

Code of Conduct relating to Local Involvement Networks' visits to enter and view services



Gateway reference: 10194

Part One

This Code draws upon existing good practice from a range of partners in relation to undertaking visits to Local Authorities, health and independent sector premises where health or social care services are provided. It has been informed by a range of experiences and perspectives, including those of care regulators, third sector user-led health and social care organisations, independent care providers, NHS and Local Authority staff as well as service users.

The Code is not statutory guidance – rather, it sets out the background principles and practical considerations relating to Local Involvement Networks (LINKs) ability to enter and view certain health and social care settings. The Code has been prepared by the Department of Health. It does not amend or limit any existing legislation or create any legal obligations.

People who use health and social care services, their carers and the public generally, have expectations about the experience they want to have of those services and want the opportunity to express their view as to whether their expectations were met. To enable Local Involvement Networks (LINKs) to carry out their activities effectively there will be times when it is helpful for authorised representatives to observe the delivery of services and for them to collect the views of people whilst they are directly using those services.

LINKs may, in certain circumstances, enter health and social care premises to observe and assess the nature and quality of services and obtain the views of the people using those services. In carrying out visits, LINKs may be able to validate the evidence that they have already collected from local service users, patients, their carers and families, which can subsequently inform recommendations and be fed back to relevant organisations. Properly conducted and co-ordinated visits, carried out as part of a constructive relationship between LINKs and organisations commissioning and/or providing health and social care services, may enable ongoing service improvement. LINKs' role is not to seek out faults with local services, but to consider the standard and provision of care services and how they may be improved.

The aim of this Code is to provide good practice guidance that should underpin appropriate conduct in respect of LINKs' visits. LINKs' representatives who are authorised to undertake visits should use the Code when making visits. Those being visited may take the Code into account when deciding if LINKs are acting reasonably and proportionately.

The Code is designed to give advice about how the following aims can be achieved:

- that – in relation to LINKs' visits – the rights of patients, service users, staff and residents are respected and protected as are those of the authorised representatives undertaking the visit;
- that visits are conducted in a spirit of openness and partnership between the LINK, the provider of the service and the individuals receiving the service; and
- that the relationship and dialogue between the LINK, provider and wider population remains positive and constructive.

What are LINKs and why are they able to enter and view services?

The Local Government and Public Involvement in Health Act 2007, which makes provision about the establishment of LINKs and includes provisions relating to LINKs' visits.

LINKs are networks of local people and organisations, funded by Government and supported by independent organisations known as a Host to promote and support the involvement of people in the commissioning, provision and scrutiny of local health and social care services. There is a LINK in every Local Authority area that has social services responsibility.

The role of a LINK is to:

- give everyone an opportunity to say what they think about their local health and social care services – what is working well and what is not so good;
- give people an opportunity to monitor and check how services are planned and run; and
- provide feedback on what people have said about services, so that things can change for the better.

There is a range of methods available to LINKs that can enable them to say how local services could improve, such as:

- to make reports and recommendations to commissioners and get a reply within a set period of time;
- to ask commissioners for information and get a reply within a set period of time;
- to go into some types of health and social care premises to observe the nature and quality of services; and
- to refer issues to the local Overview and Scrutiny Committee and receive a response.

To enable LINKs to gather the information they need about services, there will be times when it is appropriate for them to see and hear for themselves how those services are provided. That is why the Government has introduced duties on certain commissioners and providers of health and social care services to allow authorised

representatives of LINKs to enter premises that providers own or control (with some exceptions), to observe the nature and quality of services.

In the context of the duty to allow entry, the organisations or persons concerned are:

- NHS Trusts
- NHS Foundation Trusts
- Primary Care Trusts
- Local Authorities
- a person providing primary medical services (eg GPs)
- a person providing primary dental services (ie dentists)
- a person providing primary ophthalmic services (ie opticians)
- a person providing pharmaceutical services (eg community pharmacists)
- a person who owns or controls premises where ophthalmic and pharmaceutical services are provided.
- Bodies or institutions which are contracted by Local Authorities or NHS Trusts, Primary Care Trusts or Strategic Health Authorities to provide care services.

Part Two

Preparations and practical arrangements

This section of the Code explains the legal responsibilities and duties relating to LINKs' visits and also sets out some good practice in terms of preparing for a visit.

