Society
- Boots the Chemist
- West Dunbartonshire Council
- East Kilbride LHCC Advisory Group

List of Respondents Who Replied After Closing Date of 18 June 2004

- NHS Ayrshire and Arran
- NHS Grampian
- Royal Pharmaceutical Society of Great Britain
- Forth Valley Local Health Council
- Royal College of General Practitioners
- NHS Forth Valley, Primary Care Operating Division
- Fife Council
- An individual