



futurefit

Shaping healthcare together

**Developing the framework for
our Consultation Plan
December 2015 to March 2016**

Version Control				Contents
Version	Date	File Name	Status	
Version 1	2 July 2015	1507-ConsultationFramework	Initial draft prepared based on Engagement and Communications Strategy, specialist advice from Consultation Institute and further development work during 2015.	1. Introduction 2. Consultation Principles 3. Consultation Plan Framework 4. Key Requirements 5. Resources 6. Risks 7. Next Steps
Version 1.1	6 July 2015	1507-ConsultationFramework	Additional sections on Resources and Risks added. Version 1.1 issued for review and feedback to NHS Future Fit Core Group, Engagement & Communications Workstream and Programme Team	
Version 2	31 July 2015	150731-ConsultationFramework	Updated for presentation to NHS Future Fit Programme Board on 13 August 2015, with all feedback fully incorporated.	

1 Introduction

This document sets out the framework for developing our detailed Consultation Plan for formal consultation on NHS Future Fit proposals for safe and sustainable acute and community hospital services from December 2015 to March 2016.

Subject to discussion and approval by the NHS Future Fit Programme Board on 13 August 2015, this framework will be used to develop a detailed Consultation Plan for agreement by Programme Board on 1 October 2015.

This framework assumes the delivery of the Critical Path approved by the NHS Future Fit Programme Board on 24 June 2015.

Development of this document

A draft of this framework (version 1.1) was developed based on the work to establish and review the Engagement and Communications Strategy, advice from the Consultation Institute and other guidance and best practice. This was shared on 6 July 2015 with the NHS Future Fit Core Group, Programme Team and Engagement and Communications Workstream for feedback by 31 July 2015. Engagement in the development of this framework focused on the following questions:

- Are we content with the Consultation Principles in Section 2? Is anything missing?
- Does the Consultation Plan Framework in Section 3 encompass the main elements we will need to consider? What other key dependencies would you add?
- Have we identified the Key Requirements in Section 4? Is there anything to add or change?
- Are the assumptions around Resources and Risks in Sections 5 and 6 appropriate?

This version (version 2) fully incorporates all feedback received from Core Group, Programme Team and the Engagement & Communications Workstream.

2 Consultation Principles

During the Call To Action in 2013, the development of the NHS Future Fit Engagement and Communications Strategy, the pilot work on the integrated impact assessment and the ongoing delivery of the Engagement and Communications Workstream, the following principles have been identified which will be used as the basis for developing the Consultation Plan:

- a. The future plan for services, whilst clinician-led, needs to be the result of genuine consultation. All those affected need to be able to understand the process and the reasons for the outcomes and so have the **opportunity to feed into the debate**
- b. Some people believe that decisions have already been taken, so ongoing action must be taken to counteract this by offering the public a **wide range of ways to be involved**.
- c. **All groups and individuals** must be targeted e.g. all age groups, ethnic groups, those without internet access, isolated communities, NHS staff, politicians, clinicians, carers, vulnerable groups, the working well etc.
- d. **Genuine consultation** must be undertaken, not a paper exercise in order to tick boxes
- e. Need to **go to where people are** e.g. Shrewsbury Flower Show, schools, GP surgeries etc.
- f. Keep **politics out of the debate**
- g. Work with organisations that have **existing networks** e.g. Patient Groups, Healthwatch, Young Health Champions, voluntary groups, community and religious leaders, etc.
- h. The impact on **populations across Shropshire, Telford and Wrekin and mid Wales** should be taken into account at all stages
- i. **All media** to be utilised, e.g. internet, social media, traditional media, newsletters, etc.
- j. Prepare **information** for distribution at regular intervals to involved groups
- k. Avoid jargon in all communications, ensure language is **clear and easy to understand**
- l. Provide regular updates and feedback to let people know that their input is being taken into account – **close the loop**
- m. Communications should **be accurate and honest**; acknowledging shortcomings, providing the facts
- n. Varying, appropriate approaches to engagement and communication to be employed including **specific approaches** for those with learning difficulties, disabilities and English as a second language

3 Consultation Plan Framework

The Consultation Institute provides specialist advice and consultancy to ensure good practice in engagement and consultation. They have identified key elements for formal consultation. These are summarised below and will be considered in the development of the consultation plan:

