Involving People and Communities Toolkit

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Why we need to involve the public

This toolkit supports the work of NHS Shropshire, Telford and Wrekin to ensure good communications and involvement is embedded in our culture and is robust, planned, and meets best practice.

It has been put together by the NHS STW Communications and Engagement team, with input from partners, to help guide and advise those commissioning and delivering services on why it's important to involve people and communities, when to involve them, and practical tips on how to do it.

Research has shown many benefits to involving people and the earlier you involve them the better. Being able to look at services from different perspectives, not just those who are most motivated to be heard, can really help us to make sure they meet the needs and aspirations of our diverse population. Without a range of perspectives, decisions may be unfairly balanced in favour of certain groups, or may unknowingly create barriers and inequalities for others.

Involving people is also the right thing to do. Effectively working with people and communities is essential to:

- improving people's health outcomes
- empowering people to make decisions and manage their own health
- reducing health inequalities
- making better decisions
- improving the quality and safety of services
- providing the best value for money
- acting in an accountable and transparent way
- meeting our legal obligations.

The main legal obligations on NHS bodies to make arrangements to involve individuals, their carers, and representatives, are all set out in the National Health Services Act 2006, as amended by the Health and Care Act 2022:

- section 13Q for NHS England
- section 14Z45 for ICBs
- section 242(1B) for NHS trusts and NHS foundation trusts.

A requirement to involve the public is also included as a service condition in the NHS Standard Contract for providers.

It can be costly and time-consuming when commissioners and providers of services do not act on these obligations. The worst-case scenario is that legal challenges can stop proposed service changes from being implemented altogether.

The law does not insist on formal consultation or prescribe how people should be involved but it does require arrangements to ensure that people are involved. This can be achieved by consulting people, providing people with information, or in other ways. In practice, for any substantial proposed changes to services, some form of involvement or consultation exercise will be required to comply with this duty. However, working with people and communities is beneficial even if it is not a legal requirement and should be adopted as best practice where possible.

We are also committed to taking positive steps to ensure fair access to services for all, recognising and promoting equality, diversity and inclusion. It is important to take into account the different needs and wishes of people we involve and to be inclusive and respectful when designing our approach.

The NHS Constitution states that the NHS has a duty to "…pay particular attention to groups or sections of society where improvements in health and life expectancy are not keeping pace with the rest of the population". This is reflected in the Health and Social Care Act 2012, which introduced legal duties to reduce health inequalities.

NHS England defines involvement as: "Enabling people to voice their views, needs and wishes, and to contribute to plans, proposals and decisions about services."

In certain circumstances, changes can be made temporarily because of a risk to safety or welfare of patients or staff (regulation 23(2) of the s.244 Regulations). In these circumstances it may not be possible to undertake any public involvement or consultation. We should try to undertake as much engagement as possible in the time available and discuss with NHS England and NHS Improvement how this can be assured. However, when a decision is proposed to make a temporary change permanent, the full process set out in this guidance must be followed.

Key terms used in this document

Engagement is about having an open conversation with the public which allows them to input their views and ideas in the planning, design, and development of options for change. It is about establishing the issues, e.g., possible scenarios for change and the potential impact on services and describes a continuing and on-going process of developing relationships and partnerships so that the voice of service users, carers, local people, and their communities is heard.

Public Consultation is governed by law and seeks the views of the public on a set of proposals put forward for the substantial development of health services. It is a prescribed and time-limited piece of work.

Service Change is 'any change to the provision of services which involves a shift in the way front line health services are delivered'. Service change usually involves a change in the range of services available or a change to

the location from which services are delivered. Most of the legal duties apply to any change that meets this description. There is no single, generally accepted definition of service change and in particular no legal definition, so each case should be assessed on its specific attributes and in discussion with the Communications and Engagement Team.

Substantial Service Change. The Communications and Engagement Team can support NHS STW leads to establish whether a change is substantial enough to mean that public consultation is required and formal assurance from NHS England (NHSE). This will be done in consultation with the local Health Overview and Scrutiny Committee (HOSC). There is no single definition of what constitutes a substantial service change; hence each case should be examined individually. Commissioners, providers, and system leads should continue to involve the public in service changes or service improvements, even where it is decided that formal public consultation is not required.

