AGENDA ITEM

FALKIRK COUNCIL

Subject: **LOCAL HEALTHCARE BILL – CONSULATION PAPER**
Meeting: **COMMUNITY HEALTH AND SAFETY COMMITTEE**
Date: **18TH MARCH 2008**
Author: **DIRECTOR OF CORPORATE & COMMERCIAL SERVICES**

1. INTRODUCTION

1.1 Members will be aware over the last number of months the Scottish Government has consulted on a range of reforms to the NHS in Scotland. The latest consultation paper - Local Healthcare Bill was published in January 2008. This report outlines the content of the consultation document and suggests a response to be sent to the Government by the deadline of 1st April 2008. The attached response set out in Appendix 1 of this report has been informed by discussion with Group spokespersons on the Community Health and Safety Committee.

2. BACKGROUND

2.1 As Members will be aware the Scottish Government wants to encourage greater public and patient involvement in the planning and delivery of local NHS services in Scotland. As part of this reform of the NHS, Members have provided responses to a number of pervious consultation papers. These include:

- Better Health, Better Care – October 2007; and
- Independent Scrutiny – Proposals for Major Change in NHS Services – January 2008

2.2 This consultation paper develops some of the subjects previously consulted on including introducing legislation for direct elections to NHS Boards. The purpose of this consultation paper is to gather views and comments on whether a Local Healthcare Bill should include provision for direct elections to NHS Board, and if so what form these might take.

2.3 The consultation paper firstly sets out how the NHS in Scotland currently works. It notes that there are currently 14 geographically based NHS Boards, with a further 7 boards such as the Scottish Ambulance Service Board that provide cross Scotland services.

2.4 The consultation paper sets out the responsibilities of the Boards, how they are made up and how they are financed. It notes how members of Health Boards are appointed at the moment and in particular the three main groups of Members. These are non executive lay members including the Board Chair, non executive stakeholder members and

executive members. Boards usually have between 5-9 non executive lay members. These comprise of:

- A senior elected Councillor nominated by each local authority within a Board area;

- An employee Director – normally chair of the Area Partnership Forum nominated by the relevant NHS staff representative group;

- The chair of the Area Clinical Forum – a senior healthcare professional nominated by local clinicians; and

- Where a Board is a teaching Health Board a university medical school members.

2.5 Executive members are appointed to the Board because of the jobs they do in the local Health Service. Normally these include the Board Chief Executive, the Director of Public Health, the Director of Finance, the Nurse Director and the Medical Director. In some instance the Director of Human Resources is also appointed.

2.6 The consultation paper notes the Scottish Government's commitment to delivering services as locally as possible so that they are convenient and responsive to patient's needs. It notes that some recent decisions taken with regards health care services have been controversial, with many people believing that NHS Boards have not taken sufficient account of the views of local people.

2.7 Members will recall a recent consultation paper on options for opening up scrutiny of proposals to change NHS services. The Scottish Government believes that elections to NHS Boards can provide a further, complementary approach to ensuring that the voice of local people and communities is heard when major decisions are being made.

2.8 It is the intention of the Scottish Government that the proposed Local Healthcare Bill should further address concerns about the role of patients and the public play in decisions about how local health services are designed and delivered. The consultation asks for views on how best this might be done.

2.9 The Consultation paper sets out two possible options under 2 headings –

- Section one asks questions about strengthening existing policies and processes to ensure that the needs of local communities are heard more effectively, within the current framework of appointed NHS Boards; and

- Section two asks views on introducing new legislation to require elections to be held to NHS Boards to place locally elected members on Boards.

2.10 The following sections set out the questions posed in the consultation paper and suggests a response to these in the appendix to this report.

3. CONSULTATION PAPER

Section One

3.1 This section of the consultation paper outlines the current arrangements and requirements placed on the NHS to consult and involve patients and communities in the services they deliver. It notes the role of the Local Health Council as well as the statutory duty NHS Boards have to encourage public involvement and other actions to improve public engagement. These include:

- A requirement that Boards should achieve a year on year improvement in patient focus and public involvement;
- The principles and practice set out in the National Standards for Community Engagement have been endorsed as a guide to the NHS in Scotland;
- National guidance has been developed on informing, engaging and consulting the public in development of proposals for major service change;
- Public Partnership Forums have been developed as a vehicle for proactively involving the public in the work of Community Health Partnerships and their parent NHS Boards;
- The role of local authority representatives appointed to NHS Boards have been supported to help ensure local accountability and improve joint working arrangements where services are jointly managed by NHS Boards and local authorities;
- The annual review process between Boards and Members meeting has been opened up to local people and organisations so they can discuss and questions Board's stewardship and performance; and
- The Scottish Government's Patient Experience Programme is being implemented to help develop and enhance how the views of patients and the public can be used to deliver improvements to patient experience across Scotland.

