

# Addendum

*To the Summary Report on issues relating to  
local Healthwatch regulation*

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<b>Contact Details</b>	Kasey Chan People, Communities and Local Government - Healthwatch Richmond House 79 Whitehall, LONDON SW1A 2NS 020 7210 5322  <a href="http://www.wp.dh.gov.uk/">www.wp.dh.gov.uk/</a>
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## Addendum

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# Addendum

*To the Summary Report on the issues relating to local Healthwatch regulations*

Prepared by Kasey Chan

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## 1. Introduction

1.1 The Department sought views for a two month period of engagement (from mid-April to mid-June 2012) on the issues around the regulations for local Healthwatch. A summary of the views gathered through that process was published on the 31<sup>st</sup> July 2012, and can be found at <http://www.dh.gov.uk/health/2012/07/healthwatch-engagement/>

1.2 In addition to this engagement, the Department carried out 6 weeks of targeted consultation (from 6<sup>th</sup> August to 14<sup>th</sup> September 2012) with relevant stakeholders.

1.3 A full list of those who responded can be found at Annex I. In total, we received 76 responses, which included individuals and representative organisations. A range of commissioners and providers responded, as well as some Local Involvement Networks (LINks) and Host organisations.

## 2. The Consultation Questions

2.1 The targeted consultation related to two sections of the regulations:

- (a) Duty on services-providers (i.e. commissioner and providers of health and social care) to respond to reports and recommendations, which includes whether we would want to enact duties relating to local Healthwatch requesting for information; and
- (b) Duty on services-providers to allow entry to local Healthwatch and renewing the extension to other persons such as primary care providers.

2.2 There are two regulations that exist for LINks in the 2008 regulations<sup>1</sup>, which were proposed to be rolled forward for local Healthwatch organisations (see [www.legislation.gov.uk](http://www.legislation.gov.uk)).

2.3 In the Local Government and Public Involvement in Health 2007 Act (amended by the Health and Social Care Act 2012), “services providers” (for the purpose of these regulations) are defined as the NHS Commissioning Board, a clinical commissioning group, a NHS Foundation Trust (and NHS Trusts until their abolition) a local authority, or a person prescribed in regulations (i.e. primary care providers).

## 3. Summary of Responses

3.1 The key findings from the consultation are summarised below.

- i. Duty on services-providers to respond to reports and recommendations*

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<sup>1</sup> <http://www.legislation.gov.uk/ukxi/2008/528/contents/made>

- 3.2 In addition to seeking views on the proposals generally, the consultation posed three key questions, which can be found at Annex II. The first was whether to bring forward this regulation for Healthwatch. **The majority of responses agreed with this proposal**, citing that it had worked well for LINKs, and would be an important mechanism for local Healthwatch organisations to be able to get feedback about the views and experiences that it has gathered.
- 3.3 The next question concerned who would be subject to this duty; currently it is the commissioners of services who are directly under the duty to respond – the duty does not extend in the same way to providers. We proposed that this duty should extend equally to providers as well as commissioners of services. **The majority of responses agreed with this proposal; providers took a supportive view, on the basis that there must be clarity about protocols for local Healthwatch making such visits.**
- 3.4 The final question in relation to this regulation concerns the exclusion around children’s social care services that is currently part of the regulation for LINKs. The result of this exclusion is that currently services-providers of children’s social care services are not under a duty to respond to report or recommendations from a LINK concerning these services.
- 3.5 We proposed to remove the exclusion in this regulation for local Healthwatch; this would have the effect of going some way to ensuring that the views and experiences of children’s health and social care services are gathered and listened to equally. **The majority of responses agreed with this proposal.**
- 3.6 Some concerns were raised in the responses about the duty required to commissioners and providers for acknowledgment of the report, and a response must be given within 20 working days, beginning from the date of receipt of the report or recommendation. Some felt that this may not give providers or commissioners long enough to produce a meaningful response.
- 3.7 We have heard the concerns and propose to set a standard response time of 20 working days (maintaining the current position) and 30 working days (for more complex issues), for example where a commissioner needs to consult their provider, where there may be joint commissioning, or a number of providers involved. We also propose to make it clear when the clock starts on the response times.
- ii. Duty on services-providers to allow entry to local Healthwatch*
- 3.8 This regulation currently applies to LINKs; the consultation and engagement considered the proposal to bring it forward for local Healthwatch and its contractors.
- 3.9 The first key question focused on whether the existing regulation had worked well for LINKs, and whether service-providers ought to be under the same duty for local Healthwatch.
- 3.10 **The majority of responses supported this proposal**, stating that it had generally worked well for LINKs, and would be an important tool for local Healthwatch organisations to be able to use to gather the views and experiences