The legal framework

Who from a LINK can conduct a visit?

Under the legislation, certain individuals can be authorised to enter, view and observe health and social care activities being carried out – these individuals are referred to as 'authorised representatives'. The Local Government and Public Involvement in Health Act 2007 is clear that authorised representatives must only enter and view premises for the purpose of carrying out the activities of the LINK they represent.

Before an individual can be authorised, the LINK must have agreed procedures for making decisions about who can be an authorised representative. Regulation 3 of the Local Involvement Networks Regulations 2008 (included in Appendix I) sets out the arrangements for authorised representatives. In brief, representatives can be authorised only if:

- they have undergone a Criminal Records Bureau check, in line with section 113A of the Police Act 1997, and have a certificate to verify this; and
- a 'nominated person' of the LINK has considered the certificate and is satisfied that the person is suitable to carry out visits.

The LINK must make publicly available a comprehensive and up to date list of all of its authorised representatives.

In what circumstances can an authorised representative make a visit?

The Local Involvement Networks (Duty of Services-Providers to Allow Entry) Regulations 2008, attached at Appendix II, impose a duty on providers of health and social care services (listed in Part One of this Code), with certain exemptions, to allow authorised representatives of LINKs to enter premises that they own or control to observe the services that are being provided. [There are also certain activities that are excluded.]

In addition, because many health and social care services are now provided by the independent sector, the Government has published legally binding Directions. These Directions place a further duty on those commissioning services to ensure that their contracts with independent providers, made after 1 April 2008, allow for authorised representatives to enter and view, and observe the carrying on of activities in premises, which are owned or controlled by the independent provider. The Directions are attached as Appendix III and guidance on the implications of the Directions for independent providers can be found on the Department of Health website at: www.dh.gov.uk/LINKs.

However, the Government believes that some exclusions from the duty to allow entry are essential. Therefore, the duty to allow entry does not apply in the following circumstances:

- if the visit compromises either the effective provision of a service or the privacy or dignity of any person;
- if the premises where the care is being provided is a person's own home (this does not mean that an authorised representative cannot enter when invited by residents – it just means that there is no duty to allow them to enter);
- where the premises or parts of premises are used solely as accommodation for employees;
- where the premises are non-communal parts of care homes;
- where health and social care services are not provided at the premises (such as offices) or where they are not being provided at the time of the visit (for example when facilities and premises are closed);
- if, in the opinion of the provider of the service being visited, the authorised representative, in seeking to enter and view its premises, is not acting reasonably and proportionately; and/or
- if the authorised representative does not provide evidence that he or she is authorised in accordance with Regulation 4 of the LINKs (Duty of Services-Providers to Allow Entry) Regulations 2008.

The exemption of children's social care services

Finally, an important exclusion for LINKs to be aware of is that the duty does not apply to the observing of any activities which relate to the provision of social care services to children. This is because the Government is of the view that it would be inappropriate for children's social care to be included as there are already effective measures in place to scrutinise and oversee children's social care and also to seek the views of children and young people in the development of their services.

More information about the regulation and inspection of social care services for children is available via the Ofsted website – www.ofsted.gov.uk.

Good Practice

Preparing for a visit

Visits are only one way of gathering intelligence about a service. It is important that a LINK has a clear understanding of why it deems it necessary to enter and view a particular care setting. For example, it may be that a visit is prompted by feedback from local service users, patients, their carers and families, which suggests common concerns about performance or aspects of provision.

Before a visit, we would advise that LINKs prepare by thinking through the kinds of information it might be helpful for the care provider to have prior to the proposed visit, and to give thought to the aims and structure of the visit.

Preparatory information for the care provider

The legislation allows for both announced and unannounced visits. If the visit is 'announced', it may be helpful for a LINK to let care providers know about the reasons for a visit and to set out the practical aspects in advance; this would be best presented in a formal email or letter.

Whilst the legislation allows for unannounced visits, careful consideration should be given before one is undertaken. The duty to allow entry does not apply in circumstances where a visit is not reasonable and proportionate or would compromise the privacy or dignity of patients, and authorised representatives should be aware that they run the risk of being refused entry on those grounds. LINKs may consider suggesting to those being visited that this Code will be treated as the agreed protocol for the visit.

