

THE DEVON ACCOUNTABLE CARE SYSTEM: Questions for the Health & Adult Care Scrutiny Committee

A. WHAT WE KNOW ABOUT THE DEVON ACCOUNTABLE CARE SYSTEM

The Devon Sustainability and Transformation Plan (STP) has announced plans to establish a Devon Accountable Care System (ACS) from 1 April 2018.¹ This will be a more permanent organisation of the NHS in the whole of Devon, including both CCGs, providers and Councils.

Proposals approved by the Collaborative Board and the CCGs' Governing Body meeting in common, both in September 2017, state: 'During 17/18, through the STP Strategic Commissioning/ACS work stream, Council and NHS partners will agree the staging, mechanisms and pace to progress the agreed ambition for a consistent model of integrated health and social care commissioning arrangements and pooled commissioning budgets, including the performance management and accountability arrangements that underpin these...'
'Objective: To implement the first phase of these new arrangements during 2018/19.'²

The ACS will include:

1. A single strategic commissioner for Devon

This will be the Joint Chief Executive of the two CCGs, who will also take the STP lead role.

2. An integrated delivery system for Devon, providing affordable health and social care within a fair share of resources for the population served.

'Phase 1: To develop integrated delivery systems that will better achieve the service ambitions set out in 'Shaping Your Future Care'. Phase 1 will focus on addressing the most pressing delivery challenges in the Devon care system, these are:

- (i) A single delivery system for Mental Health services in Devon ...
- (ii) Place-based integrated delivery systems with agreed delivery networks where more specialist services need to be delivered at greater scale across these 'place based' systems.'

3. Shared Corporate Services Across Devon

'Corporate services (such as Information Technology, Finance, Human Resources, Estate services, legal services and others) will be organised on a Devon-wide basis to improve resilience and productivity and to further reduce cost.

'Objective: To develop a shared services delivery model for Devon by December 2017 with a phased implementation plan that will be delivered from Q1 2018/19.'

¹ RD&E, '[Devon STP – top 10 developments and successes](#)'. Webpage published 29 November 2017.

² NEW Devon and South Devon & Torbay CCGs, Governing Body meetings in common - PUBLIC 28.09.2017 V2.pdf,

<http://www.southdevonandtorbayccg.nhs.uk/about-us/our-governing-body/meetings/Documents/governing-body-common-2017-09-sep.pdf>

Governance

'The developments of the ACS for Devon in relation to both the commissioning and delivery parts of the system, will be overseen by the Organisational Design Programme (Nick Roberts as SRO) and reported on regularly through the STP PMO and PDEG.'

Role of local authorities

'The partner arrangements with the three local authorities within Devon will "lift and shift" to this arrangement. This will replace the current STP leadership and infrastructure. Under this partnership the "Single Strategic Plan for Devon" will be refreshed and implemented, with all NHS and Councils working as a commissioning partnership to deliver this plan through collaborative investment of their respective health, social care and public health funding for the populations they serve.'

B. QUESTIONS FOR THE HEALTH & ADULT CARE SCRUTINY COMMITTEE

Many important questions are raised by the development of the ACS. Below I indicate some provisional answers on the basis of the available information, but these are all issues which this Committee needs to investigate further.

- 1. This transformation of the existing 'plan' into an ongoing 'system' appears to be a fundamental change in the organisation of health care. But what precisely does it mean and where is it going?**

The documents quoted above refer to 'Phase 1', developing integrated delivery systems. Clearly there will be a Phase 2 and possibly further phases. The direction of travel is explained in the 'toolkit – a route map for creating an Accountable Care Environment – that considers possible future options and a structured approach to determine the best solution locally', written by Rebecca Harriott, former Chief Officer for NEW Devon CCG, and published in December 2017 by the South West Academic Health Science Network (SW AHSN).³

This toolkit, which describes how 'colleagues working as part of the Devon STP started to consider its options for the future, they engaged to look into the different options available for commissioning in the future', comes with a recommendation from Dr Tim Burke, NEW Devon CCG Chair⁴, and can be seen as an authoritative explanation of the purpose of the changes.