of service users in the setting in which the service is being provided. In addition, some respondents recognised the role of Ofsted and the Children's Rights Director to gather children's views.

- 3.11 The second key question considered the exclusion imposed around children's social care; the LINk regulations do not place a duty on services-providers to allow entry to premises where children's social care services are being provided.
- 3.12 **The majority of responses supported this proposal**; it is therefore proposed that the exclusion around children's social care services will remain in relation to the duty on services providers to allow local Healthwatch entry. The proposal is therefore to retain this exclusion.
- 3.13 Some concerns were noted about the impact this could have on a local Healthwatch organisation's ability to gather the views and experiences of users of children's social care services. Some felt that retaining the exclusion for this regulation would be inconsistent with the regulation placing a duty on services-providers to respond to reports and recommendations.
- 3.14 We have noted those concerns, and offer the following reassurances; 'enter and view' is just one way that views and experiences can be gathered – it is just one way of carrying out good engagement. The Department is working with Healthwatch England and the LGA to develop some 'best practice' material about engagement, which should go some way to supporting local Healthwatch organisations in this respect. Furthermore, in our view, whilst it is important to remove the exclusion in relation to reports and recommendation (see paragraph 3.4 and 3.5), it is important to retain it in this context, as it is an area that is already heavily regulated, and may cause Healthwatch to duplicate – rather than complement - the work that is already being carried out.
- 3.15 **The majority of respondents** supported the continuity of the duties imposed on primary care providers as being reasonable and proportionate, but that clarification needs to be given to some environments where local Healthwatch needs to be mindful of sensitivities to patients, service users and the public.

*iii. Duty to respond to information requests*

- 3.16 The consultation outlined that there is an additional regulation-making power available for the local Healthwatch regulations, under which a duty could be imposed on services-providers to respond to information requests from a local Healthwatch or its contractor. The Department proposed not to use this provision; **the majority of responses supported this view**, citing the reason that informal local working in partnerships worked best to obtain information and the ability to make requests under the Freedom of Information Act 2000 offered an additional useful mechanism to use, where local relationships did not allow for straightforward information sharing.
- 3.17 On that basis, we do not propose to use this provision for local Healthwatch at this time as information can be requested and can be dealt with by other means. However, this is something that may be revisited once Healthwatch is up and running.



## **4. Conclusion**

4.1 On the basis of the responses to this consultation, the Department proposes the following:

*Duty on services-providers to respond to reports and recommendations:*

- Exclusion around children's social care services will be removed;
- The duty will extend to providers as well as commissioners;
- The response time to such reports and recommendations will be 20 working days (standard) and 30 working days (for more complex matters) and the clock will start when the report is received by the services-providers.

*Duty on services-providers to allow entry*

- The exclusion around children's social care services will remain.

*Information requests*

- This provision will not be used for local Healthwatch at this stage, though may be subject to later review.

## **5. Next Steps**

5.1 The Department would like to thank those who contributed to the consultation and the prior engagement period, which sought views during April to June. The views summarised in this report will inform the final drafting of the regulations for local Healthwatch, which will be laid in December this year.