The legal duties

- NHS bodies have a legal duty to involve patients and members of the public who might use services, in the:
  - planning of services
  - developing and considering proposals for changes to services (from the patient's point of view)
  - decisions about services
- Where proposed changes to services are **substantial**, 'public consultation' is normally part of the approach to discharging that duty
- Where the changes proposed are substantial in the view of the local authority whose area they affect, NHS bodies have a duty to consult the local authority via the Health Overview and Scrutiny Committee (HOSC)
- Where the proposal is initiated by the service provider, they must consult the local authority HOSC through the commissioner of the service in question

- NHS bodies must have what the law calls ‘due regard’ to the need to eliminate the types of conduct which are prohibited under the Equality Act 2010 and to advance equality of opportunity and foster good relations between those who have protected characteristics and those who don’t. This is called the ‘public sector equality duty (PSED)’
- NHS bodies have a legal duty to consistently have regard to the need to reduce health inequalities when exercising their functions:
  - Reduce inequalities between patients with respect to their ability to access health services
  - Reduce inequalities between patients with respect to the outcomes achieved for them by the provision of health services

- A substantial change brought about by the Health and Care Act 2022 is that the description of people to be involved has been extended from ‘individuals to whom the services are being or may be provided’ to also include ‘their carers and representatives (if any)’

- Changes can be made temporarily due to a risk to safety and welfare of patients or staff, without public involvement or consultation, **however the decision to make a temporary change permanent, must follow the full process set out in this guidance***

<u>Additional note: Temporary Changes</u>

- NHS bodies may decide to change a service without allowing time for public involvement or consultation where they are genuinely satisfied there is an imminent risk to the safety or welfare of patients or staff. Other duties will still apply and should be addressed appropriately.

- It is not acceptable for NHS bodies to delay addressing fragile service situations that might lead to such a risk occurring until they are so urgent that an imminent risk exists.
- In these cases, NHS bodies should:
  - Keep good records of the factors they considered in making these decisions.
  - Communicate the changes to affected people; and
  - Inform the local authority HOSC about the changes and reasons for not consulting them under the regulations.

Principles and tests that need to be followed

It is important to be aware of other principles and tests that also need to be followed, set by case law, the Government or NHSE:

Gunning Principles (a set of rules for public consultation)

Case Law: The Gunning Principles consist of four rules, which if followed, are designed to make consultation fair and a worthwhile exercise:

Gunning 1 – Consultation must be at a time when proposals are still at a formative stage. Public bodies need to have an open mind during a consultation and decisions cannot already be made.

Gunning 2 – Sufficient reasons must be put forward for any proposal to permit "intelligent consideration" and response. People involved in the consultation need to have enough information to make an intelligent input into the process.

Gunning 3 – Adequate time must be given for consideration and response. Timing is crucial; is it an appropriate time and environment, was enough time given for people to make an informed decision and then provide that feedback, and is there enough time to analyse those results and make the final decision?

Gunning 4 – The product of consultation is conscientiously taken into account by the decision maker(s). Think about how to prove decision-makers have taken consultation responses into account.

The Four Tests of Service Change

The Government's four tests of service change are:

1. Strong public and patient engagement
2. Consistency with current and prospective need for patient choice
3. Clear, clinical evidence base
4. Support for proposals from GP/clinical commissioners (this might also include support from neighbouring systems or providers)

'NHS England's Patient Care Test' or the 'NHS Beds Test'

To provide assurance against this test, systems must be able to demonstrate their proposals meet at least one of the following three conditions:

1. Demonstrate that sufficient alternative provision, such as increased GP or community services, is being put in place alongside or ahead of bed closures, and that the new workforce will be there to deliver it; and/or

2. Show that specific new treatments or therapies, such as new anti-coagulation drugs used to treat strokes, will reduce specific categories of admissions; or

3. Where a hospital has been using beds less efficiently than the national average, that it has a credible plan to improve performance without affecting patient care (for example in line with the Getting it Right First Time programme).