LINKs might consider providing the following information prior to the visit:

- a suggested date and time of the visit and how long it will last;
- the intelligence that has stimulated the visit (note that any patient and user feedback should be anonymised);
- the purpose of the visit;
- the shape and format of the planned visit, for example:
 - identification of staff, service users, and user forums that authorised representatives would like to meet;
 - the number and nature of discussions/meetings to take place and whether special requirements will be necessary, such as communication aids or special access to buildings;
 - the types of activities and service areas authorised representatives would like to access and observe;
 - whether authorised representatives have explanatory leaflets about LINKs (including contact information) available for distribution during the visit; and
 - whether it would be helpful for staff and/or service users to accompany authorised representatives during the visit;
- the names of the authorised representatives attending the visit.
Please note: careful consideration should be given to the number of representatives visiting an establishment at any one time. We would advise against authorised representatives working alone and would suggest that numbers should be proportionate to the size of the establishment wherever possible. Some care homes are extremely small and large numbers of visitors may unnerve residents and could compromise their privacy and dignity;
- reassurance that authorised representatives will have appropriate identification visible throughout the visit; and
- reassurance that draft findings resulting from the visit will be shared with the provider, together with – where appropriate – relevant residents, users, patients, carers and families or people whose feedback had prompted the visit, prior to them being finalised and shared more widely.

Requesting information from a care provider

In preparation for, or following, a visit a LINK may request information from the relevant providers. A LINK may request information from a public body under the Freedom of Information Act. If a LINK wants to request information about a service provided by the independent sector but funded by a Primary Care Trust, NHS Trust, Strategic Health Authority or Local Authority, it can do so in line with the legally binding Directions about LINKs and independent providers. The Directions in respect of LINKs and independent providers are attached at Appendix III.

Responding to the LINK

We would encourage those being visited to respond to LINKs in a spirit of cooperation, while recognising it will not always be possible to meet all the requests. In those cases, the providers might consider, for example:

- offering alternative times and dates if a request for a visit falls on a day which is not suitable;
- give sufficient notice if an agreed date becomes unavailable owing to, for example, staff being unavailable;
- give reasons why a visit request is to be turned down; and/or
- provide an explanation if a visit has to be terminated early.

Preparatory work for LINKs

With the support of the Host, authorised representatives should prepare for all visits made to a health or social care setting. The types of activities that LINKs might consider undertaking in advance of a visit include:

- thinking through the aim and desired outcomes of the visit;
- establishing whether any other visits are being planned around the same time of the LINK's visit by, for example, the care regulators (eg the Healthcare Commission or the Commission for Social Care Inspection) or Foundation Trust governors. Could the visits be coordinated?;
- agreeing how the objectives of the visit will be achieved, for example:
 - by talking to staff, service users, patients – with their agreement – including meeting the user forum (where one exists) to hear their views;
 - by observing the general interaction between staff, users and patients; and/or
 - by noting environmental aspects of the care setting;
- preparing a pre-visit checklist. The checklist could refer to information about a service which is already in the public domain to build a profile of any issues or concerns which have already been noted such as:
 - comments received by the LINK from people with direct knowledge of the service (for example, users or their families, user groups or forums);
 - regulators' monitoring and recommendations;
 - Overview and Scrutiny Committee reviews and recommendations;
 - complaints information;
 - Patient and Public Involvement and/or Patient Advice and Liaison Service intelligence held by the relevant premises being visited; and
 - research into recommended practice/national minimum standards/core standards for the particular service area, numbers of staff, beds, activities, therapies, etc.
- identifying any special support needs necessary to facilitate the visit for example, the use of interpreters, signers, advocates or private rooms;
- identifying whether a specific mix of authorised representatives is appropriate to the setting to be visited (in terms of gender and diversity);
- agreeing and allocating topics of enquiry to visiting representatives in advance;
- deciding whether a particular service or specific aspect of a service should be the focus of the visit and whether the visit needs to be made at a specific time to coincide with certain activities;

- researching specific types of care provision to sufficiently understand methods deployed in different care environments and with different patient and user groups, for example, people with dementia, people with challenging behaviour, people who are close to death, etc;
- agreeing an approach for dealing with matters of concern or complaints raised by individuals on a visit and whether these should be referred to other agencies;
- researching the formal complaints process relevant to that care service, so that authorised representatives can inform service users of it if appropriate; and
- agreeing an approach for collating and writing up notes and producing draft findings from the visit including whether additional concerns or complaints raised during the visit should be included with the overall outcomes and recommendations.