**List of stakeholders who responded to the consultation**

ADASS	NHS Basildon and Brentwood CCG
Alzheimer's Society	NHS Cambridgeshire and Peterborough
Birmingham Council	NHS Central Lancashire
Blackburn with Darwen LINK	NHS Rushcliffe CCG
Brent LINK host	NHS Worcestershire Healthwatch Steering Group
British Dental Association	North East Lincolnshire LINK
Central Bedfordshire LINK and Council	North Tyneside ASC Council
Cheshire East Council	North Tyneside Council
Cheshire West Citizens Advice	Northamptonshire Council
Citizens Advice Bureau	Nottingham City CCG
Commissioning Manager, Shropshire Council	Optical Confederation
Cornwall Council and partners	Oxfordshire LINK
Coventry LINK	Oxfordshire LINK host
Croydon HW pathfinder	Royal College of Nursing
Devon Council	Royal College of Ophthalmologists
East and North Herts CCG	Sefton LINK host
East Riding of Yorkshire Council	Sheffield City Council
East Sussex County Council	Sheffield LINK
English Community Care Association	Stafford and Surrounds CCG and Cannock CCG
Gloucestershire LINK	Staffordshire County Council
Hackney Council	Stockport Council
Healthwatch Portsmouth	Stockport LINK
HeathEast CCG	Stockton Borough Council
Hestia (LINK Host Hounslow)	Sunderland City Council.
Hillingdon LINK	Telford and Wrekin CCG
Individual	Trafford Council
Individual	Turning Point
Individual	Wigan Borough CCG
Individual	Wigan Borough LINK
Keep Our NHS Public (SW)	Wigan Council
Kent County Council	Wiltshire and Swindon Users' Network
Kirklees Council (via Sheila Senior)	Wolverhampton Healthwatch Steering Group
Lesbian & Gay Foundation	York LINK
Milton Keynes LINK	
My Healthnet Charity	
National Pharmacy Association	
Newcastle LINK host	

**Copy of the consultation letter (note: consultation is now closed)**

31<sup>st</sup> July 2012

Dear,

I am writing to inform you about the Government's proposal for local Healthwatch (LHW) and to seek your views by 14<sup>th</sup> September 2012 on aspects of the two sets of regulations that are proposed. We welcome your views in light of your existing or future role in relation to health or social care.

This consultation builds on the Department's recent engagement on issues relating to the LHW regulations (for more information see summary report at <http://healthandcare.dh.gov.uk/healthwatch-engagement/> ).

Healthwatch will be the new consumer champion for people in relation to certain publicly funded health and social care services. At the local level, LHW will have a role in influencing the way in which those services are provided or commissioned by feeding in people's views and experiences. This will be enhanced by its membership on the local authority health and well being boards. For more information about Healthwatch visit <http://healthandcare.dh.gov.uk/files/2012/03/Local-Healthwatch-policy.pdf> .

Under changes introduced by the Health and Social Care Act 2012 (for more information visit <http://www.legislation.gov.uk/ukpga/2012/7/contents/enacted> ) to the Local Government and Public Involvement in Health Act 2007 ("the 2007 Act"), LHW organisations will replace LINKs and carry forward its statutory activities as listed under section 221 of the 2007 Act.

Section 222 of the 2007 Act contains new regulation-making powers on the criteria to be met in order for a body to be contracted as LHW. There are also regulation-making powers in section 223 of the 2007 Act to require local authority arrangements for LHW to include prescribe provision. There are also powers in section 226 of the 2007 Act to enable the Secretary of State, by regulations, to make provision as respects the time by which a local authority overview and scrutiny committee must acknowledge receipt of the referral of a matter relating to social care services by LHW. The powers in sections 223 and 226 carry forward existing regulation-making powers in relation to LINKs. We believe the existing regulations for LINKs ("the LINKs regulations 2008") under these powers have worked well so far and intend to generally roll forward the current provisions as set out in the LINKs regulations 2008 (for more information visit <http://www.legislation.gov.uk/uksi/2008/528/contents/made> ) in relation to LHW from April 2013.

