

Health Scrutiny in Nottingham and Nottinghamshire: Process for dealing with substantial developments or variations to health services

The main aim of health scrutiny is to act as a lever to improve the health of local people, ensuring their needs are considered as an integral part of the commissioning, delivery and development of health services. Regulations allow local authorities to:

- review and scrutinise any matter relating to the planning, provision and operation of the health service in their area;
- require information to be provided by relevant NHS bodies¹ and providers of health services about the planning, provision and operation of health services in the area;
- require attendance at meetings from members and employees working in relevant health bodies;
- make reports and recommendations to clinical commissioning groups, NHS England and local authorities as commissioners of NHS and/or public health services about the planning, provision and operation of health services in the area, and expect a response within 28 days;
- be consulted by commissioners of NHS and public health services when there are proposals for substantial developments or variations to services, and to make comment on those proposals; and
- in certain circumstances, refer decisions about substantial developments or variations in health services to the Secretary of State for Health.

The relevant NHS bodies have corresponding duties to provide information, attend meetings and respond to health scrutiny reports and recommendations. Health service commissioners and providers are also required to consult with the relevant local authority scrutiny body on proposals for substantial development or variation of the health service in the area of that local authority. In guidance on planning and delivering service changes, NHS England recognises the importance of this role, stating that “local authority health scrutiny bodies are important stakeholders in the development of reconfiguration proposals. Health scrutiny is a mechanism for ensuring the health and care system is genuinely accountable to patients and the public, and it brings local democratic legitimacy for service changes” (NHS England, 2013²). It is important to recognise that consultation with a health scrutiny committee is different to discussions and consultation that may take place with other parts of the local authority about service developments e.g. Executive councillors or officers.

It is also important to recognise that consultation with health scrutiny committees is distinct from the separate duties in the NHS Act 2006 (as inserted by the Health and Social Care Act 2012) on clinical commissioning groups and NHS England involving service users in the development of proposals for service change. Commissioners have a duty to involve; and engagement, consultation, participation and patient voice are all phrases that can be used to describe different levels of involvement activity. Consultation and involvement are not mutually exclusive, rather, consultation is one of the possible types of public involvement. Commissioners must ensure that arrangements for involvement are fair and proportionate. The Gunning Principles help to define what is fair - Involvement:

- takes place at a time when proposals are still at a formative stage. If involvement is to be meaningful, it should take place typically at an early stage. However, it is often permissible to consult on a preferred option or decision in principle, so long as there is genuine opportunity for the public to influence the final decision.

¹ This applies to clinical commissioning groups; NHS England; local authorities as commissioners and/or providers of NHS or public health services; and providers of NHS and public health services commissioned by clinical commissioning groups, NHS England and local authorities.

² NHS England (2013) *Planning and Delivering Service Changes for Patients*

- gives the public sufficient information and reasons for any proposal to allow the public to consider and respond.
- allows adequate time for the public to consider and respond before a final decision is made.
- the product of the public involvement exercise must be conscientiously taken into account in making a final decision.

With respect to proportionate it is almost always possible to suggest that more can be done or an involvement exercise can be improved upon. However commissioners must balance their duty to make arrangements to involve the public with their duty to act effectively, efficiently and economically.

This document focuses on the process for consulting local authority health scrutiny functions on substantial developments or variations to health services.

What is a substantial development or substantial variation?

Regulations do not define ‘substantial development’ or ‘substantial variation’. Guidance from the Centre for Public Scrutiny (CfPS)³ (based on Department for Health guidance and good practice) states that the key feature of a substantial development or variation is that there is a major impact(s) experienced by service users, carers and/or the public. It does not directly relate to whether the outcome of the change is considered to be positive or negative – whether it is in the interests of local health services is something that the health scrutiny committee will consider if it is deemed to be a substantial change. It is difficult to have a standard rigid definition that can be applied in all cases and therefore this document sets out a process for the relevant NHS body and the relevant health scrutiny body to discuss locally which proposals they consider to be substantial or not. It will therefore always be preferable for commissioners to discuss a proposed change with a health scrutiny committee at an early stage to identify whether it might be considered substantial.