Working with the regulators

Close working between LINKs and the regulators strengthens LINKs' ability to make a difference and improve local health and social care services. We would advise LINKs to get in touch with the relevant regulator locally whilst planning a visit; prior co-ordination of visits could prevent duplication of work and reduce the burden to the provider of services and disruption to patients, carers and staff.

Regulators inspect organisations in order to assess their performance in relation to regulations, national minimum standards and core standards. The aim of an inspection is to identify evidence of compliance with these standards. As part of this process, regulators may also take account of people's experiences of using services. Currently, the Commission for Social Care Inspection involves 'Experts by Experience' as part of the inspection team in certain social care inspections and the Healthcare Commission collects 'third party' commentaries from service user groups.

The Healthcare Commission has produced a helpful guide for LINKs and Host organisations called *The LINKs Guide*, which provides useful information and guidance on how LINKs can work effectively with the Commission. You can download the guide at www.healthcarecommission.org.uk

Both regulators are entering a period of transition and, in 2009, a single, integrated regulator for health, mental health and social care services will be created. Once the new body has been established, the processes of assessment will be changing and this Code will be updated to reflect any new ways of working.

Part Three

Conduct and Behaviour during the visit

This section provides advice for authorised representatives at the time of their visit, **focusing on personal conduct and behaviour.**

The legal framework

As set out in Part Two of the Code, it is vital that LINKs' visits are appropriately carried out and undertaken only by authorised representatives. In addition to the legal requirements for authorised representatives set out in the Local Government and Public Involvement in Health Act and Regulation 3 of the Local Involvement Networks Regulations 2008, it is expected that LINKs' authorised representatives will possess certain qualities which help to ensure proficiency in conducting visits. For example, people should demonstrate that they have the ability to listen, that they are sensitive to people's feelings, and are observant, patient and respectful.

Nolan Principles

When thinking about their conduct whilst on visits, LINKs' authorised representatives may find it useful to read and apply the Seven Principles of Public Life, commonly known as the Nolan Principles. These are reproduced at Appendix IV.

Conduct, behaviour and responsibilities of authorised representatives

As set out in Part Two it is vital that authorised representatives conduct themselves in an appropriate way throughout the visit. In certain circumstances providers do not have to allow entry to premises and the conduct and behaviour of the authorised representative(s) are key elements of the exemptions to the duty.

It is very important, therefore, that authorised representatives have regard to the Code of Conduct and behave in a responsible, reasonable and proportionate manner as befits their role. They should bear in mind at all times that the needs of service users, residents and patients are paramount and are not to be compromised by the visit. They should also be sure to treat staff with respect at all times.

Conduct or behaviour which could lead to entry being refused or a visit being terminated

To recap, the duty to allow entry **does not apply** when:

- the authorised representative acts in such a way as to compromise the effective provision of services or the privacy or dignity of any person (e.g. being present when someone is being washed or dressed, getting in the way of a consultation, holding up the serving of a meal, or the administration of medication);
- the provider judges that the authorised representative is not acting in a way which is reasonable or proportionate (eg making repeated visits, regularly undertaking unannounced visits, presenting a large number of representatives at a small facility); and/or
- the authorised representative does not provide evidence that he or she is authorised to enter and view services (as specified in the legislation).

The visit must also be for the purpose of carrying out legitimate LINKs' activities (ie to observe service delivery or to talk to patients and users of the facility).

The full list of exemptions is set out in Part Two of this Code.