3.2 All of the above has helped further engage and involve communities in the development of local services. In addition there has been consultation recently on proposals to establish independent scrutiny of NHS Boards decisions with regards major changes to local NHS services.

3.3 The questions posed with regards existing involvement arrangements are:

1. Do you think the current proposals for independent scrutiny of service change proposals help achieve the aim of better engaging and involving local communities?
2. How could additional guidance to NHS Boards on making public consultation as effective as possible help achieve this aim?

3. Would the appointment of more lay members to NHS Boards – perhaps to directly represent patients or other groups – help achieve the aim? How might this be achieved?

4. In particular, would adding more local authority councillors (one councillor from each local authority whose area a Board serves is currently appointed to that Board) help achieve the aim? Could local authorities have a role in scrutinising public and community engagement?

5. Should we develop further the role of the Scottish Health Council to bring about more effective engagement and involvement? If so, what additional responsibilities could the Council take on and what would the benefits be?

6. How could the Public Partnership Forums associated with Community Health Partnerships encourage greater public engagement?

7. How could local Community Planning Partnerships best ensure improve public engagement with NHS planning?

8. What other measures could be introduced to increase effective engagement and involvement of the public with the NHS in Scotland?

3.4 The Council has already sent in a response to the matters noted above. It is proposed that the Scottish Government is directed to that response as the formal position of the Council on those matters.

Section Two

3.5 This section of the consultation document asks for views on changing the current framework for NHS Boards so that they have directly elected members. The main purpose of this is to bring about greater patient and community involvement in planning and delivering local health services. In particular the Scottish Government wants to hear views on:

- Electoral processes;

- Piloting elections to NHS Boards in some areas; and

- Ensuring accountability and control of NHS Boards in order to maintain consistency across Scotland.

Electoral Processes, Procedures and Systems

3.6 Given the responsibility for public resources the consultation highlights the need for Members of Health Board to follow a formal process of election. The consultation document again highlights a number of questions in this regard.

9. What eligibility criteria should candidates meet (e.g., should they be resident in the Board area? Should there be any other qualifications?)

10. How could equality and diversity of candidates be promoted?

11. Should candidates have to submit profile statements and declare any interests and/or relevant qualifications / skills / experience, for example membership of a political party or a pressure group?

12. Is there a case for excluding candidates standing as a representative of a political party?

13. In what circumstances might someone be disqualified from seeking election?

14. Who should be allowed to vote in the election? Should the same rules as apply to local authority elections be followed?

15. How often should elections be held, and when? Local authority elections are held every 4 years. Should elections to NHS Boards follow the same pattern?

3.7 The proposed Local Healthcare Bill could provide for any proportion of NHS Board members to be elected-from all of them to fewer than half. The Bill could also provide for some of the existing categories of appointed NHS Board members to remain. The existing categories are noted in para 2.4 of this report.

16. Should directly elected members form a majority of the members on a Board?

17. Should the existing categories of appointed Board members (lay members, stakeholder members and executive members) remain in place?

18. Among the appointed "stakeholder" members on NHS Boards are local authority Councillors. What should there role be if directly elected members sit on Boards?

3.8 As NHS Boards cover large geographic areas it may be necessary to divide areas up into electoral wards. This may ensure candidates from a single area do not dominate the decision making process. The consultation document also suggests that candidates may come from particular interest groups i.e. those with a particular condition or position on an issue, or political parties.

19. Should NHS Board areas be divided up into electoral wards?

20. Would the emergence of groups or individuals with particular views be a difficulty or a potential threat to good governance and direction of the NHS in Scotland?

21. Should safeguards be introduced to prevent unrepresentative / disproportionate representation of a political party or special interest group on a Board, and if so what form might such safeguards take?

3.9 In addition to determining the make of Boards, the consultation document suggests various voting systems that may be used. These include first past the post or proportional representation.

22. Would you favour a simple "first past the post" voting system, a proportional representation approach or another type of system?

23. How should voters be allowed to cast their votes? By postal ballot or at a polling station? Or either, depending on the voter's choice?

3.10 Appointed NHS Board Members currently receive payment of around £7,500 a year. This reflects the expectation that members will contribute around 4 days a month on average on Board business. The consultation document notes that Local Authority Elected Members are currently paid around £15,000 per annum.

24. Should directly elected Board members be remunerated? If so, at what rate – the same as appointed members currently receive?

