

## **DUNDEE CITY COUNCIL**

**REPORT TO: SOCIAL WORK COMMITTEE - 19TH APRIL 2004**

**REPORT ON: COMMUNITY CARE AND HEALTH (SCOTLAND) ACT 2002: MINISTERIAL POWERS OF INTERVENTION – CONSULTATION ON LADDER OF SUPPORT AND INTERVENTION**

**REPORT BY: DIRECTOR OF SOCIAL WORK**

**REPORT NO: 302-2004**

### **1.1 PURPOSE OF REPORT**

To inform members of the content of a Scottish Executive consultation paper setting out proposals for a Ladder of Support and Intervention developed under Part 2 of the Community Care and Health (Scotland) Act 2002. The report also seeks approval of a response which will be submitted to the Joint Future Unit of the Scottish Executive on behalf of Dundee City Council.

### **2.0 RECOMMENDATIONS**

It is recommended that the Committee:-

2.1 Notes the content of the report.

2.2 Notes and approves the content of the response, which is proposed to be submitted to the Scottish Executive on behalf of Dundee City Council and NHS Tayside, a copy of which is attached Appendix 2.

### **3.0 FINANCIAL IMPLICATIONS**

There are no financial implications arising directly from this report.

### **4.0 LOCAL AGENDA 21 IMPLICATIONS**

4.1 The principles, which underpin the intent of the initiative outlined in this report, are aimed at improving the quality of joint working between NHS Tayside and the Council. The impact of effective integrated working will improve the quality of life of older people and adults with specific needs in the City.

### **5.0 EQUAL OPPORTUNITIES IMPLICATIONS**

5.1 The Joint Future agenda takes account of the rights and needs of older people and adults, including those from minority ethnic communities and those with disabilities. The Ladder of Support and Intervention promotes the principle that services must be provided and developed in ways that promote better outcomes for people.

## 6.0 BACKGROUND

In the paper 'Consultation on Supporting and Promoting Joint Working between Local Authority and NHS Bodies: Ladder of Support and Intervention', the Scottish Executive proposes a framework to support joint working between the NHS and local authorities. It concentrates on methods of delivering service improvement through support mechanisms and local action. It also describes how Scottish Ministers may use the power to direct such bodies to participate in joint working. The proposals in the paper have been developed in conjunction with COSLA.

6.1 The power of Scottish Ministers to intervene is established in Section 17 of the Community Care and Health (Scotland) Act 2002.

### 6.2 The Ladder of Support and Intervention

The Scottish Executive consultation document states that the Ladder of Support and Intervention is *"an administrative framework designed to emphasise the opportunity for self improvement, with Ministerial intervention as a last resort. It contains a set of steps that Scottish Ministers, local authorities and NHS bodies believe would be appropriate, in most cases, to achieve the desired improvements, once Scottish Ministers have taken the view that joint working would improve the performance of these bodies' community care and health functions."*

The functions covered by the powers are set out in the Community Care (Joint Working, etc) (Scotland) Regulations 2002. In summary, they cover all community care functions of local authorities, with the exception of Adults with Incapacity and Mental Health Officers, and the community based and primary care services of NHS bodies (and some hospital based services).

Ministers are looking for local partners to deliver good results for users across the range of community care services with the focus being on delivery.

### 6.3 How the Ladder Will Work

The national partnership of the Executive, COSLA & NHS Chairs set the pace and direction of change on joint working under the Joint Future agenda. The Joint Future Implementation Advisory Group (JFIAG) is charged with leading the implementation of joint working and would consider any concerns about poor results. The SE representatives would set the case for an improvement in joint working. Local partners would be given the opportunity to respond, indicating how they intend to progress.

The consultation paper indicates that they might want to set up an internal Assessment Team or seek access to the resources of the Joint Working Improvement Team. A response would be expected to take the form of a Local Joint Working Improvement Plan to be submitted to the Scottish Executive. The Plan should set out actions, timescales and joint monitoring arrangements. A diagrammatic representation of the Ladder of Support and Intervention is contained in Annex 1

If Scottish Ministers are dissatisfied with either the local authority's or the NHS bodies' initial response, or subsequently with the Joint Working Improvement Plan or its implementation, they may constitute a Joint Working Improvement Team. The Joint Working Improvement Team may draw its membership from the NHS, local authorities, or from national bodies such as the Scottish Executive, Audit Scotland, SWSI, Care Commission etc. depending on the nature of the issues. The Executive would consider how such a team might be made up and work in light of the circumstances of each case. Depending on its entry point, this Team would work with local partners, either to draw up a

plan or to identify why a locally developed plan is not working or was not achieved. The Joint Working Improvement Team would work to develop and agree a Joint Working Action Plan with the partners that is acceptable to the Executive. The Plan would identify how the action will be implemented and monitored, and would give details of timescales.