But there are two other regulation-making powers on which we are seeking your views, as follows:

- **Section 224** of the 2007 Act enables the Secretary of State to make regulations to impose on certain persons<sup>2</sup> duties relating to responding to requests for information made by LHW

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<sup>2</sup> Those persons are the National Health Service Commissioning Board; a clinical commissioning group; a National Health Service trust; an NHS foundation trust; a Primary Care Trust; a local authority; or a person prescribed by regulations made by the Secretary of State. See section 224(2) of the 2007 Act.

or an LHW contractor, dealing with reports or recommendations made by LHW or an LHW contractor or dealing with reports or recommendations which have been referred by another person.

- **Section 225** of the 2007 Act requires the Secretary of State to make regulations for the purpose of imposing on certain persons<sup>3</sup> a duty to allow authorised representatives of LHW or an LHW contractor to enter and view, and observe the carrying-on of activities on, premises owned or controlled by the services-provider.

### **Section 224 - Responding to information requests, reports and recommendations made by LHW**

We are asking for your views about requiring commissioners and providers to respond to reports and recommendations made by LHW.

Because of their activities in collecting peoples' views and experiences, and through their monitoring and review of services, LHW will be able to form a view on how services can be improved and strengthened.

The Department believes that services should take account of any findings made by a LHW, so that these views can be used to improve the care provided. There is a new duty under section 221 of the 2007 Act requiring a person to whom LHW makes views known or makes reports or recommendations, in exercising any function relating to care services, to have regard to those views, reports or recommendations.

Further, the Department is proposing that a specific duty be placed, through regulations, on commissioners and providers of health or social care services<sup>4</sup> to respond to reports and recommendations they receive from LHW.

This would be a change to the position under the LINKs regulations 2008 in so far as the duty to send a substantive response (as opposed to an acknowledgment) would be extended to providers whereas such a duty currently only applies to commissioners (and lesser duties apply to providers).

Under our proposals, commissioners and providers would have 20 working days to respond to the recommendations or reports. They would have to acknowledge receipt of the report or recommendation and provide an explanation to the referring LHW of any action they intend to take in respect of the report or recommendation, or an explanation of why they do not intend to take any action in respect of that report or recommendation.

A commissioner would also have to provide a copy of the report or recommendation to any other commissioner and to a provider who is responsible for a service to which the report or recommendation relates. A provider would have to provide a copy of the report or

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<sup>3</sup> Those persons are a National Health Service trust; an NHS foundation trust; a Primary Care Trust; a local authority; or a person prescribed by regulations made by the Secretary of State. See section 225(7) of the 2007 Act.

<sup>4</sup> See Footnote 1 as the commissioners and providers to which the power extends.

recommendation to a commissioner of a service to which the report or recommendation relates and to any other provider who is responsible for the service.

When there is more than one commissioner, those commissioners may agree that one of them will provide a response on behalf of them all. The agreed lead on the report or recommendation must then respond to the referring LHW within 20 working days of the latest date on which the report or recommendation was received by a commissioner.

The above proposals largely mirror the existing provisions under regulations under section 224 of the 2007 Act in relation to LINKs<sup>5</sup>, but have been adapted to apply to both commissioners and providers.

In addition, under the existing regulations relating to LINKs, the duty to respond does not apply to reports or recommendations (or parts of reports or recommendations) that relate to children's social care functions.

The reason for this is that it was felt that there were already effective mechanisms in place to ensure that the views of children and young people are taken into account in the planning, regulation and inspection of services.

However we propose a change to this i.e. to remove the **exclusion relating to children's social care** so that the regulations for LHW would extend the duties to respond to reports or recommendation to those reports and recommendations that relate to children's social care. The reason for this is that we want LHW to be a stronger champion of health and social care for people of all ages including children and young people and being able to influence through making reports and recommendations would support this intention.

In relation to duties to respond to information requests, we consider that [LHW] will be able to access the appropriate information in most cases by using the powers under the Freedom of Information Act 2000. We therefore do not consider it necessary to make regulations under section 224(1)(a) at this time.