³ Rebecca Harriott, *Designing the commissioning system in an accountable care environment: A route map for Sustainability and Transformation Partnerships (STPs)*, South West Academic Health Science Framework,,
<https://www.swahsn.com/wp-content/uploads/2017/12/Accountable-Care-Environment-Route-Map-2.pdf>

⁴ SW AHSN publishes a route map to creating an Accountable Care Environment, 18 December 2017
<https://www.swahsn.com/sw-ahsn-publishes-route-map-creating-accountable-care-environment/>

According to this toolkit, **‘the move to an accountable care delivery model has at its centrepiece a population health focus and a capitation funding approach’**. The Devon Accountable Care System will involve what is called ‘capitated accountable care’. Capitation means that providers are contracted to provide a package of services for a whole population at a fixed price per capita, rather than being paid per treatment. Obviously, this type of payment is good for accounting but could lead to patients’ treatments being pared back or even denied if the overall costs threaten to exceed the contracted payments to the provider.

2. What will the Phase 1 developments, the single delivery system for Mental Health services and the place-based integrated delivery systems, involve?

What is entailed in ‘agreed delivery networks where more specialist services need to be delivered at greater scale across these “place based” systems’? Since these changes are to be rolled out imminently, can we have a full explanation of what they mean for localities? Does ‘a fair share of resources for the population served’ mean that areas will have standardised per capita allocations, involving reductions in funding for areas which currently have above-average funding (even though differences may reflect population needs?).

3. What will Phase 2 and subsequent phases involve?

This has not yet been formally decided by the STP. However according to the ‘toolkit’, key elements of the Accountable Care Environment include:

- (a) **‘The Accountable Care Delivery System (ACDS) will hold the capitated budget for the population covered (that may exclude some specialised services)’**. It is not clear if this delivery system has been established, or what precisely it involves.
- (b) **The development of Accountable Care Organisations, which agree contracts to provide services to a population.** The aim is ‘through bringing budgets together on a whole population and/or model of care basis, [to] provide signals to providers on how to organise. This will signal the number, shape and scope of accountable care organisations and how they will need to work together to deliver.’
- (c) **‘Utilising national new models of care contract document and locally developed investment approach.’** I assume this refers to the new standard contract for Accountable Care Organisations developed by NHS England.⁵ However the legality of

5

<https://www.england.nhs.uk/publication/accountable-care-organisation-aco-contract-service-conditions-1b-ii/>

this contract has been challenged in the courts by health professionals and others⁶ and a judge has now agreed to allow a judicial review of the contract to go forward. This will begin on 22 April 2018.

- (d) **‘Stimulating the market to ensure there are a number of high-quality options for patients available when commissioning services, and that there are alternative providers available in the event of provider failure.’** This clearly means that Accountable Care Organisation contracts may involve private providers taking over large packages of Devon NHS services, i.e. the large-scale privatisation of NHS provision. The reference to provider failure indicates that NHS contracts will be subject to the vagaries of the market in the same way as Carillion’s contracts and the Virgin/Stagecoach contract for the East Coast Main Line. The public have not accepted the legitimacy of this kind of privatisation in the NHS.
- (e) **‘Ensuring that, where appropriate, patients are offered personal health budgets or integrated personal commissioning. People receiving NHS continuing healthcare (or continuing care in the case of children) have the legal right to a personal health budget.’** Personal budgets sound as though they offer choice but in reality they are a way of capping expenditure on individual patients, especially those with chronic conditions.

4. In what sense will this system be ‘accountable’?

It appears that the system is ‘accountable’ in the sense of financial accountability, i.e. accountable to the parameters of the agreed capitated budget.

5. Will the Accountable Care System remain fully accountable to this Committee?

It may be that in Phase 1, the integrated delivery systems remain fully within the purview of the Health & Adult Care Scrutiny Committee. However it appears unlikely that private providers with Accountable Care Organisation contracts will remain subject to scrutiny in the same way as at present, if at all. Private providers are also exempt from FOI requirements.

6. Do ‘shared corporate services’ include DCC, and what are the implications of the ACS for our adult social care services?

Both these points are unclear and need to be investigated by the Committee.

6

<http://www.independent.co.uk/news/uk/politics/jeremy-hunt-health-department-nhs-legal-action-americanise-privatisation-customers-id-pay-a8033986.html>

7. How has Devon County Council been involved in the development of the ACS, and on what authority?

DCC's logo is used on the SPT documents about the ACS, which envisage that 'During 17/18, through the STP Strategic Commissioning/ACS work stream, Council and NHS partners will agree the staging, mechanisms and pace to progress the agreed ambition ... including the performance management and accountability arrangements that underpin these' in order to 'implement the first phase of these new arrangements during 2018/19.'