If Ministers are dissatisfied with the implementation of the Joint Working Action Plan, they must consult with local partners on their plans to intervene. Local partners will be given the opportunity to respond within 4 weeks.

If, on consideration of the response, Scottish Ministers remain dissatisfied, they will outline the nature of their planned intervention. This will take the form of a direction to the local authority and/or NHS body.

Where Ministers decide to direct a local authority or health body, they can require them to enter into:

- delegation of functions and pooling of budgets under Section 15 of the 2002 Act, to whatever extent is appropriate; or
- making payments to one another under sections 13 & 14 of the 2002 Act; or
- any of the other joint arrangements (e.g. joint planning, etc) set out in Schedule 4 of the Regulations, or make payments between partners under Sections 13 & 14 of the Act.

Ministers would report to the Scottish Parliament when making a direction,.

## **6.4 In Summary**

The Scottish Executive consultation paper states that *“the goal is to promote and encourage joint working on health and community care services between local authorities and health bodies. To support this objective those bodies involved in audit, inspection, assessment and monitoring arrangements are encouraged to consider the benefits of joint working for service users and carers as part of their processes. The accent is firmly on steps to support improvement, with intervention intended only where remedial action is not delivering improvements in service”*.

### **6.5.1 Response To Consultation Paper**

A draft response has been prepared jointly by Dundee City Council Social Work Department and NHS Tayside (see Annex 2). The final response will be returned in the name of the chair of the Joint Health and Local Authority Management Team.

The response provides comments on aspects where views were specifically requested:

- (a) the process;
- (b) the arrangements for measuring and assessing performance;
- (c) the preventative arrangements; and
- (d) the arrangements for intervention and reporting.

The response goes beyond providing views on the specific areas where views have been requested and comments are provided on the overall content of the consultation document. This approach has been taken as it is hoped that, by providing more detailed and explicit comments, influence might be brought to bear on the content of final guidance on the Ladder of Support and Intervention yet to be issued by the Scottish Executive.

## **7.0 CONSULTATION**

7.1 The Chief Executive, the Depute Chief Executive (Support Services), the Depute Chief Executive (Finance) and partners in NHS Tayside have been consulted in the preparation of this report.

## **8.0 BACKGROUND PAPERS**

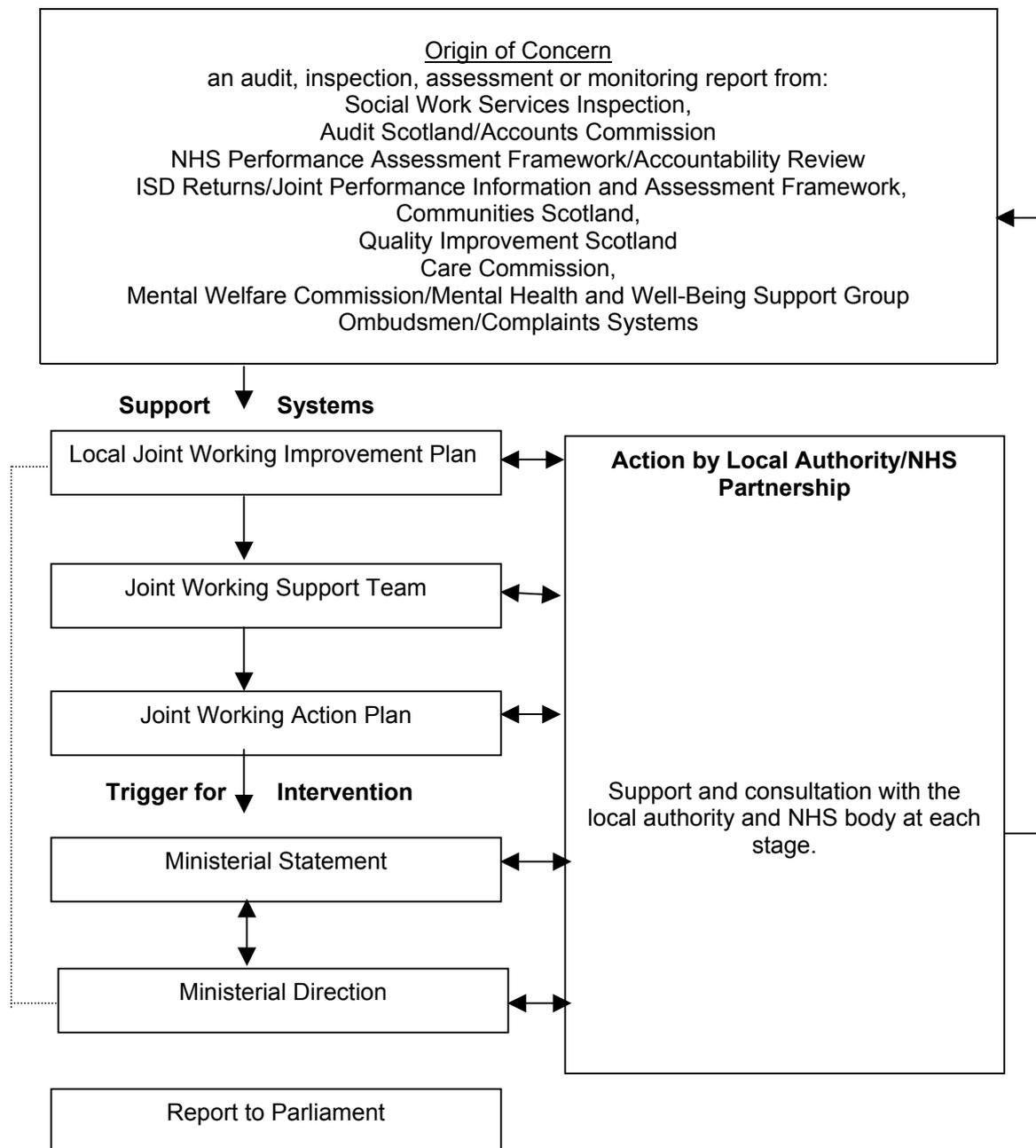
Reference has been made to the Community Care and Health Act 2002: Ministerial Powers of Intervention - Consultation on Ladder of Support and Intervention.

