



# Healthwatch Birmingham: Our Legislative Duty - Information for health and social care system organisations



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## **This document overviews and references the legal requirements for Healthwatch Birmingham and sets out what we are doing and how, to discharge these duties.**

- The overview of legal requirements has been taken from the Healthwatch England document ‘**Interpreting the Arrangements to be made by relevant bodies in respect of local Healthwatch Organisations Directions 2013: Information for Local Healthwatch**’.
- Information about how Healthwatch Birmingham is meeting these requirements has been taken from the Healthwatch Birmingham Business Plan.

### **1. What the legislation says Healthwatch Birmingham must do.**

Legislation sets out particular activities <sup>1</sup> which Healthwatch Birmingham must carry out and which are part of the contractual arrangements Birmingham City Council makes with us.

#### **These duties are:**

1.1 Healthwatch Birmingham has a seat on Birmingham’s Health and Wellbeing Board <sup>2</sup> and we have a vote when decisions are made.

#### **Healthwatch Birmingham uses this seat to:**

- Ensure that the views and experiences of patients, carers, the public and service users are taken into account when local needs assessments and Joint Strategic Needs Assessments are carried out and when the Health and Wellbeing Board makes strategic decisions. We can request evidence to check that this is happening and making a difference <sup>3</sup>. This ensures that Healthwatch Birmingham has a role in promoting public health, health improvements and in tackling health inequalities.
- Gather information that helps Healthwatch Birmingham understand what Patient and Public Participation and Involvement activity is making a difference and enable us to disseminate good practice.
- Ensure that commissioning, providing and scrutiny organisations tackle health inequalities.

1.2 Healthwatch Birmingham must enable people to share their views and concerns about their health and social care services and make sure they understand that their contribution will help build a picture of where services are doing well and where they can be improved.

**We do this in several ways:**

- Online through an engagement tool called the Feedback Centre on the Healthwatch Birmingham website. People can post comments about their experiences of care 24 hours a day.
- Face-to-face through a community engagement programme which ensures service user and carer experiences and views are collated in all 10 districts of Birmingham.
- Face-to-face at a focus group. Focus groups are arranged when Healthwatch Birmingham needs insights into a specific aspect of health and social care.
- Face-to-face during an Enter and View visit. These visits enable Healthwatch Birmingham to gather the experiences of users and carers at the point of experience.
- By telephone via the Healthwatch Birmingham Information and Signposting Line.
- By encouraging people to contribute to consultations organised by commissioners or providers.
- By advising people at point of contact how their experiences will be used. If they wish they can join the Healthwatch Birmingham mailing list and become involved with our work.

1.3 Healthwatch Birmingham must provide people with information about their choices and what to do when things go wrong. This includes signposting people to the relevant provider or providing support ourselves (if commissioned by the local authority) to individuals who want to complain about NHS services.

**We achieve this by:**

- Publishing an 'Information Route' on our website of the providers and choices available to people in Birmingham regarding their options when things go wrong.

- Our Information and Signposting Line which is manned by volunteers who signpost people to the relevant provider and provide support to community engagement workers to ensure effective signposting and referral happens ‘from the field’.
- Recording all contacts. This data, and the reason why people are complaining or seeking help, can be used as an indicator of a potentially avoidable health inequity which might prompt an investigation or feed into an ongoing investigation.
- Auditing every organisation to which we have made direct referrals. Our audit programme also involves contacting people we have referred for feedback about their experience. This data may be used to inform or help shape future Healthwatch Birmingham investigations, reports and recommendations.

1.4 Healthwatch Birmingham must provide or signpost people to information about local health and care services and how to access them.

**How we do this:**

- People contacting us are either provided with or signposted to the appropriate source of information.

1.5 Healthwatch Birmingham must provide authoritative, evidence-based feedback to organisations responsible for commissioning or delivering local health and care services.

**We do this by:**

- Ensuring the feedback we gather about the experiences and views of people is evidence based, collected in a scientifically robust manner and is grounded in policies and legislation (particularly the policies and legislation which require us to meet equality standards and involve the public in commissioning).
- By scrutinising the Quality Accounts of our acute healthcare providers and monitoring whether Birmingham City Council is achieving its Adult Social Care Outcomes Framework performance measures.
- By scrutinising the content and process of public consultations and giving the public an opportunity to contribute to Healthwatch Birmingham’s responses to those consultations.