Have DCC representatives been involved in agreeing these proposals, through the STP's Collaborative Board? We need proper reporting on the Council's involvement.

8. Why haven't these major changes in the organisation of Devon's health and social care been reported to this Committee, to Cabinet or to Council, or consulted with the public?

The Accountable Care System is an 'evolution' of the Sustainability and Transformation Plan which launched at the end of 2016, itself a new version of the Success Regime established early in 2016. Council resolved on 8 December 2016 (by 55 votes to 0), that: '*County Council believes that the NHS Success Regime project for Devon is now flawed and accordingly asks the Secretary of State for Health and NHS England to put the process on hold, until issues relating to the "independence" of the Success Regime are investigated and for fair funding to be considered.*'

Just as the Council asked for the Success Regime process to be put on hold, it was being renamed the STP. Eight days later, on 16 December 2016, the 'Devon STP memorandum of understanding for governance' was agreed. This memorandum states that DCC is a party, although the version available online is not signed of behalf of the Council.⁷ It is not clear on what authority the Council has been involved in the STP over the last year. I have been unable to locate a formal decision by the Council to authorise DCC's participation.

Clearly the transformation of the STP into a more permanent Devon Accountable Care System, with the further changes envisaged in the toolkit, is a fundamental organisational change in health and adult care and should have been brought to this Committee and to the Council well before its start date of 1 April 2018.

As the toolkit acknowledges, there is a 'Statutory obligation on clinical commissioning groups (CCGs) and NHS providers to involve the public in the planning, development, consideration and decisions for service change proposals.'

7

<http://www.northdevonhealth.nhs.uk/wp-content/uploads/2017/02/Annex-4.2-Board-07.02.17-Devon-memorandum-of-understanding-for-STP-governance-Part-2.pdf>

However it seems that the CCGs don't consider the establishment of an Accountable Care System, and the sweeping further changes envisaged, as in need of consultation. In Cornwall, in contrast, where the establishment of an Accountable Care System is also being considered, Cornwall Council has established an enquiry to consider 3 questions:⁸

1. To understand the rationale behind the establishment of Accountable Care Systems across the NHS in England and specifically for Cornwall and the Isles of Scilly.
2. To consider the option put forward for integrated strategic commissioning as part of a Cornwall and Isles of Scilly Accountable Care System (including the ones discounted and take a view on which is more likely to achieve the desired outcome) and the route map to achieve it.
3. Within the preferred option, ascertain how democratic control and clinically led commissioning can be retained.

Cornwall Council has published information about the ACS for the public⁹ and their Cabinet Portfolio Holder says "The inquiry sessions will be open to the public and there is no hidden agenda – this is fully transparent. The inquiry will make a recommendation to Cabinet and then full Council." I gather it will go to Cornwall's Cabinet on February 7.

Why haven't this Committee, Council and the public been similarly informed and consulted, and why has no authority been obtained for the Council's role in the preparation of the ACS?

C. CONCLUSIONS

Members will doubtless agree with the principles of integrating health and social care and bringing the fragmented NHS created by the 2012 Act into a common framework.

However the STP's plans to create an Accountable Care System raise fundamental issues about the direction of the NHS in Devon, in particular whether it is right that NHS care should be provided through capitated contracts and whether large-scale private contracts are the right vehicles to deliver major areas of Devon's NHS services.

At a time when, as this Committee has acknowledged, public confidence in the CCGs is very low, it is truly astonishing that these plans have not been properly presented to this Committee in good time for you to scrutinise them before they are implemented, and that there has been no public consultation and no decision by the Council.

⁸ <https://democracy.cornwall.gov.uk/mgCommitteeDetails.aspx?ID=1242>

⁹

<https://www.cornwall.gov.uk/council-and-democracy/council-news-room/media-releases/news-from-2017/news-from-december-2017/plans-for-a-shadow-accountable-care-system/>

The Committee's only remaining meeting is on 22 March 2018, nine days before the ACS is due to come into being. I ask the Committee to hold a special meeting as soon as possible to consider these developments and to seek answers to the questions outlined above.

Councillor Martin Shaw

14 January 2018