

Local Healthwatch Regulations Explained – lay and volunteer involvement and restrictions on activities of a political nature

**Part 6 of the NHS Bodies and Local Authorities (Partnership
Arrangements, Care Trusts, Public Health and Local Healthwatch)
Regulations 2012**

March 2013

Purpose of this note

There has been some debate about the interpretation of the local Healthwatch regulations¹. By their nature regulations are technical, using legal phrasing and wording which is often more precise than the common usage of language. This note aims to explain and provide clarity in relation to the following issues:

- (a) lay person and volunteer involvement in local Healthwatch and;
- (b) restrictions on activities of a political nature.

This is not intended to be a substitute for or a definitive way of applying the regulations. Only the courts can provide a definitive interpretation of the legislation, and if there are any doubts, legal advice should be sought.

About Healthwatch

Healthwatch is the new consumer champion for the public, patients, health and care service users, and their carers and families.

It has two forms: Healthwatch England, which was established on 1 October 2012; and local Healthwatch organisations which will start from 1 April 2013 based in upper-tier and unitary local authority areas in England².

Healthwatch England will provide leadership, support and advice to the local Healthwatch network. It will use evidence based on experiences to highlight national issues and trends in order to influence national policy. Through the network and by receiving views directly, Healthwatch England will ensure that voices of people who use health and social care services are heard by the Secretary of State for Health, the Care Quality Commission, the NHS Commissioning Board, Monitor and local authorities in England.

A key role of local Healthwatch organisations will be to promote the local consumer voice to ensure that the views of patients, service users and the public are fed into improving local health and care services. The primary task of local Healthwatch organisations will be to gather evidence from the views and experiences of patients, service users and the public about their local health and care services and to provide feedback based on that evidence.

¹ In this publication “the local Healthwatch regulations” refers to the NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012 (S.I. 2012/3094). There are separate regulations on local Healthwatch entry, namely the Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations 2013 (S.I. 2013/351).

² Section 229 of the Local Government and Public Involvement in Health Act 2007 sets out the meaning of a “local authority” in the context of local Healthwatch. Each of the following is a “local authority” in this context: a county council in England, an upper tier district council in England; a London borough council; the Common Council of the City of London; and the Council of the Isles of Scilly.

They will take this information and report the evidence to those in charge of arranging and funding services and making decisions – and those providing services – about the quality of care, including through statutory representation on the local health and wellbeing board. This should help to ensure that those who make decisions about health and care services can be aware of and act and respond quickly to concerns. Local Healthwatch organisations will also feed this evidence into Healthwatch England.

The Local Government and Public Involvement in Health Act 2007 (as amended by the Health and Social Care Act 2012) sets out the requirements for arrangements for patient and public involvement activities through local Healthwatch organisations. Regulations laid in December 2012 make further provision about the criteria that bodies will need to meet in order to be contracted as local Healthwatch organisations, the duties on commissioners and providers, and the contractual arrangements between the local authority and local Healthwatch; and local Healthwatch and its contractors.

You can find out more about the local Healthwatch regulations at: <http://www.legislation.gov.uk/uksi/2012/3094/contents/made> and; <http://www.legislation.gov.uk/ukdsi/2012/9780111531679/contents>.

A. About lay person and volunteer involvement in local Healthwatch

Local Healthwatch has been set up to be the voice for people. It is important that local people are at the heart of Healthwatch.

What the regulations say

There are three places where the regulations refer to lay person and volunteer involvement:

- 1) Regulation 38 – as a qualifying criterion for the purposes of a local Healthwatch being awarded the contract by the local authority³.
- 2) Regulations 40(1)(g) and 41(1)(e) – through requirements imposed on the contract between the local authority and local Healthwatch in relation to the involvement of lay persons and volunteers in the carrying on of section 221⁴ activities by local Healthwatch and its contractors.

³ That the body wishing to be contracted as local Healthwatch must have arrangements for the involvement of lay persons and volunteers in its governance arrangements.