3.11 The consultation document suggests that piloting elections to NHS Boards may allow some comparison to be made on the various options noted above. If pilots were undertaken it would be important to ensure the geography and socio economic diversity would be reflect. It makes a commitment to publish an assessment of the merits of each pilot prior to final decisions were made about introducing elections to Boards across Scotland.

25. Are should pilots a good idea?

26. How many pilots should there be?

27. How should pilot areas be selected?

28. How long should pilots run for?

29. What criteria should be used to assess and evaluate the pilots?

Accountability of NHS Boards

3.12 The aim of direct elections to NHS Boards is to increase local accountability but within a national performance framework. People expect similar priorities and approaches to NHS services across Scotland. With regard to this, the consultation document stresses that NHS Boards would still be accountable to Scottish Ministers and to the Scottish Parliament. Current legislation gives Ministers power to direct and regulate NHS Boards and such legislations legally binding on Boards. However governance, priorities and performance standards are not legally binding.

30. Should NHS Boards continue to provide generally consistent levels of performance across Scotland and follow national policies and priorities? Or should elected NHS Boards have the freedom to exercise local discretion and flexibility?

31. Should current guidance e.g. on governance, priorities and performance standards be set out in future in legally-binding form, to ensure that elected Boards comply with them? What would be the advantages and disadvantages of this?

32. Ministers currently have powers to remove members. Should they be able to remove elected members? What sort of reasons might justify such a power being used?

Costs of Direct Elections

3.13 Direct elections obviously cost money. Base on recent studies by the Electoral Commission the cost of initial elections would cost around £5m.

33. Should NHS resources be used to support direct elections? What do you think would be a reasonable amount to spend on elections?

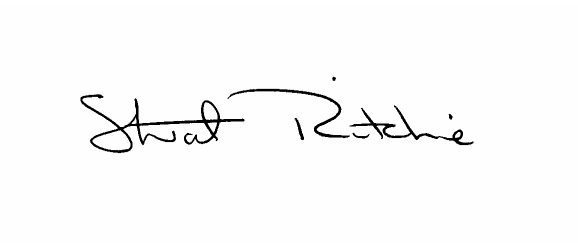
4. CONCLUSIONS

4.1 The Local Healthcare Bill, consultation paper raises a number of important issues with regards to the future governance of NHS provision in Scotland. Members have considered a number of matters contained with the paper previously and Council's position on such matters has been reflected in the proposed response. In addition the proposed response has been informed by a discussion with Members.

5. RECOMMENDATIONS

It is recommended that Members:

5.1 Note the content of the Local Healthcare Bill consultation paper;
5.2 Recommend the attached response to Policy and Resources Committee as the Councils to the Local Healthcare Bill for submission to the Scottish Government.



.....
DIRECTOR OF CORPORATE & COMMERCIAL SERVICES

Date: 10th March 2008
Ref: ABB0308FC – Healthcare Bill
Contact Name: Fiona Campbell Ext 6004

LIST OF BACKGROUND PAPERS

None.

APPENDIX 1

PROPOSED RESPONSE TO THE LOCAL HEALTHCARE BILL
(Proposed response is noted in bold)

Consultation Questions

1. Do you think the current proposals for independent scrutiny of service change proposals help achieve the aim of better engaging and involving local communities?

2. How could additional guidance to NHS Boards on making public consultation as effective as possible help achieve this aim?

3. Would the appointment of more lay members to NHS Boards – perhaps to directly represent patients or other groups – help achieve the aim? How might this be achieved?

4. In particular, would adding more local authority councillors (one councillor from each local authority whose area a Board serves is currently appointed to that Board) help achieve the aim? Could local authorities have a role in scrutinising public and community engagement?

5. Should we develop further the role of the Scottish Health Council to bring about more effective engagement and involvement? If so, what additional responsibilities could the Council take on and what would the benefits be?

6. How could the Public Partnership Forums associated with Community Health Partnerships encourage greater public engagement?

7. How could local Community Planning Partnerships best ensure improve public engagement with NHS planning?

8. What other measures could be introduced to increase effective engagement and involvement of the public with the NHS in Scotland?

The Council has previously commented on the issues noted above and therefore the Government is directed to the Council's response on the Independent Scrutiny of NHS Decisions as forwarded to the Scottish Government on the 25th January 2008.

The Council's response to the following questions are grouped where appropriate.

In responding to 'Better Health, Better Care', the Council at its meeting in December noted its support for the principle of having an element of democratically elected members in the membership of NHS Boards in addition to local authority members and medical professionals. The response below reflects this position.

9. What eligibility criteria should candidates meet (e.g., should they be resident in the Board area? Should there be any other qualifications?)
10. How could equality and diversity of candidates be promoted?

