

Southampton, Hampshire, Isle of Wight and Portsmouth Health Overview and Scrutiny Committees: Arrangements for Assessing Substantial Change in NHS provision.

Purpose and Summary

- 1) The purpose of this document is to agree the arrangements for assessing significant developments or substantial variations in NHS services across the Southampton, Hampshire, Isle of Wight and Portsmouth (SHIP) Local Authority areas.
- 2) It describes the actions and approach expected of both the NHS and Local Authority Health Overview and Scrutiny Committees (HOSCs) when proposals that may constitute substantial service change are being developed and outlines the principles that will underpin the discharge of each parties' role and responsibilities.
- 3) The document refreshes the 'Framework for Assessing Substantial Service Change' originally developed with advice from the Independent Reconfiguration Panel (IRP) and updates the guidance relating to the key issues to be addressed by the NHS when service reconfiguration is being considered. Emphasis is placed on the importance of constructive working relationships and clarity about roles by all parties based on mutual respect and recognition that there is a shared benefit to our respective communities from doing so.
- 4) The legal duties placed on the NHS and the role of the HOSCs are included to provide a context to the dialogue that needs to be taking place between NHS organisations and the relevant HOSC(s) to establish if a proposal is substantial in nature.
- 5) It is intended that these arrangements will support:
 - Improved communications across all parties
 - Better co-ordination of engagement and consultation with service users carers and the public
 - Greater confidence in the planning to service change to secure improved outcomes for health services provided to communities across Southampton, Hampshire, the Isle of Wight and Portsmouth.

Background legislation

- 6) Section 242 of the NHS Act 2006 (formerly Section 11 of the Health and Social care Act 2001) places a statutory duty on commissioners and providers of NHS services to engage and involve the public and service users in :
 - Planning the provision of services
 - The development and consideration of proposals to change the provision of those services
 - Decisions affecting the operation of services.

- 7) 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.
- 8) Section 244 of the NHS Act 2006 (formerly Section 7 of the Health and Social Care Act 2001) places a statutory duty on commissioners and providers of NHS services to consult Local Authority HOSCs on any proposals for significant development or substantial variation in health services. NHS organisations will note that this duty is quite distinctive from the routine engagement and discussion that takes place with Local Authorities as partners and key stakeholders.
- 9) Significant development and substantial variation are not defined in the legislation but supporting guidance is clear that the NHS body responsible for the proposal should initiate early dialogue with the HOSC(s) affected by the proposal to determine:
 - a) If the HOSC(s) consider that the change constitutes a significant development or substantial variation in service
 - b) The timing and content of the consultation process.
- 10) Where it is agreed that the proposal does constitute a substantial change the response of the HOSC(s) to the subsequent consultation process will be shaped by the following considerations:
 - a) Has the development of the proposal been informed by appropriate engagement and involvement of local people and those using the service. This should take account of the relevant equality legislation and be clear about the impact of the proposal on any vulnerable groups.
 - b) The extent to which GP commissioners have informed and support the change
 - c) The strength of clinical evidence underpinning the proposal and the support of senior clinicians whose services will be affected by the change.
 - d) How the proposed service change affects choice for patients, particularly with regard to quality and service improvement
- 11) NHS organisations will also wish to invite feedback and comment from the relevant Local Involvement Networks (LINKs) which were established by legislation to facilitate the involvement of people using health and social care services in their area. The LINK has specific legal powers, including the ability to refer issues of concern to the HOSC(s) and to enter and inspect health and social care premises. Locally good working relationships exist with LINKs and HOSCs will normally expect evidence of their contribution to any proposals for varying health services from the NHS.