Aspect	Key Dependencies include:
July 2015 to November 2015	
Agree the project timeline	Delivery of NHS Future Fit Programme critical path
Confirm what can and cannot be influenced <ul style="list-style-type: none"> • Clarify Preferred Option or Options? 	Option Appraisal Process
Agree the critical questions to be asked as part of the formal consultation	Workshop needed in early Autumn to agree the critical consultation questions
Agree consultation processes	Financial and Human resources available to support the process
Identify risks to deliver of effective consultation and agree a strategy to mitigate risks	Risk identification and management process already in place through the Engagement and Communications Workstream with further assurance through Assurance Workstream and Programme Board
Undertake stakeholder mapping	Review and update existing Stakeholder Mapping within the Engagement and Communications Strategy
Develop a communications plan	Review and update existing Stakeholder Mapping within the Engagement and Communications Strategy
Undertake Integrated Impact Analysis	Build on experience of pilot Integrated Impact Analysis
Develop the consultation engagement plan <ul style="list-style-type: none"> • Quantitative • Qualitative • Participatory • Online > Social Media • Agree appropriate venues 	Driven by the critical questions, agreed above Engagement will be dependent on the financial and human resources available to support the process – all organisations will need to ensure that senior individuals can be released for the period of the formal consultation (and for training and development prior to consultation)

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Aspect	Key Dependencies include:
<p>Agree post consultation processes, including how the outcome of consultation will influence decision-makers and how decisions will be made</p>	<p>Dependent on how the decisions will be made following consultation – clarity on decision-making process needed by end August Decision on whether to commission independent analysis</p>
<p>Review and approval</p>	<p>Review and approval of draft consultation plan by NHS Future Fit Programme Board on 1 October 2015</p>
<p>Develop the consultation documents (including online resources)</p> <ul style="list-style-type: none"> • The story so far • Explain why change is necessary and provide clear evidence • Explain any external drivers for change • This is what you have told us • What has been considered at the different stages (scenarios > options) [demonstrate that this is not a fait accompli] • Provide a clear vision of the future services • Explain the consequences of change VS maintaining the status quo on quality, safety, accessibility, and proximity of services • In the case of hospitals, demonstrate how services will in future be provided within an integrated service model • Set out clearly evidence for any proposal to concentrate on a single site • Include the evidence of support from clinicians/GPs for any proposed change • Set out how sustainable staffing levels are to be achieved • In the case of changes prompted by clinical governance issues show how these have been tested (through independent review) • Explain any risks and how they will be managed • Give a clear picture of the financial implications of the different proposals • Spell out who will be affected by the proposals and how their interests will be protected • Explain how any change and benefit will be evaluated after implementation 	<p>Need to clarify approval process for the document and how differences of opinion will be addressed Availability of key individuals to provide expert input during the development period</p>

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Aspect	Key Dependencies include:
<ul style="list-style-type: none"> • Be available in appropriate formats – easy read, Braille, BSL, audio, etc • Get it signed off by the board • Invitation to propose alternative solutions 	
Populate the website <ul style="list-style-type: none"> • Put all relevant information in the public domain 	
December 2015 to March 2016	
Publish the opening equalities analysis	
Launch the consultation	
Engage	
Hold a mid-Consultation review Update equalities analysis Make changes to the plan	Undertake by late-January Agree scope
March 2016 to June 2016	
Hold a closing date review	At end of consultation
Analyse the feedback (consider whether you wish to commission independent analysis) <ul style="list-style-type: none"> • Put into useful formats that support decision making • Make all info available to decision makers 	Budget and timescale for independent analysis Contingencies for scale of response
Re-confirm and publicise how the consultation will be analysed	Learning from mid-Consultation and Closing Date reviews – has anything changed in terms of how the consultation will be analysed and how decision-makers will be influenced) since the beginning of consultation
Re-confirm and publicise how decision makers will be influenced	
Update media, web and stakeholders of processes	NB recognise the impact of the pre-election period in Wales on the information that can be communicated, when and how
Update integrated impact analysis and publish	
Conduct decision making meetings	
Publish the outcomes/decisions	
Tackle process issues	
Tackle any challenges	

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Aspect	Key Dependencies include:
<i>July 2016 onwards</i>	
Develop/complete an implementation plan	
Agree on-going engagement plan	
Timescales	

4 Key Requirements

This section summarises the main statutory and mandatory guidance relating to formal consultation. It focuses on legislation and guidance that specifically relates to consultation and engagement, rather than the wider policy framework that influences how this is conducted (e.g. Equalities Act 2010):

4.1 Legislation and guidance relating to communities and NHS services in Wales

The Welsh Government sets policy and legislation for engagement and consultation in relation to NHS services provided for people living in Wales.