When deciding if a proposal is ‘substantial’ or not, the following issues should be considered:

- Number and proportion of patients and/or carers affected – the change may affect the whole population of a geographical area or a small group. If the change affects a small group of people it may still be substantial, especially if patients need to continue to access that service regularly and/or for many years.
- The impact of changes in methods of service delivery e.g. moving services from an acute hospital setting to a community setting; changes in use of technology; change in type or level of practitioner; change in care pathway
- The impact of changes in accessibility of services e.g. change in opening times; relocation of services; withdrawal of a service; reduction or increase in services available on a particular site
- The sustainability of the service(s) affected by the proposal
- The impact of changes on patient outcomes
- Proposals to mitigate any negative impacts arising from the proposal
- Whether it is a permanent or temporary change
- The impact on other health services
- The impact on the wider community and other related services
- The cumulative impact when considered alongside other ongoing/recent developments or variations to services

³ Centre for Public Scrutiny (2005) *Substantial Variations and Developments of Health Services*
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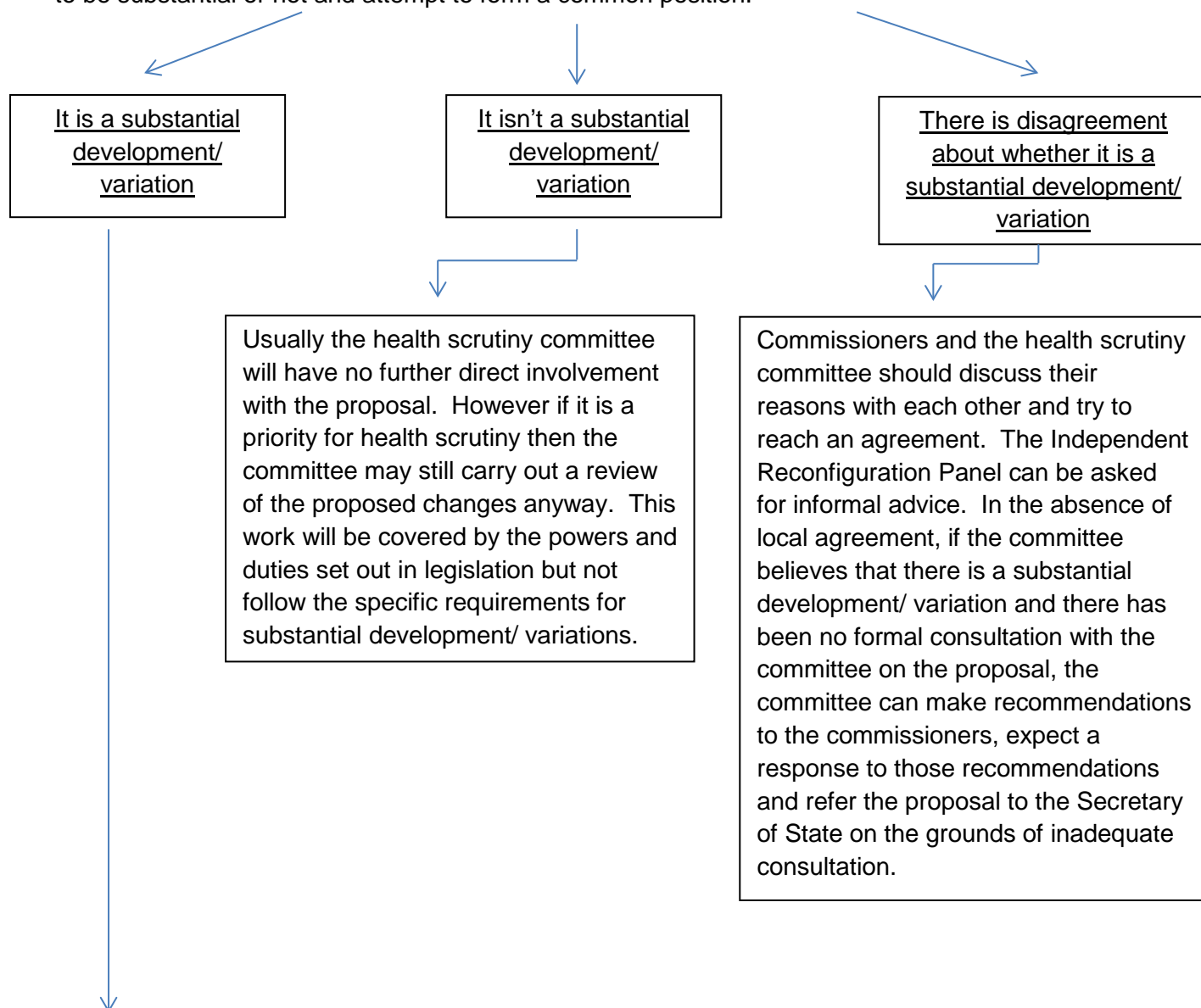
Identifying and dealing with substantial developments or variations