- 1. What are your views on these proposals? In particular do you agree that the requirement to respond to reports and recommendations by a LHW should apply to commissioners and providers? In particular, is the timescale of responding within 20 days appropriate? Should the exclusion relating to children's services be removed? Do you agree that duties should not be imposed on commissioners or providers to respond to information requests by [LHW]?**

### **Section 225 - Duty of services-providers to allow entry by LHW**

To enable LHW to gather the information they need about services, there will be times when it is right for them to see and hear for themselves how those services are provided.

We therefore propose that regulations will impose a duty on health and social care services-providers to allow authorised representatives of LHW or LHW contractors to enter premises that they own or control (with some exceptions), to observe the nature and quality of services.

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<sup>5</sup> The Local Involvement Networks Regulations 2008 (S.I. 2008/528).

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The Department believes that some exemptions to this duty are essential to protect patient safety and dignity. We therefore propose that a services-provider does not have to allow a representative of LHW or an LHW contractor entry if this would compromise the effective provision of a service or the privacy or dignity of a person.

We also propose that the regulations will provide that, while an authorised representative is on premises owned or controlled by a services-provider, they must not act in a way that compromises the provision of services or the privacy or dignity of any person. If the representative does not comply with this, the duty to allow entry would not apply.

There are also some types of premises that it is deemed inappropriate for a representative to have the right to enter, and therefore the duty to allow entry not to apply.

This includes non-communal areas of care homes – for example, people’s private bedrooms, premises used as accommodation for employees of services-providers, and premises which are occupied by one or more persons as their home and which at least one of those persons occupies under a tenancy or a licence.

We therefore believe that the duty to allow entry should not apply to such premises.

It is also proposed that LHW will not have the right to enter premises or parts of premises at any time when health and social care services are not being provided or if, in the opinion of the services-provider, the authorised representative, in seeking to enter and view its premises, is not acting reasonably and proportionately.

The above proposals largely mirror the content of existing regulations on LINKs.

At present, under those regulations, the duty to respond does not apply to reports or recommendations (or parts of reports or recommendations) that relate to children’s social care activities and functions.

We propose to retain this exclusion relating **to children’s social care** activities. The reason for this is that there are already effective mechanisms in place to ensure that the views of children and young people are taken into account in the inspection of services such as through the Children’s Rights Director and Ofsted.

It is also proposed to state in the regulations that a person is an authorised representative if they are authorised in accordance with the arrangements the local authority has put in place with LHW or in accordance with the arrangements LHW has put in place with a contractor.

### **Additional services-providers covered by this duty**

Finally, it is proposed to list additional persons who are to be services-providers for these purposes, and who will therefore have to comply with the duty to allow authorised representatives to enter and view activities carried on at premises which they own or control. These are carried forward from existing regulations on LINKs.

These additional persons are:

- those providing primary medical services
- those providing primary dental services

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- those providing primary ophthalmic services (and who own or control premises where services are provided).
- those providing primary pharmaceutical services (and who own or control premises where services are provided).

We believe that these proposals will give LHW the ability to effectively carry out their roles while at the same time, protecting the safety and dignity of patients.

- 2. Do you agree with the above proposals to impose duties on commissioners and providers to allow entry to LHW to visit and make observations about the quality of care? In particular, that the exclusion relating to children's social care remains? Does the list of additional services providers seem appropriate?**

I would welcome your views about the above regulations and please do not hesitate to contact us if you wish to discuss further.

In order for us to take your views into consideration in the drafting of the LHW regulations, which we are aiming to lay in October/November, **please send your responses by 14<sup>th</sup> September (or earlier if you wish or are able) to [kasey.chan@dh.gsi.gov.uk](mailto:kasey.chan@dh.gsi.gov.uk) and [helen.jones@dh.gsi.gov.uk](mailto:helen.jones@dh.gsi.gov.uk).**

Thank you and we look forward to hearing from you.

Yours sincerely,  
Kasey Chan  
Implementation Lead for Healthwatch policy