- By analysing patient experience datasets. If this data raises any concerns we will either raise the issue directly with a provider or launch an investigation into a provider or system. We will also feed this data into the investigations of other organisations including the West Midlands Quality Surveillance Group, our local clinical commissioning groups, the Care Quality Commission, Healthwatch England, children or adult Safeguarding Boards or Health Oversight Scrutiny Committees.
- By auditing the Patient and Public Involvement (PPI) arrangements of our local providers and commissioners.

1.6 Healthwatch Birmingham must help and support our three local clinical commissioning groups (CCGs) to make sure that services really are designed to meet citizens' needs.

**We do this by:**

- Listening to patient, the public, service user and carer experiences of using services (through community engagement, our Feedback Centre and Enquiry Line) and bring any evidence of health inequities to the attention of our CCGs.
- Using this experience data to highlight any health inequities and ensuring action is taken to redress them.
- Promoting opportunities for patient and public involvement in the activities of our CCGs.
- Responding to CCG consultations and enabling patients, the public, service users, carers and third sector organisations to inform our responses.
- Making our online feedback Widget freely available and encouraging CCGs to adopt it.
- Auditing the Patient and Public Involvement activities of our CCGs and reporting or making recommendations on them when appropriate.
- Ensuring CCGs audit their PPI quality and meet the required NHS England standards.
- Asking CCG Primary Care Commissioning Boards challenging questions and seeking assurance that they are conducting effective PPI activities.
- Carrying out specific PPI work commissioned by the CCG.



1.7 Healthwatch Birmingham must be inclusive, reflect the diversity of the community it serves and must represent local people and different users of services, including carers.

**We do this by:**

- Ensuring the makeup of our Board, volunteer and staff teams complies with our Equality and Diversity Policy.
- Developing an approach to our work which ensures that the needs of our diverse community are at the heart of everything we do.
- Bringing any verified evidence of health inequity to the attention of commissioners, providers and the wider health and care system and calling for action on those concerns.
- Listening to the concerns our population raises with us.
- Helping other people to listen by:
  - Using a quality standard and audit tool we have developed which helps commissioners and providers to monitor how well they are listening to the views of their populations.
  - Encouraging commissioning and providing organisations to adopt the partner version (Feedback Widget) of our Feedback Centre.
  - Scrutinising public consultations and the Quality Accounts of commissioning and providing organisations to make sure they are listening to their populations.
  - Encouraging the public to become involved in consultations.

**2. Healthwatch Birmingham must produce an annual report which includes details of its activities and expenditure at the end of each financial year <sup>4</sup>.**

The report is published on our website, is disseminated via social media and is sent to: Healthwatch England, Birmingham City Council, NHS England, our three CCGs, the Care Quality Commission and the Overview and Scrutiny Committee of Birmingham City Council.

**3. Healthwatch Birmingham must have a procedure for making relevant decisions<sup>5</sup> which includes provision as to who may make such decisions and provision for involving lay persons or volunteers in such decisions.**

**Relevant decisions include:**

- How to undertake our activities.
- Which health and care services we are looking at covering with our activities.
- The amounts we will spend on our activities.
- Whether to request information.
- Whether to make a report or a recommendation.
- Which premises to Enter and View and when those premises are to be visited.
- Whether to refer a matter to one of our overview and scrutiny committees.
- Whether to report a matter concerning our activities to another person.
- Any decisions about subcontracting.
- This document is published on our website and forms part of induction of new staff, volunteers and Board members.

**4. Healthwatch Birmingham must open its meetings to the public<sup>6</sup>.**

Our meetings are held in public with notification, papers and agendas published on our website at least three days in advance. Resolutions are taken to exclude the public or news agencies from a meeting, or part of a meeting, where publicity would be prejudicial.

**5. Healthwatch Birmingham can subcontract the delivery of particular activities<sup>7</sup>.**

We do not currently subcontract any of our activities.

**6. Healthwatch Birmingham can ask providers for information which they must make available <sup>3</sup>.**

Healthwatch Birmingham asks providers for information for its three work areas: investigations into potential health inequity, audit and scrutiny.