- 12) The framework attached at Appendix One identifies a range of issues that may inform both the discussion about the nature of the change and the response of the HOSC to the consultation process. The intention is that this provides a simple prompt for assessing proposals, explaining the reasons for the change and understanding the impact this will have on those using, or likely to use, the service in question.
- 13) The framework is not a 'blueprint' that all proposals for changing services from the NHS are expected to comply with. The diversity of the health economy across the SHIP area and the complexity of service provision need to be recognised, and each proposal will therefore be considered in the context of the change it will deliver. The framework can only act as a guide: it is not a substitute for an on-going dialogue between the parties concerned. It is designed for use independently by the NHS in the early stages of developing a proposal, or provide a basis for discussion with HOSCs regarding the scope and timing of any formal consultation required.
- 14) The development of the framework has taken into account the additional key tests for service reconfiguration set out by Sir David Nicholson in [July 2010](#) and included in the revised operating framework for 2010-11.
- 15) Although it remains good practice to follow Cabinet Office Guidance in relation to the content and conduct of formal consultation HOSCs are able to exercise some discretion in the discharge of this duty. Early discussions with the HOC(s) whose populations are affected by a proposal are essential if this flexibility is to be used to benefit local people.
- 16) Any request to reduce the length of formal consultation with the HOSC(s) will need to be underpinned by robust evidence that the NHS body responsible for the proposal has engaged, or intends to engage local people in accordance with Section 242 requirements. These require the involvement of service users and other key stakeholders in developing and shaping any proposals for changing services. Good practice guidance summarises the duty to involve patients and the public as being:
 - a) Not just when a major change is proposed, but in the on-going planning of services
 - b) Not just when considering a proposal, but in the development of that proposal, and
 - c) In decisions that may affect the operation of services
- 17) All proposals shared with HOSCs by the NHS – regardless of whether or not they are considered substantial in nature - should therefore be able to demonstrate an appropriate consideration of Section 242 responsibilities.
- 18) Individual HOSCs will come to their own view about the nature of change proposed by the NHS. Where a proposal is judged to be substantial and

affects service users across HOSC boundaries the HOSCs concerned are required to make arrangements to work together to consider the matter.

- 19) Although each issue will need to be considered on its merits the following information will help shape the views of the HOSC(s) regarding the proposal:
 - a) The case of need and evidence base underpinning the change taking account of the health needs of local people and clinical best practice.
 - b) The extent to which service users, the public and other key stakeholders including GP commissioners have contributed to developing the proposal. Regard must be given to the involvement of 'hard to reach groups' where this is appropriate, including the need for any impact assessment for vulnerable groups.
 - c) The improvements to be achieved for service users and the additional choice this represents. This will include issues relating to service quality, accessibility and equity.
 - d) The impact of the proposal on the wider community and other services. This may include issues such as economic impact, transport issues and regeneration as well as other service providers affected.
- 20) This information will enable the HOSC(s) to come to a view about whether the proposal is substantial, and if so, whether the proposal is in the interest of the service users affected.
- 21) The absence of this information is likely to result in the proposal being referred back to the responsible NHS Board for further action.
- 22) If NHS organisations consider there is a risk to the safety or welfare of patients or staff then temporary urgent action may be taken without consultation or engagement. In these circumstances the HOSC(s) affected should be advised immediately and the reasons for this action provided. Any temporary variation to services agreed with the HOSC(s), whether urgent or otherwise, should state when the service(s) affected will reopen.
- 23) If the HOSC(s) affected by a proposal are not satisfied with the conduct or content of the consultation process, the reasons for not undertaking a consultation (this includes temporary urgent action) or that the proposal is in the interests of the health service in its area then the option exists for the matter to be referred to the Secretary of State. Referrals are not made lightly and should set out:
 - Valid and robust evidence to support the HOSC(s) position
 - Confirmation of the steps taken to secure local resolution of the matter.

Guiding Principles

- 24) The four HOSCs in Southampton, Hampshire, the Isle of Wight and Portsmouth have worked closely to build effective working relationships and share good practice.
- 25) HOSCs will need to be able to respond to requests from the NHS to discuss proposals that may be significant developments or substantial variations in services. Generally in coming to a view the key consideration will be the scale of the impact of the change on those actually using the service(s) in question.
- 26) Early discussions with HOSCs regarding potential for significant service change will assist with timetabling by the NHS and avoid delays in considering a proposal. Specific information about the steps (whether already taken or planned) in response to the legislation and the 4 tests outlined by Sir David Nicholson will support discussions about additional information or action required.
- 27) Some service reconfiguration will be controversial and it will be important that HOSC members are able to put aside personal or political considerations in order to ensure that for the scrutiny process is credible and influential. When scrutinising a matter the approach adopted by the HOSCs will be:
 - a) Challenging but not confrontational
 - b) Politically neutral in the conduct of scrutiny and take account of the total population affected by the proposal
 - c) Based on evidence and not opinion or anecdote
 - d) Focused on the improvements to be achieved in delivering services to the population affected
 - e) Consistent and proportionate to the issue to be addressed
- 28) It is acknowledged that the scale of organisational change currently being experienced in the NHS coupled with significant financial challenges across the public sector is unprecedented. Consultation with local people and the HOSC(s) may not result in agreement on the way forward and on occasion difficult decisions will need to be made by NHS Boards. In these circumstances it is expected that the responsible NHS Board will apply a 'test of reasonableness' which balances the strength of evidence and stakeholder support and demonstrates the action taken to address any outstanding issues or concerns raised by stakeholders.
- 29) If the HOSC(s) is not satisfied that the implementation of the proposal is in the interests of the health service in its area the option to refer this matter to the Secretary of State remains.
- 30) All parties will agree how information is to be shared and communicated to the public as part of the conduct of the scrutiny exercise.