Examples of good practice

Given the importance of personal conduct during a visit, we would advise authorised representatives to:

- treat staff, service users, residents, patients, their carers and families fairly, courteously, and with sensitivity and respect;
- ensure that the dignity and privacy of service users, residents patients, carers, families and staff are maintained at all times;
- be as unobtrusive as possible, and inform staff on duty about what they are doing at each stage of the visit;
- value people as individuals, respecting the different and diverse people they meet;
- exhibit no discriminatory behaviour;
- have respect for individual confidentiality, not disclosing confidential or sensitive information unless there is a genuine and urgent concern about the safety and wellbeing of a user, resident or patient, or if the individual concerned consents to the sharing of the information;
- cooperate with requests from staff, users, residents, patients carers and their families if necessary, and comply with all operational or health and safety requirements;
- avoid interrupting the effective delivery of health or social care provision; authorised representatives should refrain from making unreasonable demands on staff, users and patients or disrupting services outside the agreed visiting schedule;
- recognise that user, resident or patient needs should always take priority; and
- be guided by staff where operational constraints may deem visiting activities inappropriate or mean that staff are unable to meet the requests of the authorised representative.

What authorised representatives might expect

Providers and staff

There is much that can be done in advance to help make sure the visit is undertaken in a spirit of cooperation. The detailed advice on this is set out in Part Two of this Code.

In line with this, we would encourage those being visited to:

- allow and enable access to the premises as requested;
- work cooperatively and in partnership with authorised representatives in responding to their visiting requests, wherever possible; and
- accompany authorised representatives on the visit if required and appropriate.

Users, patients, carers, families

There is no formal requirement for users, residents, patients, carers and families to engage with authorised representatives during visits, but we would encourage them to participate and share their views if they wish. They are also free to provide the LINK with feedback if they are unhappy with any aspect of the visit, including the conduct of the authorised representative.

We also think it is very important that comments and compliments are shared; the purpose of a visit is to gather views and experiences and to observe the quality of services, not simply to identify faults and problems.

If an authorised representative is judged to be behaving inappropriately

The nature of the action which might be considered in these circumstances will very much depend on the nature of the conduct or behaviour of the authorised representative. However, in addition to refusing entry, or terminating the visit if it has already begun, we would recommend that, at the very least, the Host and authorised representative is informed of the problem and provided with evidence of the alleged misbehaviour or misconduct.

Part Four

After the visit

This section of the Code deals with what authorised representatives and LINKs should consider once the visit has been completed, what to do with the information and with which other organisations the information might usefully be shared.

Documenting findings

Authorised representatives should document their findings in writing following the visit. It will be helpful to refer to the pre-visit paperwork and to structure the written report in a way that clearly reflects the reasons for the visit being undertaken and how any information / evidence meets the visit objectives.

Authorised representatives should also make clear the source of their information / evidence and the weight assigned to it taking care, of course, always to respect confidentiality. Such sources could include:

- authorised representatives' observations;
- discussions with staff;
- discussions with users;
- comments from carers and/or relatives;
- structured interviews; and/or
- documentation provided by staff/the proprietor.

In addition, we consider it good practice for a LINK, following a visit, to inform the staff that they visited of their findings, setting out detailed and constructive observations and comments. Sometimes, if the LINK thinks it appropriate and feasible, it may wish to send the findings to service-users who were involved in the visit.

Findings should offer a balanced assessment of the service and, where appropriate, make recommendations for improvement. As with their own documentation of the visit, the findings should be drawn from a range of sources and those sources should be made clear.

In all cases, a copy of the draft findings and any recommendations should be sent to the provider who was subject to the visit giving them the opportunity to check for factual accuracy and to allow for any recommendations to be considered. Ideally a LINK will allow providers two weeks to respond or another agreed and reasonable period of time. Where the provider raises issues or concerns about the content of the draft, the LINK and relevant authorised representative(s) should consider carefully what has been said, and decide whether the draft should be amended. It is also good practice for the LINK to share the final version with the provider.

Using the findings

The LINK will be able to use this information to inform the overall picture of services being provided for the local community, what is being done really well, examples of good practice, and whether and how the needs and preferences of the community are being met. It will also help in documenting recommendations for improvement where things are not so good, or there are gaps in provision.

Sharing findings with other organisations

A key LINKs activity is to make reports and recommendations and, following a visit, a LINK may wish to consider when and how it makes any information available to other organisations.

Commissioners of Services

Those who commission services are a principal audience for the information LINKs gather. We would expect LINKs and commissioners to build good working relationships and agree how best to work together to make sure the intelligence gathered by the LINK is fed back in the most effective and appropriate ways so that the needs and preferences of the local community can be effectively relayed to commissioners of services.