**We do this:**

- Usually through existing or referred relationships or by just asking.
- Through the Freedom of Information Act when information is required for investigative work.

There is a separate requirement on NHS Bodies and Local Authorities to implement the necessary arrangements to ensure that independent providers respond to Healthwatch Birmingham request for information <sup>8</sup>.

**7. Healthwatch Birmingham can escalate matters relating to social care services to its two Health Oversight and Scrutiny Committees (HOSC) (Sandwell and West Birmingham HOSC and Birmingham HOSC).**

The HOSC must acknowledge receipt and keep us informed of any action they take <sup>9</sup>.

**8. Healthwatch Birmingham has the power to ‘Enter and View’ providers <sup>10,11</sup> so that we can observe matters relating to health and social care services.**

We use this power to make announced or unannounced visits to health or social care providers when we have a reasonable belief that this is the most appropriate way to collect information and people’s experiences about a potential health inequity. Volunteers are specially trained for this procedure and a list of our authorised representatives is published on our website.



## **9. Healthwatch Birmingham covers health and care services.**

Because our investigative work is prompted by user or carer experience we proactively seek and collect experiences from all parts of the health and care system through community engagement, marketing and communication, including social media.

## **10. Healthwatch Birmingham cannot Enter and View premises where Birmingham City Council social services are provided for people under the age of 18.**

However if we have a reasonable belief that we need to Enter and View such a service in order to collect experience data this concern is referred to Healthwatch England, the Care Quality Commission or one of our Health and Oversight Scrutiny Committees.

## **11. Reports and Recommendations.**

To help make the views of people known to the people that are responsible for the commissioning, providing, managing or scrutinising of local care services, Healthwatch Birmingham is required to make reports and recommendations. These can cover how local care services could or ought to be improved. When producing a report we think hard about who the audiences will be so most of the time specific people from commissioners, providers or scrutiny know what we are doing.

We maintain active membership of a number of Boards and Committees within our health and social care system to establish and maintain good relationships and ‘critical friendships’ which help us make decisions when developing recommendations and publishing reports. Service providers must have regard to our views, reports and recommendations and respond to explain what action they will take, or why they are not taking action <sup>12</sup>. We take note of their responses and track progress. Reports and recommendations are shared with Healthwatch England and some are published on the Healthwatch England website.

## **12. Campaigning.**

Regulations <sup>13</sup> allow us to speak out and to campaign (including for policy or legislative change) as a consumer champion. Campaigns are most likely to be related to the content or application of a national or local policy relating to reducing health inequity, public involvement or access to services. We will first seek to work with or refer the matter to one or more third sector or other agencies if we think they are better positioned to influence the required change.

## **13. Working with Healthwatch England.**

Healthwatch Birmingham must share its views, reports or recommendations with Healthwatch England. Healthwatch England are a partner of the Care Quality Commission (CQC). When asked, we will get involved in the work of Healthwatch England and share our data and views with them. We are also able to escalate issues we are concerned about to Healthwatch England and sometimes we ask them to publish their own report or to advise the Care Quality Commission (CQC) on a particular course of action <sup>14</sup>.

## **14. Lay people and volunteers.**

Healthwatch Birmingham has arrangements in place to ensure that lay people and volunteers are properly involved in our governance and activities as required by the regulations <sup>15</sup>. Our Chair and Board members are lay people. Volunteers are able to influence the Board agenda directly through the Chair or through volunteer managers. Directors and volunteers meet informally on a quarterly basis and volunteers are encouraged to attend public Board meetings. Volunteers are integral to running all our activities including the Enquiry Line, Community Engagement, Audit and Scrutiny, Enter and View and other means of collecting people's experience of using health and care services. They inform our policy responses and help to shape our investigations, the analysis of data and development of recommendations and conclusions.

## **15. Private sector services.**

Healthwatch Birmingham's activities cover private and independent providers who are in receipt of public funding. This means services which people pay for privately, for example a non-NHS dentist, or private hospital where this is paid for by a member of the public or their insurance provider, are not within the scope of our activities. We signpost people who want information about making a complaint about these services directly to the Ombudsman and to the CQC. We do not take any action as a local Healthwatch.