Appendix One

Key questions to be addressed

Each of the points outlined above have been developed below to provide a checklist of questions that may need to be considered. This is not meant to be exhaustive and may not be relevant to all proposals for changing services

The assessment process suggested requires that the health body responsible for taking the proposal forward co-ordinates consultation and involvement activities with key stakeholders such as service users and carers, the relevant Patient and Public Involvement Forums, District Councils and other service providers affected by the proposal. The relevant HOSCs also need to be alerted at the formative stages of development of the proposal. The questions posed by the framework will assist the NHS and HOSCs in determining if a proposal is substantial, identify any additional action to be taken to support the case of need and agree the consultation process.

Name of Responsible (lead) NHS Body:

Brief Description of the Proposal:

Description of Population affected:

Confirmation of Health Overview and Scrutiny Committees contacted:

Name of Key stakeholders supporting the Proposal:

Date:

Criteria for Assessment	Yes/No/NA	Comments/supporting evidence
<p>Case for Change</p> <p>1) Is there clarity about the need for change (e.g. key drivers, changing policy, workforce considerations, gaps in service, service improvement)</p> <p>2) Has the impact of the change on service users, their carers and the public been assessed?</p> <p>3) Have local health needs and/or impact assessments been undertaken</p> <p>4) Do these take account of :</p> <p>a) Demographic considerations</p> <p>b) Changes in morbidity or incidence of a particular condition</p>		

Criteria for Assessment	Yes/No/NA	Comments/supporting evidence
<p>c) Impact on vulnerable people and health equality considerations</p> <p>d) Potential reductions in care needs (e.g. falling birth rates)</p> <p>e) Comparative performance across other health providers</p> <p>5) Has the evidence base supporting the change proposed been defined? Is it clear what the benefits will be to service quality or the patient experience?</p> <p>6) Do the clinicians affected support the proposal</p> <p>7) Is any aspect of the proposal contested by the clinicians affected</p> <p>8) Is the proposal supported by GP commissioners</p>		

Criteria for Assessment	Yes/No/NA	Comments/supporting evidence
<p>9) Will the proposal extend choice to the population affected?</p> <p>Impact on Service Users</p> <p>10) Will there be changes in access to services as a result of the changes proposed.</p> <p>11) Can these be defined in terms of</p> <ul style="list-style-type: none"> a) waiting times b) transport (public and private) c) travel time d) other (please define) <p>12) Is any aspect of the proposal contested by people using the service?</p>		

Criteria for Assessment	Yes/No/NA	Comments/supporting evidence
<p>Engagement and Involvement</p> <p>13) How have key stakeholders been involved in the development of the proposal</p> <p>14) Is there demonstrable evidence regarding the involvement of</p> <ul style="list-style-type: none"> a) Service users, their carers or families b) Other service providers in the area affected c) The relevant Local Involvement Network (s) d) Staff affected e) Other interested parties (please define) 		

Criteria for Assessment	Yes/No/NA	Comments/supporting evidence
<p>15)Is the proposal supported by the key stakeholders</p> <p>16)Is there any aspect of the proposal that is contested by the key stakeholders? If so what action has been taken to resolve this</p> <p>Options for change</p> <p>17)How have service users and key stakeholders informed the options identified to deliver the intended change</p> <p>18)Were the risks and benefits of the options assessed when developing the proposal</p> <p>19)Have changes in technology, including new drugs been taken into account</p>		

Criteria for Assessment	Yes/No/NA	Comments/supporting evidence
<p>20)Has the impact of the proposal on other service providers been evaluated</p> <p>21)Has the impact on the wider community affected been evaluated (e.g. transport, housing, environment)</p> <p>22)Have the workforce implications associated with the proposal been assessed</p> <p>23)Have the financial implications of the change been assessed in terms of: a) Capital & Revenue b) Sustainability c) Risks</p> <p>24)How will the change improve the health and well being of the population affected?</p>		