Alan G Baird  
Director of Social Work

Date

12 April 2004

**Ladder of Support and Intervention for Joint Working**



## ANNEX 2

### DRAFT RESPONSE – LADDER OF SUPPORT AND INTERVENTION

This response has been prepared jointly by Dundee City Council Social Work Department and NHS Tayside.

The report provides views on the specific aspects of the consultation document on which views were sought. It also provides further comment on the content of the document which it is hoped will prove helpful to those compiling future guidance on the Ladder of Support and Intervention.

#### PART 1: CONTEXT

##### Introduction

Para 1. None

Para 2 It would be helpful if there were a timetable and target date for issue of the final Guidance.

Para 3 Whilst delayed discharge is acknowledged to have a very high priority within the partnership, the parameters of joint working encompass far more than this issue alone. The implication in this paragraph is that delayed discharge will be the primary focus for measuring success and failure, and any subsequent need for intervention. If this is to be the case, it should be made more explicit.

It would be useful to have a clearer indication of the priority service areas around in which "integrated services, with single lines of communication and leadership" are expected.

#### Indicators of Joint Working

Paras 4 + 5 It would be helpful to have greater clarity about the precise framework of indicators that will be used. In the interests of fairness, the same framework or set of indicators should be applied to each Partnership to ensure objectivity.

It is suggested that emphasis should be placed on the development of jointly agreed indicators of joint working performance among the bodies listed, wherever possible. If this approach is not taken then the volume of indicators is likely to become unmanageable.

It is also suggested that when new joint performance indicators are introduced consideration should be given to the deletion of current single agency indicators, where they already exist.

#### A Graduated Approach to Intervention

Para 6 It would be helpful to have an explicit benchmark against which success or failure is measured. Without this it may be difficult for partners to resolve performance issues locally if there are different perceptions of success/failure and the causes of failure within Partnerships.

It is hoped that performance will be measured in terms of outcomes and not in terms of processes or infrastructure, as these may vary from authority to authority depending on local context.

Para 7 The response to paragraph 6 applies - the steps taken by authorities and health bodies may vary from these suggested but may still achieve the desired improvements.

Para 8 The response to Para 6 applies.

The wording of this 'avoid being subject to direction' suggests intervention as a first response and gives no indication of an initial supportive response.

## **Other Powers of Intervention**

Paras 9 – 11 These are helpful in clarifying the relationship between unilateral powers of intervention as applied to the individual partner organisations and those that will apply to joint working. However, the content does not give an explanation of when and how the powers of intervention overlap or more particularly when one would be used rather than the other. An addition to Annex 1 may assist.