## **16. The role of Healthwatch Birmingham in relation to the CQC.**

If we believe we have identified a quality or safety issue with a service that needs investigating we may ask Healthwatch England to advise the CQC about any special reviews or investigations that may be required. However before we start an investigation like this we would take care to ensure that no other organisation is already undertaking investigative work in that area to avoid duplication. If we believe that there is a concern e.g. where there is an immediate risk to an individual (but it is not a safeguarding issue) we will escalate the matter to the CQC and copy the escalation to Healthwatch England.

## **17. The role of Healthwatch Birmingham in relation to Monitor and Trust Special Administrators.**

Monitor and the NHS Trust Development Authority (NHS TDA) are now part of NHS Improvement (from 1st April 2016). Trust Special Administrators can be appointed by Monitor when a Trust is found to be financially unsustainable. Once appointed the Trust Special Administrator must offer to meet with Healthwatch Birmingham and ask for a written response to its views <sup>16</sup>. If invited to meet with or provide a written response to Monitor or Trust Special Administrators we do so, however we also have information sharing procedures in place as part of our membership of the West Midlands Quality Surveillance Group.

## **18. The role of Healthwatch Birmingham in relation to Quality Accounts.**

The nine NHS Foundation Trusts in Birmingham are required to send us a report on the quality of care they provide (the 'Quality Account') within their overall annual report and make these available to the public by April 30 <sup>17, 18</sup>. We aim to provide an evidence based challenge to the content of all Trust Quality Accounts by analysing the feedback we have received from people using those services. This statement must state whether or not we think the report is a fair reflection of the full range of services provided and then has to be included in the Appendix of the Quality Account.

## **19. Requirements relating to the Public Sector Equality Duty.**

Healthwatch Birmingham is subject to a general equality duty which requires us have 'due regard' to the relevant statutory needs <sup>19</sup> of our work. Birmingham is one of the most diverse cities in Europe and Healthwatch Birmingham takes its general equality duty very seriously. Our Equality and Diversity Policy outlines how these duties are met.

## **20. Requirements of Healthwatch Birmingham relating to Freedom of Information <sup>20</sup>.**

We have agreed Freedom of Information Arrangements with Birmingham City Council.

### **This means that**

- Freedom of Information requests about the activities, strategy or governance of Healthwatch Birmingham come to us and we notify the Council.
- Freedom of information requests about the commissioning or performance of Healthwatch Birmingham go to the Council who notify our Chair.

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## References:

1. Section 221(2) of The Local Government and Public Involvement in Health Act (2007)
2. Section 194 of the Health and Social Care Act 2012
3. Section 224 of the Local Government and Public Involvement in Health Act 2007
4. Section 227 of The Local Government and Public Involvement in Health Act (2007)
5. Regulation 40, The NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public health and Local Healthwatch) Regulations 2012
6. The Public Bodies (Admissions to Meetings) Act 1960, as amended by Section 189 of the Health and Social Care Act 2012.
7. Section 222 of the Local Government and Public Involvement in Health Act 2007
8. The arrangements to be made by Relevant Bodies in Respect of Local Healthwatch Regulations 2013
9. The Local Authority (Public Health, Health and Wellbeing Board and Health Scrutiny) Regulations 2013
10. Section 226 of the Local Government and Public Involvement in Health Act 2007
11. The Local Authorities (Public Health Functions and entry to Premises by Local Healthwatch Representatives) Regulations 2013
12. Section 221 [3a] and Section 224 of the Local Government and Public Involvement in Health Act 2007 and implemented by “The arrangements to be made by Relevant Bodies in Respect of Local Healthwatch Regulations 2013”
13. Regulation 36, The NHS Bodies and Local Authorities (Partnership Arrangements, care Trusts, Public health and Local Healthwatch) Regulations 2012
14. Section 221(2) and Section 227(4) of The Local Government and Public Involvement in Health Act 2007
15. Regulation 38 and Regulation 40(g), the NHS Bodies and Local Authorities (Partnership Arrangements, care Trusts, Public health and Local Healthwatch) Regulations 2012
16. Section 65H (e) (8) and (9) of the National Health Service Act 2006
17. The National Health Service (Quality Accounts) Regulations 2010
18. The National health Service (Quality Accounts) Amendment Regulations 2010
19. Section 149 of the Equality Act 2010
20. Part 2 of Schedule 1 of the Freedom of Information Act 2000

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