⁴ These activities are set out in section 221 of the Local Government and Public Involvement in Health Act 2007 (as amended by section 182 of the Health and Social Care Act 2012), and consist of: (a) Promoting, and supporting, the involvement of local people in the commissioning, provision and scrutiny of local care services; (b) enabling local people to monitor for the purposes of their consideration of matters in subsection (3) of section 221 [the standard of provision of local care services, whether and how these could be improved; and whether and how these ought to be improved], and to review for these purposes, the commissioning and provision of local care services; (c) obtaining the views of people about their needs for, and their experiences of, local care services; (d) making (i) views such as mentioned in paragraph (c) known, and (ii) reports and recommendations about how local care services could or ought to be improved, to persons responsible for commissioning, providing, managing or scrutinising local care services and to Healthwatch England; (e) providing advice and information about access to local care services and about choices that may be made with respect to aspects of those services; (f) reaching views on the matters

- 3) Regulation 40(1)(a) read with 40(2), (3) and (4) – as part of transparency, one requirement imposed on the local authority contract is that local Healthwatch must be required to publish certain procedures, including for involving lay persons and volunteers in “relevant decisions” (including decisions about how to undertake and the spending of funds in relation to section 221 activities⁵).

Key messages:

- The legislation does not stop people with professional experience in health and social care settings being involved in local Healthwatch organisations and their activities, as lay persons and volunteers.
- “Lay person” and “volunteer” are defined by regulation 34⁶ to reflect those people who wish to give their time to something they feel passionately about in order to influence change and service improvements. In this context, the definition of “volunteer” could include someone with a health and social care background giving their time freely, whereas the definition of a “lay person” is aimed at those without a professional health or social care background contributing their time.
- Thus, between them, the definitions of “lay person” and “volunteer” can apply to anyone who wishes to give up their time for local Healthwatch. This can include people who do not work, or are retired and people in work who wish to give up their spare time to influence services in the area they live (which may be different from the area where they work).
- If volunteers come with a professional health or social care background this does not necessarily create a conflict of interest – it can be complementary to the work of the local Healthwatch organisation.
- The local Healthwatch regulations do not differentiate between volunteers or lay people in terms of the importance of their contributions to local Healthwatch, and both groups have valuable insights to make.

mentioned in subsection (3) of section 221 [see above] and making those views known to Healthwatch England; (g) making recommendations to Healthwatch England to advise the Care Quality Commission about special reviews or investigations to conduct (or, where the circumstances justify, making such recommendations direct to the Commission); (h) making recommendations to Healthwatch England to publish reports under section 45C(3) of the Health and Social Care Act 2008 about particular matters; and (i) giving it assistance as it may require to enable it to carry out its functions effectively, efficiently and economically.

⁵ Other “relevant decisions” are decisions as to which care services in relation to which section 221 activities are to be carried out, whether to request information from certain commissioners and providers of health or social care services, whether to refer a report or recommendation to such commissioners and providers, which premises are to be entered and viewed and when, whether to refer a matter to an overview and scrutiny committee or health scrutiny authority, whether to report a matter concerning section 221 activities to another person, and certain matters concerning the making of arrangements with contractors – see regulation 40(2).

⁶ Of the NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012.

- It is important that a local Healthwatch organisation is diverse and inclusive of its local people and community – be it through paid staff, lay people or unpaid volunteers.
- There is potential for different types and levels of involvement for lay persons and volunteers within a local Healthwatch organisation (including in governance, making relevant decisions, carrying out section 221 activities). Local Healthwatch should ensure that a range of ways are available for people to get involved so that lay persons and volunteers can give their time in ways that suit their own needs and preferences.

B. About restrictions on activities of a political nature

Local Healthwatch has been set up to be the voice for people, ensuring that what local people say has influence over local services, and how they might be improved – this is its core purpose. As part of this, it is expected that from time to time local Healthwatch will need to consider the issue of health and care service standards against wider policies and the law.