It would be have been helpful if the ethos of support contained in this paragraph had been reflected in Paragraph 8 also.

## **PART 2: LADDER OF SUPPORT AND INTERVENTION**

### **Support and Intervention under the 2002 Act**

Para 12 There is a lack of clarity about the criteria that will be applied to arrive at a judgement with regard to performance failure.

It is not clear why “after consultation” is in inverted commas. It may simply indicate a direct quote from the legislation but on reading it implies consultation will be a nominal exercise. Again upon reading this, the question arises as to whether support would be offered initially and direction only really came as a last resort. As the content stands it does not reflect the ministerial intentions indicated in Paragraph 10.

Para 13 With reference to the last sentence, does it mean by implication, a plan that does not address the issues satisfactorily? If so, that should be made explicit.

### **Proposals for a Ladder of Support and Intervention for Joint Working**

Para 14 The last sentence suggests that Ministerial intervention could in some circumstances be the first stage in the process. That is inconsistent with the concept of a ladder that is normally climbed on a graduated basis starting with the lower rungs and ascending step by step. It is suggested that, in any guidance issued, the issues covered in this paragraph should appear earlier.

It would be helpful to have a clearer indication of the circumstances in which 'a more direct approach' which is taken to mean early or immediate direction, might be deemed necessary.

### **Process**

Para 15 Bullet 1. There are concerns with regard to the absence of a transparent basis or set of criteria to underpin these considerations, and the potential for inconsistent application.

The use of the phrase 'the nature of the consequences of failing to make a direction' in this first bullet point appears contrary to the concept of a graduated system of support and intervention.

The cornerstones of a graduated approach would be better reflected if this bullet point came later in the list. It is suggested that, in any future use of such a bullet point list on process, this should commence with support and then move to intervention.

This section would also benefit from the principles of the approach e.g. bullet points 2 or 3 being separated out from the escalating actions e.g. 1, 4, 5, 6 and 7.

Bullet 2 It would be helpful to have an example or definition of what constitutes “unusual circumstances”. This is another area that is open to individual or subjective interpretation and is not consistent with the principles of fairness and openness.

- (a) Views on the Process Scottish Ministers will apply in considering exercising these powers, including the balance between “support” and “intervention”**

In summary, we would wish to make the following comments:

1. The content of Paragraph 15 concentrates almost exclusively on the intervention end of the ladder and says significantly less about the support component.
2. In terms of the overall process, there is little differentiation with regard to the point at which support will begin and end and direction will be applied.
3. If there is to be a level playing field across Scotland, there has to be a baseline or set of criteria established if partners are to have confidence in the process. Concern about “moving goalposts” and “shifting sands” has the potential to create a climate of defensiveness at a time when the emphasis is on building trust and breaking down barriers within partnerships.
4. It is not clear what happens if the support team recommends a course of action which means increased expenditure for one of the partners. This poses the question as to whether or not the principles and approach should include the provision that the partner could not be directed to do something in respect of community care that would jeopardise other duties or responsibilities.

### **What Functions Do These Arrangements Cover?**

Para 16 This suggests that performance will be assessed against powers and duties.

Para 17 What will be the determinants of “good results”? As stated in Para 19, community care has few explicit targets, so the basis on which results will be deemed to be “good” or not is unclear. There has to be transparency with regard to any benchmark or targets to be used, or whether in fact we will be judged on evidence of continuing improvement in defined key areas.

Again it is suggested that jointly determined outcomes should be considered to constitute 'good results'.

This paragraph suggests that performance will also be assessed against ministerial priorities. It should say so if this is what is meant.

### **How Will Ministers Measure Performance?**

Para 18 The last sentence implies that the JFIA Group will have a role in advising Ministers on the adequacy of performance within Partnerships. If this is to be the case, it should be made clear, or the sentence qualified. It is suggested that if the JFIA Group is to have such a monitoring role, the details of the proposed approach should be subject to consultation.

Although this paragraph covers different monitoring arrangements, it does not actually say how performance will be measured.

### **How Will Ministers Judge Adequacy of Performance?**

Para 19 The partners find it difficult to accept that a baseline beyond which the ladder of support and intervention might be applied cannot be defined, even if in broad terms only. The comments made in relation to criteria, benchmarks, and the determinants of good results in response to Paras 12, 15 and 17 also apply here.

It is suggested that time and energy must be dedicated to determining robust joint indicators. It is also strongly recommended that cognisance is given to the time-consuming nature of data collection. Having fewer jointly agreed indicators is much preferable to a proliferation of a plethora of indicators to meet agency/body specific needs.