11. Should candidates have to submit profile statements and declare any interests and/or relevant qualifications / skills / experience, for example membership of a political party or a pressure group?
12. Is there a case for excluding candidates standing as a representative of a political party?
13. In what circumstances might someone be disqualified from seeking election?
14. Who should be allowed to vote in the election? Should the same rules as apply to local authority elections be followed?

The same rules that govern Local Authority elections should be applied to NHS Board elections in relation to the eligibility of candidates for election. It is not, however, considered appropriate that Councillors, MSPs or Members of Parliament should be eligible to stand for election as members of Health Board. In addition, it should not be open for a candidate to stand as a representative of a political party, although being a member or activist of a political party should not be a disqualification from standing for election. In order to promote equality and diversity of candidates, it is important that the process of nomination is widely publicised and targets a range of interested groups.

15. How often should elections be held, and when? Local authority elections are held every 4 years. Should elections to NHS Boards follow the same pattern?
16. Should directly elected members form a majority of the members on a Board?
17. Should the existing categories of appointed Board members (lay members, stakeholder members and executive members) remain in place?
18. Among the appointed "stakeholder" members on NHS Boards are local authority Councillors. What should their role be if directly elected members sit on Boards?
19. Should NHS Board areas be divided up into electoral wards?

A four year term of office would seem appropriate for elected members of NHS Boards. This is consistent with the time frame for many other directly elected positions.

It is suggested that Boards be made up by equal numbers of elected members, Council representatives and medical professionals. The medical professionals could consist of existing executive directors. Currently, Local Authorities have one member on a Board. It is important that the number of Local Authority Members reflects the population on the area they represent.

For example, in the Forth Valley area this could mean 4 local Authority Members, 4 directly elected Members and 4 medical members. In addition it is further proposed that the Chairperson continue to be appointed by the Minister. This would mean a Board of 13.

It is suggested that directly elected Members should cover Scottish Parliamentary constituencies.

20. Would the emergence of groups or individuals with particular views be a difficulty or a potential threat to good governance and direction of the NHS in Scotland?

21. Should safeguards be introduced to prevent unrepresentative / disproportionate representation of a political party or special interest group on a Board, and if so what form might such safeguards take?

Given the balanced approach suggested above i.e. an equal balance of directly elected Members, medical professionals and Council representatives, it is unlikely that one group would have a dominant influence on the operations of a Board.

22. Would you favour a simple "first past the post" voting system, a proportional representation approach or another type of system?

23. How should voters be allowed to cast their votes? By postal ballot or at a polling station? Or either, depending on the voter's choice?

In order to encourage voters it is suggested that the voting system must be straight forward and ensure the maximum number of people can vote. It is therefore suggested that the first past the post system be introduced for NHS Board elections. This should be operated by postal ballot.

24. Should directly elected Board members be remunerated? If so, at what rate – the same as appointed members currently receive?

Directly elected Board Members should be remunerated. The level of remuneration should be assessed when the extent of the role and responsibilities of a directly elected member is clearer.

25. Are should pilots a good idea?
26. How many pilots should there be?
27. How should pilot areas be selected?
28. How long should pilots run for?
29. What criteria should be used to assess and evaluate the pilots?

The impact of direct elections to NHS Boards may only be felt after a considerable period of time. If elections are deemed appropriate then they should be introduced to all Boards and not piloted.

30. Should NHS Boards continue to provide generally consistent levels of performance across Scotland and follow national policies and priorities? Or should elected NHS Boards have the freedom to exercise local discretion and flexibility?

31. Should current guidance e.g. on governance, priorities and performance standards be set out in future in legally-binding form, to ensure that elected Boards comply with them? What would be the advantages and disadvantages of this?

Given the broad nature of health priorities it is considered that there is flexibility and discretion for Boards to ensure that they address national priorities while meeting local needs. Local CHPs have a clear role in ensuring local priorities are identified and met.

While there may be legislation to establish direct elections to NHS Boards, it is not considered appropriate to legislate for performance standards.

32. Ministers currently have powers to remove members. Should they be able to remove elected members? What sort of reasons might justify such a power being used?

It is not considered appropriate that Ministers should have the power to remove directly elected Members. Members of a health board are bound by the terms in their code of conduct which can be enforced if necessary by the Standards Commission. This provides an adequate safeguard.

33. Should NHS resources be used to support direct elections? What do you think would be a reasonable amount to spend on elections?

It is not considered appropriate that NHS resources should be diverted from front line service delivery to support elections. This must be funded by the Scottish Government.

There has been no consideration in the consultation paper as to who would organise the elections. If Local Authorities were to organise these elections, discussions must take place with returning officers prior to legislation being drafted.