This includes the Community Health Councils (Constitution, Membership and Procedures) Regulations 2010 which place a duty on specified English NHS bodies which provide services to persons resident within the district of a Community Health Council to consult the Council when developing and considering proposals for changes in the way services are provided, and in decisions that will affect the operation of services.

Legislation is supplemented by guidance from NHS Wales, including NHS Wales Guidance on Engagement and Consultation (2011). This expects:

- Strong continuous engagement and formal consultation
- NHS bodies and Community Health Councils must work together to develop methods of continuous engagement which promote and deliver service transformation for their population
- In cases where substantial change or an issue requiring consultation is identified, the NHS should use a two-stage process where extensive discussions with citizens, staff, staff representative and professional bodies, stakeholders, third sector and partner organisations is followed by a focused formal consultation on any fully evaluated proposals emerging from the extensive discussion phase.

4.2 Legislation and guidance relating to communities and NHS services in England

The UK Government sets policy and legislation for engagement and consultation in relation to NHS services provided for people living in England.

This includes the Health and Social Care Act 2012 which places legal duties on CCGs to involve and consult, and the NHS Act 2006 which places legal duties to consult and involve patients and public and for consultation with Health Overview and Scrutiny Committees.

The Health and Social Care Act 2012 introduced significant amendments to the NHS Act 2006, especially with regard to how NHS commissioners function. These amendments include two complementary duties for clinical commissioning groups with respect to patient and public participation. The second duty places a requirement on CCGs and NHS England to ensure public involvement and consultation in commissioning processes and decisions. It includes involvement of the public, patients and carers in proposed changes to services which may impact on patients.

4.3 CCG Constitutional Commitments

Both Shropshire CCG and Telford and Wrekin CCG have set out in their constitutions how they intend to deliver these statutory requirements at a local level. These constitutional commitments will need to be reflected through the programme:

Shropshire CCG – extract from Constitution	Telford and Wrekin CCG – extract from Constitution
<p>5.2. General duties - in discharging its functions the group will:</p> <p>5.2.1. Make arrangements to secure public involvement in the planning, development and consideration of proposals for changes and decisions affecting the operation of commissioning arrangements by:</p> <ul style="list-style-type: none"> a) Ensuring that patients and the public are fully consulted and involved in every aspect of the commissioning cycle in line with the Duty to Involve. Promoting among its members and service providers the requirements of the Duty of Candour. b) Developing and publishing an engagement strategy and consultation policy. c) Ensuring compliance with the 'Code of Conduct' which was jointly developed by the Shropshire Patients' Group and the group. d) Publishing an annual consultation report at the AGM describing all the consultations it has undertaken and the findings and actions resulting. e) Embedding lay representation on all clinical pathway or service reform project teams. f) Creating and establishing a public reference group that will 	<p>5.2. General Duties - in discharging its functions the group will:</p> <p>5.2.1. Make arrangements to secure public involvement in the planning, development and consideration of proposals for changes and decisions affecting the operation of commissioning arrangements by:</p> <ul style="list-style-type: none"> a) delegating the responsibility to discharge this duty to the Clinical Commissioning Group Governance Board, to prepare and approve a communications and engagement plan. b) the Clinical Commissioning Group Governance Board will have regard to the following statement of principles in the discharge of the duty outlined in paragraph (a) above: <ul style="list-style-type: none"> i) working in partnership with patients and the local community to secure the best care for them; ii) adapting engagement activities to meet the specific needs of the different patient groups and communities where possible and affordable; iii) publishing information about health services on the group’s website and through other media; iv) encouraging and acting on feedback.

monitor and report the group's compliance against this statement of principles.

3.3. Petitions

3.3.1. Where a petition has been received by the group, the Chair of the Governing Body shall include the petition as an item for the agenda of the next meeting of the Governing Body.

3.4 Petitions

3.4.1 Where a petition has been received by the group the Chair of the Clinical Commissioning Group Governance Board shall include the petition as an item for the agenda of the next meeting of the Clinical Commissioning Group Governance Board.

4.4 Cabinet Office Consultation Principles

The Cabinet Office has published the following guidance on the principles that Government departments and other public bodies should adopt for engaging stakeholders:

This guidance sets out the principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation. It replaces the Code of Practice on Consultation issued in July 2008. It is not a 'how to' guide but aims to help policy makers make the right judgments about when, with whom and how to consult. The governing principle is proportionality of the type and scale of consultation to the potential impacts of the proposal or decision being taken, and thought should be given to achieving real engagement rather than merely following bureaucratic process. Consultation forms part of wider engagement and decisions on whether and how to consult should in part depend on the wider scheme of engagement.

