

APPENDIX 2

Substantial variations of service:

Statutory background

Health bodies have statutory duty to engage and involve the public and service users in planning the provision of services, changes to the provision of services and decisions affecting the operation of services. This duty applies to changes that affect the way in which a service is delivered as well as the way in which people access the service.

The latest guidance issued by the Department of Health makes clear that the NHS “should ensure that there is a meaningful and on-going engagement with service users in developing the case for change and in planning and developing proposals. There should be engagement with the local community from an early stage on the options that are developed”. (*Department of Health – Local Authority Health Scrutiny – Guidance to support Local Authorities and their partners to deliver effective health scrutiny: June 2014 – Page 23*).

The above guidance also suggests that “if informally involved and consulted at an early enough stage, health scrutiny bodies in collaboration with local Healthwatch, may be able to advise on how patients and the public can be effectively engaged and listened to”.

Consultation with the health scrutiny committee

Separate to the above duty on public involvement, there is also a specific statutory duty (Regulations under the Health and Social Care Act 2001) on NHS bodies and health service providers to consult health scrutiny committees on any proposed substantial developments or variations in the provision of health services.

What constitutes a substantial development or variation of service?

What constitutes ‘substantial’ is not defined in law and is left to local determination. The Health Scrutiny Committees of Essex and Hertfordshire County Council both currently judge each proposal on a case-by-case basis. Generally, the degree of impact of the change on patients, carers and the public who use, or have the potential to use, a service should be considered. This could include:

1. *Changes in accessibility of services.* This could be changes to eligibility to qualify for a service or the financial subsidy available for a service, withdrawal of one or more services from a site, or opening times.
2. *Changes to service models and methods of service delivery - Good public/patient engagement is essential:* how have public views been taken into

account? This might require some mitigating actions to reduce impact of the change.

3. Impact of the proposal on the wider community and other services, including transport.
4. The degree to which patients are affected - whole population or small group? However, it can still be substantial change for a small group, especially if it is a specialist service and/or patients need to access that service for a lengthy period of time.

What does the health scrutiny committee have to do first?

A health commissioner and/or provider may approach the health scrutiny committee to acknowledge that the proposal clearly constitutes a substantial development or variation of service. If so, then the first job of the health scrutiny committee is already done for them! In such a situation the health body is likely to already be planning and undertaking full public consultation and will be talking to the Committee at various points during that process.

However, if the above is not so clear and/or the health commissioner/provider is seeking advice, then it may be that as a first action, the health scrutiny committee may be asked to consider if it views the proposals as a substantial change. A substantial development or variation of service requires a full public consultation to be held (as previously stated – such public consultation is completely separate to the consultation dialogue with the health scrutiny committee. It is also distinctive from the routine engagement and discussion that takes place with local authorities as partners and key stakeholders).

If the Committee decides it is a substantial variation, then in considering proposals for a substantial change the statutory role of a health scrutiny committee is to consider:

1. *Whether the committee has been/is being properly consulted;*
2. *In developing the proposals, that the health body has taken into account the public interest through appropriate public and patient involvement and consultation?*
3. *Is any further information/clarification required?*
4. *Whether a proposal for change is in the interests of the local health service.*

If the Committee is not happy with a proposal there is an ultimate power to refer

The joint committee would refer if it is not satisfied:

- (i) with the adequacy of the content of, or amount of time allowed for, the consultation;
- (ii) that sufficient time has been allowed for consultation with the health scrutiny committee and public;
- (iii) with the reasons given for not carrying out a consultation with the committee are adequate;
- (iv) that the proposal is not in the interest of the local health service.

then it can refer the issue to the Secretary of State through the usual route for further review although it is expected that local dispute resolution processes should have been exhausted before doing this.

When consultation with the committee is not required for a substantial change in service:

Where a NHS body or commissioner believes that a decision has to be taken without allowing time for consultation because of a risk to safety or welfare of patients or staff

What information is needed by the HOSC to inform its view about the proposal?

Members will need to assure themselves regarding the impact upon access to services e.g.

- changes to eligibility
- ability of patients to access services
- availability of transport to the service (if there is a relocation)?

Members will need to assure themselves regarding the impact on service users e.g.

- who is going to be affected and how many people?
- what work has been done on this on mitigating impact?
- is there any disproportionate impact on particular groups of people?
- have those impacted been (adequately) consulted for their views and how?
- have their views been taken into account and the development of the proposal been informed by that consultation? Any mitigating actions being taken or

should be taken? This should take account of relevant equality legislation and be clear about the impact of the proposal on any disadvantaged or vulnerable groups.

Impact on quality of services

- what is the clinical evidence underpinning the change e.g. improved outcomes and patient experience or that in most cases should be no worse than neutral impact.
- will there be any impact on the standard of patient care, privacy and dignity and overall patient experience?
- is patient choice maintained?

Partnership and collaborative working

- are local clinicians on board and supportive? How is that evidenced?
- are other stakeholders on board and supportive (e.g. local authorities, community care and primary care, commissioners, STP, voluntary sector etc)

Planning and Financial

- are there any financial implications for other stakeholders? How is that being mitigated?

The health scrutiny committee should also recognise the resource envelope within which the NHS operates and therefore it should take into account the effect of the proposals on the overall sustainability of local services.

Public consultation timetable

Should the joint committee determine that this is a substantial variation of service or development a full public consultation will usually run for 12 weeks. Public consultation requires substantial planning beforehand and then significant time after for evaluation of feedback through complex NHS governance structures and can, therefore, add many months to a planning and implementation timetable. No planning or implementation work for a proposed change can be undertaken during a formal public consultation period.