

[REDACTED]

From: [REDACTED]
Sent: 12 April 2021 18:26
To: [REDACTED]
Cc: [REDACTED]
Subject: FW: Query re decision making and Fluoridation

[REDACTED]

The requirement under section 88I Water Industry Act 1991 is for a proposal to vary an existing scheme to come from the local authority (or one of the local authorities) affected by the arrangements. It does not specify who the decision making body is within the local authority. Nor do the Water Fluoridation (Proposals and Consultation) (England) Regulations 2013 which set out more detail in relation to the procedure specify who the decision making body is.

Under 10.3 of the scheme of delegation the Executive Director of People is delegated the full range of powers necessary to discharge the functions including taking decisions which are not specified in the Constitution or in law as having to be taken by elected members in the functional areas including functions relating to public health (except the statutory functions of the Director of Public Health).

The Statutory function of the Director of Public Health are set out in s73A National Health Service Act 2006. These do not include exercising the functions of the Local Authority under section 88I Water Industry Act 1991.

On this basis it should be [REDACTED] as Executive Director of People who takes the decision to make the proposal to the local authority. I agree this is not a key decision but there should be an ODR setting out the reason for the decision this should refer to the reason why no consultation is required by reference to the regulations and also specifically refer to the matters specified in regulation 12 of the regulations which set out the requirements which the proposer must take into account in making a proposed amendment. As you say in your email it is important that we follow the proper procedure as set out in the regulations. I found some useful guidance from Public Health England which I am sure you have seen which provide a useful toolkit for local authorities in the decision making process and I imagine this will provide a useful basis for starting to pull together the ODR.

Let me know if there is anything else you need from me at this stage.

Kind regards

[REDACTED]

From: [REDACTED]
Sent: 26 March 2021 11:51
To: [REDACTED]
Cc: [REDACTED]
Subject: Query re decision making and Fluoridation

Morning – a fortuitous catch-up on Monday reminding me to go through you for this sort of thing! A query that I hope is a simple one but which has significant potential implications because of the contentious topic...

Not sure how much you know about the issue of Fluoridation, so a bit of background. Parts of West Cumbria have had a Fluoridated water supply since the 1960s as a dental public health measure. This has always been controversial, with a small but vocal group of people opposed to the practice for a range of reasons that we don't

need to get into. So there are regular attempts to get the scheme stopped. The governance of this is complex but at the moment essentially CCC is the main decision maker on starting, stopping or varying any Fluoridation scheme (Public Health England and the Secretary of State for Health also play significant parts but essentially the decision is ours). Our current policy position (as agreed by Cabinet a few years ago) is that we will not review the Fluoridation scheme in West Cumbria until an ongoing research programme called CATFISH has reported. We're expecting that report later in the year (probably with some early, non peer-reviewed results towards the end of April). Scrutiny Management Board has recently agreed to timetable a scrutiny review into the Fluoridation programme later this year – this is to a degree coincidental and comes as a result of pressure from the lobby groups rather than being connected to any review that the administration has agreed to conduct, but as it happens it may come at quite a good time and could feed into a Cabinet discussion towards the end of the year.

The regulations about how you go about starting, stopping or varying schemes are again complex but pretty tight. So if, hypothetically, Cabinet was to decide to stop Fluoridating the water, there would be a formal process to go through involving public consultation, establishing a Committee to consider the matter, and all sorts of other stuff.

Now, just to add a degree of complexity to the mix, because of the (completely unrelated) requirement on United Utilities to stop water extraction from Ennerdale, there is a programme of work going on to switch the water supply to West Cumbria to Thirlmere. This is due to happen around about next April. One consequence of this is that the water treatment plants at Ennerdale and Cornhow (which is where the Fluoride is actually added to the supply) are being switched off, and a new one at Williamsgate is being commissioned. This plant has a Fluoridation module already constructed so when it comes onstream the West Cumbria Fluoridation scheme can continue. However it is the view of the legal teams from Public Health England and United Utilities that there are two elements of this that formally require the existing scheme to be varied: (a) the change in the source water supply; and (b) the fact that this change will also mean that 17 houses around Buttermere will become part of the Fluoridation scheme when they weren't originally. Neither of these variations requires public consultation – (a) because this makes no difference to the public in any way, and (b) because it's such a tiny proportionate addition to the scheme. But they do require a request to be made by CCC to the Secretary of State to vary the scheme.


Sorry – that's a lot of background to the question! Which is – who in CCC has to be the decision-maker about requesting this variation? In some ways it's a very simple variation of contract with only any impact on 17 households (and even there the impact could be said to be relatively minor – for operational reasons to do with the way water gets piped around they have regularly received Fluoridated water over the years in any case, and indeed are currently doing so) and no financial impact on the Council, so it's not a Key Decision. But we have to be very sure that we're doing this right and can't be picked up on technicalities later.

For what it's worth I think the decision has to be that we do request the variation. That's not a public health view, it's a governance one - any decision not to request the variation would mean that Fluoridation from Williamsgate couldn't then go ahead, which would de facto be a decision to end the scheme. And as I've said above, there are clear routes set out in Regulations that have to be followed to consult and decide about ending schemes, so we can't bypass that route and close the scheme by the back door, so to speak. The decision to vary the scheme now doesn't prejudice any future decision about whether to continue or end the scheme. I don't know whether that has any bearing on who makes the decision or not!

Any advice gratefully received,

Cheers




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Mobile: [REDACTED]

Please be aware that I work flexible hours, so while this is a convenient time for me to send this email to you I do not expect a response from you outside your normal working hours.



[REDACTED]

From: [REDACTED]
Sent: 17 August 2021 17:15
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Query re decision making and Fluoridation
Attachments: ODR Williamsgate Fluoridation 2.docx; ODR Willamsgate Fluoride 1.docx

[REDACTED]

As discussed I think there are two separate decision points the first relates to the decision to consult with the Secretary of State and the second the decision to formal request the variation once all other steps (including the consultation with the Secretary of State) have been completed.

I have had a go at amending up the ODR to reflect this and have split into two. Hopefully my amendments made sense but if you would like to talk through them then please let me know.

[REDACTED]

From: [REDACTED]
Sent: 28 July 2021 12:03
To: [REDACTED]
Cc: [REDACTED]
Subject: FW: Query re decision making and Fluoridation

Dear All

As the education settings COVID work has eased off a little with it being the school holidays I am keen to progress the necessary steps with regard to the Fluoridation element of the Williamsgate project. [REDACTED] and I had a meeting with PHE and UU last week and they are just waiting on us for to submit the necessary paperwork the Secretary of State to agree that CCC find the proposal operable and efficient followed by the request for the variation.

United Utilities are hoping to start the final commissioning process for Willimsgate in September to allow testing to start. I was hoping to try and get our part of the process if not completed (I'm unsure if it can be signed off during parliament recess at SoS end) then almost complete by September.

[REDACTED] a little while ago and it was agreed, in order to follow due process regarding Community Water Fluoridation schemes we are able to request this variation.

I have attached the draft ODR, a template of the first letter required agreeing 'operable and efficient' and a draft of the second letter requesting the 'variation' of the existing scheme. These letters have been drafted by PHE as they have more experience of what is required.

Please could you let me know what I need to do next in order to advance this process.

Kind Regards

[REDACTED]
[REDACTED]
People