It is for NHSE to decide via the assurance process if these tests have been met.

What can happen if NHS bodies fail to discharge their legal duties?

NHS bodies must act in accordance with the law as it applies to them. The legal requirements are designed to make sure NHS bodies take all relevant factors into account in decisions to commission and provide the best services possible. If stakeholders are dissatisfied with a service change decision made by an NHS body, there are two formal ways in which the thinking and process behind the decision can be tested publicly:

1. **Referral to the Secretary of State** - The matter may be referred to the Secretary of State for review. This avenue is open only to local authorities in the affected area using powers given under HOSC legislation. The Secretary of State may take independent advice on the matter and respond setting out the course of action to be followed.

2. **Judicial Review** - Anyone with an interest may bring a claim for Judicial Review if they consider that the NHS body has failed to act in accordance with the law. They cannot challenge the decision itself, only whether the process that they followed to reach the decision was lawful.

   In this legal process a judge will review the facts of the case by examining programme documents and considering written witness statements to determine if the NHS body has followed a legal process. The court can quash decisions if a judge finds they have not been made in accordance with the law, i.e., overturn a decision or action

under review, rendering it legally void, or the court may compel a public body to do something, e.g., to remake a decision within a designated period of time.

The stages of a service change

There are key stages of any service change process to meet our legal obligations in terms of involvement. Not all stages will be required in full for every service change. Our legal duty requires us to either inform, involve, or formally consult with patients and members of the public. The Communications and Engagement (C&E) team will advise on the level of involvement based on what is considered 'fair and proportionate' to the change taking place. The level of involvement will be assured with HOSC, where required.

The key stages:

- ✓ Complete required project outline and initiation documentation
- ✓ Complete an Integrated Impact Assessment (IIA) (see appendix 1)
- ✓ Map your stakeholders (see appendix 2, once complete, send to the C&E team for review)
- ✓ Present your completed IIA and stakeholder mapping to the Equality and Involvement Committee (C&E Team can facilitate)
- ✓ Building a Case for Change (start NHSE assurance and HOSC oversight if appropriate) (contact the C&E team for guidance on what to include and, once complete send to the C&E team for review and next steps)
- ✓ Develop a communications and engagement plan (the C&E team can provide a template. Use appendix 3 to determine the involvement activity. Once complete, send to the C&E team for review)
- ✓ Check your approach with the Equality and Involvement Committee (C&E team can facilitate)
- ✓ Early engagement listening exercise (to check your assessment of impact and ensure people are involved in developing any proposals for change)
- ✓ Revisit the Integrated Impact Assessment

- ✓ Option development and appraisal - establish the criteria for assessing viability of the options though involvement, weight the criteria, and score
- ✓ Produce business case or pre-consultation business case if required and stage two of the NHSE assurance process if applicable
- ✓ Revisit the Integrated Impact Assessment
- ✓ Formal Consultation if appropriate
- ✓ Decision making, including conscious consideration of feedback, decision making business case, adapt plans if required and implement change
- ✓ Update integrated impact assessment
- ✓ Evaluate the impact following implementation, including seeking feedback from those identified as being impacted by the change

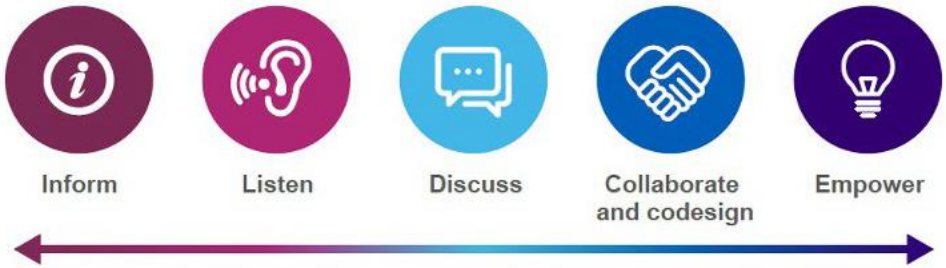
Please note: It may not be clear from the beginning if 'formal public consultation' will be required, as this may be determined by the options that are drawn up during the planning process. If it is unclear, we advise that you follow the process as though it will be required to ensure that you have factored this into your timeline, and to ensure that a robust process has been put in place which will meet all legal requirements should 'formal public consultation' be needed.