Policy makers should bear in mind the Civil Service Reform principles of open policy making throughout the process and not just at set points of consultation, and should use real discussion with affected parties and experts as well as the expertise of civil service learning to make well informed decisions. Modern communications technologies enable policy makers to engage in such discussions more quickly and in a more targeted way than before, and mean that the traditional written consultation is not always the best way of getting those who know most and care most about a particular issue to engage in fruitful dialogue.

Subjects of consultation

There may be a number of reasons to consult: to garner views and preferences, to understand possible unintended consequences of a policy

or to get views on implementation. Increasing the level of transparency and increasing engagement with interested parties improves the quality of policy making by bringing to bear expertise and alternative perspectives, and identifying unintended effects and practical problems. The objectives of any consultation should be clear, and will depend to a great extent on the type of issue and the stage in the policy-making process – from gathering new ideas to testing options.

There may be circumstances where formal consultation is not appropriate, for example, where the measure is necessary to deal with a court judgment or where adequate consultation has taken place at an earlier stage for minor or technical amendments to regulation or existing policy frameworks. However, longer and more detailed consultation will be needed in situations where smaller, more vulnerable organisations such as small charities could be affected. The principles of the Compact between government and the voluntary and community sector must continue to be respected.

Timing of consultation

Engagement should begin early in policy development when the policy is still under consideration and views can genuinely be taken into account. There are several stages of policy development, and it may be appropriate to engage in different ways at different stages. As part of this, there can be different reasons for, and types of consultation, some radically different from simply inviting response to a document. Every effort should be made to make available the Government's evidence base at an early stage to enable contestability and challenge.

Timeframes for consultation should be proportionate and realistic to allow stakeholders sufficient time to provide a considered response and where the consultation spans all or part of a holiday period policy makers should consider what if any impact there may be and take appropriate mitigating action. The amount of time required will depend on the nature and impact of the proposal (for example, the diversity of interested parties or the complexity of the issue, or even external events), and might typically vary between two and 12 weeks. The timing and length of a consultation should be decided on a case-by-case basis; there is no set formula for establishing the right length. In some cases there will be no requirement for consultation, depending on the issue and whether interested groups have already been engaged in the policy making process. For a new and contentious policy, 12 weeks or more may still be appropriate. When deciding on the timescale for a given consultation the capacity of the groups being consulted to respond should be taken into consideration.

Making information useful and accessible

Policy makers should be able to demonstrate that they have considered who needs to be consulted and ensure that the consultation

captures the full range of stakeholders affected. In particular, if the policy will affect hard to reach or vulnerable groups, policy makers should take the necessary actions to engage effectively with these groups. Information should be disseminated and presented in a way likely to be accessible and useful to the stakeholders with a substantial interest in the subject matter. The choice of the form of consultation will largely depend on: the issues under consideration, who needs to be consulted, and the available time and resources.

Information provided to stakeholders should be easy to comprehend – it should be in an easily understandable format, use plain language and clarify the key issues, particularly where the consultation deals with complex subject matter. Consideration should be given to more informal forms of consultation that may be appropriate – for example, email or webbased forums, public meetings, working groups, focus groups, and surveys – rather than always reverting to a written consultation. Policy-makers should avoid disproportionate cost to the Government or the stakeholders concerned.

Transparency and feedback

The purpose of the consultation process should be clearly stated as should the stage of the development that the policy has reached. Also, to avoid creating unrealistic expectations, it should be apparent what aspects of the policy being consulted on are open to change and what decisions have already been taken. Being clear about the areas of policy on which views are sought will increase the usefulness of responses.

Sufficient information should be made available to stakeholders to enable them to make informed comments. Relevant documentation should be posted online to enhance accessibility and opportunities for reuse. To ensure transparency and consistency of approach, all consultations should be housed on the Government's single web platform (GOV.UK).

To encourage active participation, policy makers should explain what responses they have received and how these have been used in formulating the policy. The number of responses received should also be indicated. Consultation responses should usually be published within 12 weeks of the consultation closing. Where Departments do not publish a response within 12 weeks, they should provide a brief statement on why they have not done so. Departments should make clear at least in broad terms what future plans (if any) they have for engagement.