Overview and Scrutiny Committees

LINKs will wish to consider whether they should send their findings to the relevant Overview and Scrutiny Committee (OSC). It is not anticipated that this will be a routine occurrence, but in certain circumstances it could be appropriate. In making the decision LINKs might wish to consider:

- an OSC's planned programme of scrutiny;
- whether particular services have significantly deteriorated or improved;
- whether particular services have regularly failed to respond to recommendations for changes or improvements; and
- whether service users and others have reported specific areas of concern that it would be appropriate for an OSC to follow up.

Regulators

We anticipate that LINKs will want to establish close working relationships with the care regulators.¹

A guide providing guidance for LINKs on working with the Healthcare Commission has been published – see Part Two of this Code. This explains how LINKs can contribute to the annual health check and to specific service reviews.

¹ The Commission for Social Care Inspection (CSCI), the Association of Directors of Adult Social Services and the Association of Chief Police Officers have signed a protocol on safeguarding adults, a key statement in this is:

CSCI acknowledges that, whilst safeguarding is of concern to whole communities, within regulated services the providers of care services and Local Authority and NHS commissioners and contractors have a key role in Safeguarding Adults. CSCI and the Healthcare Commission will monitor how these roles are fulfilled through our regulatory and performance assessment functions.

c) CSCI recognises that local councils hold the lead responsibility for establishing and co-ordinating the local interagency framework for safeguarding adults in accordance with the government guidance "No Secrets". In addition the Director of Adult Social Services is expected to ensure "a clear organisational focus on safeguarding adults in vulnerable situations" (Best Practice Guidance on the Role of the Director of Adult Social Services)

A LINK may, however, wish to consider sending findings from a specific visit to a regulator in circumstances where serious concerns are raised about patient safety, or the quality of care, **and** it would be appropriate for the regulator to decide if further action should be taken outside of the routine assessment of services. Alternatively, a LINK may want to draw to the regulators' attention an example of excellent service in its local area.

Other statutory bodies

Similarly, LINKs may wish to consider whether any of their findings would merit closer inspection by another statutory body such as the Health and Safety Executive or the Food Standards Agency.

In rare, extremely serious, cases, where criminal activity or abuse is suspected, LINKs should also consider contacting the police or referring the matter to the Local Authority safeguarding officer (please visit this link for further guidance – www.csci.org.uk/professional/care_providers/all_services/guidance/safeguarding_adults_and_the_pr/safeguarding_adults.aspx).

In all cases, in coming to a decision about whether to refer matters to other organisations, LINKs should consider whether it is reasonable and proportionate to do so based on the evidence, and take care to maintain confidentiality.

Glossary

Host

Each Local Authority with social services responsibilities must contract with a Host organisation to establish and support a LINK in its area. The role of a Host includes activities such as helping LINKs with marketing and communications, developing policies and procedures (covering aspects such as governance and decision making), keeping records, including financial records, arranging visits, gathering the views of local people, and organising meetings.

LINK's authorised representative

A person authorised by a LINK in accordance with Regulation 3 of the Local Involvement Networks Regulations 2008 to enter and view services.

Nominated person

Each LINK must establish governance procedures for conducting its day to day business, including how it makes decisions. A LINK must then decide which of its participants will be nominated to be responsible for considering whether individuals to enter and view premises (i.e. go on visits). A LINK may decide that this role can be performed by a group or committee.

Services-providers

Services-providers means a NHS Trust, a NHS Foundation Trust, a Primary Care Trust and a Local Authority.

Services-providers in relation to the duty to allow entry

The legal definition of services-providers was extended in relation to the duty to allow entry to include:

- a person providing services which are primary medical services (eg GPs);
- a person providing services which are primary dental services (ie dentists);
- a person providing services which are primary ophthalmic services (ie opticians);
- a person providing services which are pharmaceutical services (eg community pharmacists);
- a person who owns or controls premises where ophthalmic and pharmaceutical services are provided.

Contact us

The NHS Centre for Involvement
024 7615 0705

Email: info@links.nhs.uk

Web: www.nhscentreforinvolvement.nhs.uk/links/

A simple explanation of LINKs

www.direct.gov.uk/localinvolvementnetworks

Information about Government policy

www.dh.gov.uk/patientpublicinvolvement