It is also important that you do not promise a formal public consultation or indicate that there will be a consultation until it has been agreed following the options development and appraisal process, as this could lead to a legitimate expectation on the part of patients and users of the service that a consultation will take place, when this might not be the most appropriate course of action in the circumstances.

Your C&E team can provide support and guidance throughout this process. Please contact stw.communications@nhs.net

How we will involve people and communities

Our Involving People and Communities Strategy sets out our approach to involvement. Engaging and involving people is not a rigid process – it requires flexibility and should be seen as a spectrum of activity and includes different methods and approaches.



We have developed a set of principles for involvement which have been shaped with input from people across our health and care system and communities. They have been informed by the knowledge and experience of a diverse range of people, including those with lived experience of using our services and those for whom involvement is already embedded into their working practices.

In developing our **10 involvement principles** below, we have ensured that they align with and build on the 10 principles set out in the national guidance but reflect our local aspirations:

- Seek out, listen and respond to the views, experiences and wishes of our communities to improve people's lives
- Ensure people are involved in everything we do as an Integrated Care System (from an individual's care, to service design and making decisions about health and care priorities)
- Relationships between our communities and health and care organisations are based on equal partnerships, trust and mutual respect

- Use existing and new knowledge about our communities to understand their needs, experiences and wishes for their health and care
- Involve people early and clearly explain the purpose
- Reach out to and involve groups and individuals who are often seldom heard by working with community partners and organisations
- Make sure the communications and the ways people can get involved are clear and accessible
- Record what people say and let them know what happened as a result
- Ensure staff understand the importance of involving people in their work, and have the skills and resources they need to do it
- Learn from when involvement is done well and when it could be improved.

Getting started with involvement

To ensure your approach to involvement achieves our principles as described above, we recommend following the standards below:

- **Purpose** – clearly set out the purpose and what the engagement activity hopes to achieve
- **Be honest** – be clear about the scope of the engagement activity and what can be changed and what can't. When changes can't be made, explain why
- **Identify** – complete an Integrated Impact Assessment to identify who is likely to be impacted and needs to be engaged with
- **Involve** – reach out to the people and organisations who have an interest in or will be impacted by the focus of the engagement. Work together to design your approach to ensure it is inclusive and appropriate
- **Collaborate** – work with others where appropriate to avoid duplication of engagement and explore existing intelligence

- **Plan** – agree the purpose, scope, required resources and timescale of the engagement and the actions to be taken
- **Methods** – think carefully about the most relevant and effective methods of engagement to use
- **Communicate** – promote the different ways and opportunities to engage and update regularly on your progress
- **Reach out** – attend existing meetings, groups and spaces. Go to where people are rather than expect people to come you, making a particular effort in reaching diverse communities and those who are seldom heard
- **Support** – identify and overcome any barriers to involvement and support people to engage
- **Embed the learning** – ensure that the engagement feeds into service development
- **Feedback** – share the results of the engagement with the wider community and those who undertook the engagement in a timely manner
- **Monitor and evaluate** – consider whether the engagement achieves its purposes and keep a record of those who have engaged.

Appendix 1: Integrated Impact Assessments

An Integrated Impact Assessment (IIA) is a tool for assessing the potential positive and negative impacts that any changes to service design or delivery may have, including on people and those who share any of the protected characteristics or experience the greatest inequalities.

It should evidence that 'due regard' has been given to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
- advance equality of opportunity between people who share a protected characteristic and those who do not
- foster good relations between people who share a protected characteristic and those who do not.

An IIA involves using equality information to identify people who may be impacted to inform involvement activity and understand the actual effect or the potential effect of the service change, policy or decision. It should also identify what actions may need to be carried out to reasonably reduce, mitigate or eliminate any disproportionate impact.