Practical considerations

Consultation exercises should not generally be launched during local or national election periods. If exceptional circumstances make a

consultation absolutely essential (for example, for safeguarding public health), departments should seek advice from the Propriety and Ethics team in the Cabinet Office

Departments should be clear how they have come to the decision to consult in a particular way, and senior officials and ministers should be sighted on the considerations taken into account in order to enable them to ensure the quality of consultations.

Departments should seek collective ministerial agreement before any public engagement that might be seen as committing the Government to a particular approach. Ministers are obliged to seek the views of colleagues early in the policy making process and the documents supporting formal consultations should be cleared collectively with ministerial colleagues. If departments are intending to use more informal methods of consultation, they should think about at what point, and with what supporting documentation, collective agreement should be sought. The Cabinet Secretariat will be able to advise on particular cases.

This guidance does not have legal force and does not prevail over statutory or mandatory requirements.

(Source: Consultation Principles, Cabinet Office, 2012)

4.5 NHS Four Tests for Consultation and Involvement

The Department of Health's Mandate to the NHS England for 2015/16 identifies four tests for strengthened public involvement:

Where local clinicians are proposing significant change to services, we want to see better informed local decision-making about services, in which the public are fully consulted and involved. NHS England's objective is to ensure that proposed changes meet four tests: (i) strong public and patient engagement; ii) consistency with current and prospective need for patient choice; iii) a clear clinical evidence base; and iv) support for proposals from clinical commissioners.

(Source: A mandate from the Government to NHS England: April 2015 to March 2016, Department of Health, December 2015)

5 Resources

The delivery of the Consultation Plan will include:

- NHS Future Fit Programme Team, NHS Future Fit Engagement and Communications Team (e.g. developing the consultation plan and associated collateral)
- Support from Engagement and Communications Teams in sponsor organisations and the wider health and care system (e.g. supporting the development of the plan and collateral, supporting engagement and communication across Shropshire, Telford & Wrekin and mid Wales)
- Clinical and management leaders on sponsor organisations (e.g. providing expert input to the development of consultation materials, speakers and facilitators at consultation events, news and social media interviews)
- Local Healthwatch, CHC and Health Overview and Scrutiny Committees (e.g. engagement, assurance and scrutiny)
- Patient, community and voluntary organisations (e.g. disseminate consultation materials through their networks including websites and newsletters)

A plan will be developed assuming £50,000 resources in addition to the baseline engagement and communications programme.

6 Risks

The primary risks (and *indicative mitigating actions*) associated with the consultation plan include:

- Legal challenge as insufficient engagement at formative stage (Gunning) – *evidence from Call To Action, ongoing engagement and pre-consultation*
- Legal challenge as insufficient information to enable intelligent consideration (Gunning) – *adequacy of consultation materials, identification of consultation questions*
- Legal challenge as insufficient time for adequate consideration and response (Gunning) – *consultation period based on national guidance, adequate time between conclusion of consultation and decision-making to undertake and analysis and due regard, consider independent analysis of consultation responses, all responses provided to decision-makers*
- Legal challenge as consultation responses not conscientiously taken into account (Gunning) – *ensure that post-consultation decision-making process is clarified prior to development of the consultation plan*
- The consultation process itself is deemed insufficient because it does not adequately fulfil statutory and mandatory requirements – *agree consultation framework, develop plan based on this framework through Engagement and Communications Workstream, provide assurance through Assurance Workstream, adequate resources*
- Consultation plans are not delivered due to overly reactive approach and/or the consultation process does not adequately respond to changing circumstances and requirements – *agree and deliver plan, undertaken mid-consultation review*
- The consultation process is deemed insufficient because the plan is over-specified and is not delivered – *agreement of deliverable plan that adequately addresses statutory and mandatory guidance, identification of risks and risk mitigation*
- Significant public anxiety and dissent in relation to proposals and decisions, heightened anxiety in context of winter demands on health and care services – *clarity of case for change, availability of senior clinical and management leaders to engage and explain, adequate winter planning*
- The consultation process is deemed insufficient because of inadequate equalities analysis - *pilot Integrated Impact Analysis (IIA), develop and deliver final IIA, IIA demonstrably considered as part of decision-making*

7 Next Steps

The NHS Future Fit Programme Board is asked to APPROVE the Framework for our Consultation Plan.

Based on this framework:

- Draft risks will be refined and review for incorporation in the Workstream and Programme Risk Register.
- A detailed Consultation Plan will be developed for consideration by the NHS Future Fit Programme Board on 1 October 2015.

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