Para 20 Reference to “particular circumstances” in relation to the partner agencies again raises concerns about the potentially idiosyncratic application of the ladder of support and intervention to partnerships across Scotland. The lack of clarity and transparency will not foster and enable a climate of trust and confidence.

Para 21 The statement that Ministerial intervention is a last resort is reassuring. However, the Consultation paper says very little or nothing about how the support component of the ladder will operate, how the membership of Joint Improvement Teams will be decided, how they will be expected to interface with partnerships, and how much influence they will have in assessing subsequent progress and in determining the need for direct Ministerial intervention.

**(b) The arrangements for measuring and assessing performance**

In summary, we would wish to make the following comments:

1. Whilst it is accepted that the targets for community care are limited, it should be possible to define some key quality indicators which could form the basis for assessing performance given the range of assessment and inspection processes set out in Page 2, Para 4.
2. A lack of transparency in this regard will inevitably lead to Partnerships directing their energies towards trying to second-guess the bottom line rather than striving towards *real* improvements in outcomes for people using services.
3. The development of performance indicators must be a joint exercise, between authorities and health bodies, but also among national agencies and bodies. The aim should be for fewer joint robust indicators.
4. It is suggested that what should be being looked for in relation to performance is evidence of continuous improvement, an ability to recognise problems, a willingness to act to rectify problems and a recognition of whole system implications of actions.
5. This section would be improved by a description of what would be a good basis for continuous improvement.

**How the Ladder Would Work**

Para 22 Is this local joint working action plan what is being alluded to in Para 13? Understanding would have been eased by a greater consistency in content between the two paragraphs. Does the content of this paragraph relate to the support part of the process?

Para 23 This paragraph introduces the concept of audit for the first time but fails to clarify its place in the process.

An annotated diagrammatic representation of the process and all those involved in, and able to influence, the process is required. It is suggested that Annex 1 should be modified to show more of the detail of the process, for example ministerial involvement in decision-making about early intervention and direction.

Para 24 The role of the Joint Improvement Team is not explicit in terms of setting out the degree of delegated authority they may have from Ministers to recommend an Action Plan that may not be acceptable to the partners, or indeed to recommend Ministerial intervention.

It is suggested that there needs to be clearer guidance on the role, membership, authority, report structures and powers of a Joint Working Improvement Team.

Para 25 None

Para 26 This reinforces the point made in response to Para 15, bullet point 2. A graduated approach is what would be expected from a ladder of support and intervention which makes it all the more important to define the circumstances in which "unusual circumstances" would require this approach to be overridden.

- (c) The preventative arrangement to support local partners improve performance at their own hands

In summary, we would wish to make the following comments:

1. It is not clear how Joint Improvement Teams would help to address poor performance which was a direct result of resource shortfalls.
2. There is a need to modify Annex 1 to better reflect the process of output and intervention, including ministerial and Joint Working Improvement Team roles and responsibilities, as well as their place in the process.
3. The principles of self-assessment, local resolution and minimum intervention are to be welcomed and promoted.

### **Deciding to Intervene**

Paras 27 + 28 Is there an earlier stage where Ministers have a responsibility to agree the content of a Joint Working Action Plan? It is assumed that it is after this stage that dissatisfaction with the implementation of an agreed plan might come. Although the document states that the Joint Working Action Plan should be agreed by the Executive - what does this mean in practice? What is the process of agreement?

### **What Form Would Intervention Take?**

Paras 29 – 31 See below.

#### **(d) *The arrangements for intervention and reporting***

1. The intention and intervention route is clearest in this section.
2. Clarification is required on whether Ministers can instruct partners to direct resources from other areas where resource shortfalls have been identified as a key factor in addressing poor performance.

### **Overall Summary**

By the end of this document the process has been clarified but the basis for implementation is less so. Delayed discharge is reiterated as an example of a potential area of poor performance. Partnerships could reasonably anticipate that the ladder of support and intervention is primarily a mechanism for addressing the axis of delayed discharge and waiting times. Further transparency is required with regard to identifying the key determinants which will influence application of the ladder of support and intervention.

Roles, responsibilities and powers of those involved require further clarification. There is also an over-emphasis in the earlier part of this document on intervention and direction and it is hoped that this would not be reflected in guidance.

Further clarification and detail is needed on the people and processes involved in this graduated ladder.

It is suggested that there needs to be clearer guidance on the role, membership, authority, report structures and powers of Joint Working Improvement Teams.

Clarification is required on whether Ministers can instruct partners to direct resources from other areas.

It is anticipated that any guidance produced will be the subject of a consultation process