No two situations are the same, there is a requirement for an IIA for each situation and it should be repeated as plans develop. Once an IIA has been completed, this should be presented and reviewed by the Equality and Involvement Committee (EIC)

To find out how to access the IIA tool or arrange attendance at the EIC, please contact the NHS STW communications and engagement team stw.communications@nhs.net

Appendix 2: Stakeholders mapping

To be used as a checklist for planning – stakeholders will vary depending on the project and the outcome of the integrated impact assessment (it is not an exhaustive list) and some stakeholders fall into more than one category. The outcome of this analysis can be used to develop the communications and involvement plan.

NHS and local authority partners	Public representatives	Scrutiny	Media	Other partners

NHS STW staff	General public	Integrated Care Partnership	Local media and broadcast	Commissioning Support Unit
GPs, practice staff and LMC	Patient and public engagement groups	NHSE/I regional team	Community media/websites	NHS England
Local authorities	Patient participation groups	Assuring Involvement Committee	Regional/national media	Shropshire Partners in Care
MPFT	Patients of specific services	Overview and scrutiny committees		Clinical Senate
Shropcom	Carers	Councillors		Neighbouring ICBs
RJAH	Healthwatch	Healthwatch		Powys Teaching Health Board
SaTH	Resident groups			Independent providers
WMAS	VCSE			Health and Wellbeing Boards
	Communities of interest			Employee Unions

	Local businesses			

Appendix 3: Engagement level checklist

This checklist should be used to ensure that the level of engagement is appropriate. It uses NHS England's Ladder of Engagement as a framework and has been cross-referenced with NHS England's Patient and Public Participation guidance. All forms of involvement included in this checklist are useful to consider in your individual area of work, with the level of involvement increasing as you move down the table.

Note: you may not need to undertake all the activities described, but this tool will help you to understand what level you need to plan for. Every project is different, and will require the use of different tools, as appropriate. Please just highlight the ones relevant to your project. The outcome of this assessment can be used to support the development of a communications and involvement plan.

Level of involvement	Examples	Examples of tools (think about the target audience and all of the relevant 'touch points' with them)	Yes/No (please indicate which level of involvement applies to your work)
Information sharing – to provide accurate and objective information to	• Raising awareness of a new service/change in service (to get to this point,	• Staff/internal comms • Meetings • Events • Website and social media	

help people understand the issue	involvement/consultation may have been needed (see below)) • Setting out how to access existing services • Campaigns • Stakeholder management • Changes outside of our control (e.g. due to new legislation)	• Stakeholder/partner communications channels • Media • Written materials (e.g. leaflet/poster/report) • Patient group meetings • MPs/councillors/VCSE/Healthwatch briefings • Video/audio media	
Engagement (can be a legal requirement) – to gather people's views, experiences and wishes about services	• Minor changes to service times, booking procedures, leaflets/information • Service/pathway redesign or review • Reviewing referral criteria	Use of above information sharing techniques, as appropriate as well as the following: • Existing intelligence • Survey/questionnaire/feedback forms • Listening/discussion events/workshops • Individuals with lived experience • Focus groups/attend existing groups • One-to-one interviews	

		• Outreach into communities • Co-production with experts/people/clinicians • Suggestion boxes	
Consulting (a formal, legal requirement) – obtaining community and individual feedback on alternatives and/or decisions	• Substantial service/policy change and/or decisions which impact on what, how or where services are provided • Longer-term plans • Issues of a contentious nature	Use of the techniques above, as appropriate	
Co-producing / collaborating – professionals and citizens sharing power to plan, design, deliver support, and make decisions together	• Co-production can be applied to any of the above	Use of a number of techniques above to achieve the principles of: • Recognise people as assets • Build on people's capabilities • Develop two-way, reciprocal relationships • Encourage peer support • Blurred boundaries between delivering and receiving services • Facilitate rather than delivering	

Devolving – placing decision making into the hands of communities and individuals	• Community development (empowering people and communities)	• Citizen juries • Community grants • Personal budgets	