What the regulations say

Regulation 36(1) seeks to prevent a local Healthwatch from making certain activities of a political nature its sole or main activity. It does this by providing that the following activities are not to be treated as being for the benefit of the community⁷:

1. promotion of or opposition to changes in law or policies proposed to be adopted by governmental or public authorities; and
2. carrying out activities that could be reasonably seen to be intended (or likely) to provide or affect support for political organisations, or influence voters in relation to elections.

However, regulation 36(2) enables local Healthwatch to speak out and campaign (including for policy change or change to the law), as long as:

1. it is in connection with its other community benefit activities - those undertaken as part of its core purpose of being a consumer champion (as described in section 221 of the 2007 Act); and
2. that seeking particular legal or policy changes does not become the main focus of its activity.

Therefore if, for example, in the process of gathering the views of local people, the organisation uncovers concerns about services based on the adoption of particular policies, then local Healthwatch could campaign and speak out to influence their change or improvement where this could

⁷ Under the Local Government and Public Involvement in Health Act 2007 the local authority's arrangements for patient and public involvement activities have to be made with a social enterprise. For these purposes, a body is a social enterprise if a person might reasonably consider that it acts for the benefit of the community in England and it satisfies criteria set out in regulations. To this end regulation 36 of these regulations 2012 set out activities which are to be treated as not being carried out for the benefit of the community.

genuinely (and reasonably) be capable of being regarded as in connection with its main community benefit activities. For example, that main activity might be the making views known, or making reports and recommendations on service improvements, based on the evidence they have gathered.

The distinction here is the capacity in, and extent to which, a local Healthwatch is undertaking any campaigning activities. This distinction does not constrain local Healthwatch organisations from fulfilling their role, but ensures that they are not influenced by political considerations in how they fulfil their purpose of being a consumer champion to represent the local community's views about their health and care services.

Key messages:

- The core purpose of local Healthwatch is to be the consumer champion for health and care service users (through section 221 activities set out in the 2007 Act). It should involve patients, service users and the public in shaping local health and care services; and raise awareness of their views and experiences in relation to those services amongst those in charge of services including commissioners and providers.
- The legislation seeks to ensure that local Healthwatch organisations:
 - act independently of political parties, think tanks and campaigns;
 - keep any campaigning as secondary to their core purpose, and limited to and focused on improvement to local health and care services, based on evidence gathered and views heard from the local community, and;
 - pursue their primary purpose as a consumer champion.
- The legislation seeks to prevent a local Healthwatch from:
 - aligning itself to a particular party or political body;
 - being set up or run with a main purpose of achieving particular policy changes or changes to the law, and;
 - making political activities its main activity.
- The legislation does not stop a local Healthwatch from:
 - using robust evidence and feedback from the community as basis for raising the concerns of local people with local councillors, council officers and health service managers who have responsibilities for commissioning, providing or managing particular local health and care services;
 - speaking out based on evidence, at a local level about service improvements that affect the quality of care;
 - advocating a change in the law or policy, provided it is based on evidence, is genuinely in connection with its community benefit activities; and that such campaigning or activities do not become the organisation's main focus or activity; and

- passing findings, concerns or views from the local community to Healthwatch England, which will have a role to speak out at the national level about service improvements and to provide evidence which will inform government policy.
- The principle behind these regulations is not new or exclusive to local Healthwatch organisations. It can be found in legislation relating to social enterprises⁸ and financial assistance from the government for them⁹.
- Similar restrictions also apply to charities, which are one form of social enterprise. Charities are bodies established for charitable purposes: they cannot be bodies established for political purposes. There are also similar restrictions on the extent to which charities can engage in political activity.

Further information

[Healthwatch England website](#)

[LGA Healthwatch briefings](#)

[Department of Health website - Healthwatch page](#)

⁸ See Footnote 6.

⁹ For example, the Health and Social Care (Financial Assistance) Regulations 2009 and the Community Interest Company Regulations 2005