Identifying substantial developments or variations

1. There should be regular informal communication between commissioners and the relevant health scrutiny committee(s) to help identify potential substantial developments and variations at an early stage. Early discussions can assist with timetabling and avoid delays in considering a proposal. This communication can also help inform wider health scrutiny work programmes. Commissioning organisations are responsible for ensuring that their managers are aware of the requirements around consulting health scrutiny.

Commissioners need to provide the relevant health scrutiny committee with information as is reasonably necessary to allow it to form a view on whether a change is substantial. Set out below (Appendix A) is a list of typical information that a health scrutiny committee will require from commissioners in order to help it to identify whether the issue is likely to be substantial.

2. Commissioners and the health scrutiny committee will discuss locally whether a proposal is considered to be substantial or not and attempt to form a common position.



Exemptions from consultation

There are a number of circumstances which are exempt from the requirement to consult:

- Where the 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
- Where there is a proposal to establish or dissolve or vary the constitution of a CCG or establish or dissolve an NHS trust unless the proposal involves a substantial development or variation
- Where proposals are part of a trusts special administrator's report or draft report

In these circumstances the committee should be advised as soon as possible with the reasons for the action provided. If the committee is not satisfied with the reasons given for not carrying out consultation, they may refer the issue to the Secretary of State.

Consulting the health scrutiny committee on a substantial development or variation

3. Where a proposal for a substantial development or variation impacts on residents in more than one local authority area, then commissioners can request that a joint committee is established to be consulted on the proposed development or variation. In this circumstance only the joint committee may respond to the consultation (rather than each individual local authority scrutiny committee responding separately) and only the joint committee may exercise powers to require the provision of information about the proposal and require attendance at meetings in connection with the consultation.
4. Commissioners are required to notify the relevant health scrutiny committee of:
 - a. The proposed date by which they intend to decide to proceed with the proposal; and
 - b. The date by which they require any comments.

Ideally there should be dialogue to ensure that these timescales are realistic and achievable. For example health scrutiny committee meetings are scheduled and managed in accordance with a number of statutory requirements and timescales.

The health scrutiny committee should be advised of any changes to these dates.

Health scrutiny committee is consulted on the proposed change

If the change is considered to be substantial it does not necessarily mean that the committee will scrutinise the proposal e.g. if it is seen as positive or if the committee has other priorities and has to balance its workload. The committee may consider that it wouldn't add additional value to involvement and consultation already undertaken.

5. It is good practice for scrutiny functions to be involved in the development of proposals in the early stages but as proposals are refined there should be formal consultation on the final set of proposals to be tested through wider public engagement. Health scrutiny bodies may also be able to advise on how patients and the public can be effectively engaged and listened to.
6. The committee's role is to determine whether it considers the proposal to be in the interests of local health services. It is likely to wish to take into account a range of information to help it come to a conclusion about this. This will include the information that was originally provided by commissioners in order to inform the decision about whether the proposal was substantial but additional information is also likely to be required. A list of typical information that a health scrutiny committee will want to consider can be found below (Appendix B). The committee can make use of health scrutiny powers to request information and require attendance at meetings in connection with the proposals. It is also sensible for the committee to be able to receive details about the outcomes of public engagement and consultation so it can be informed by patient and public opinion.
7. Following consultation, the health scrutiny committee can make comments on the proposals within the timescales.
8. The commissioner should communicate the outcome of the decision to the health scrutiny committee and its response to any recommendations made by the committee in relation to the proposal.
9. If the health scrutiny committee has made a recommendation in relation to the proposal and the consulting organisation disagrees, then the organisation must notify the committee that it disagrees and the two bodies should take such steps as reasonably practicable to reach an agreement.
10. If the local authority concludes that all reasonably practicable steps at local resolution have been exhausted and it still has outstanding concerns, it has the option to refer the proposal to the Secretary of State. Referrals can be made where:
 - the local authority is not satisfied that the consultation with the relevant health scrutiny committee was adequate in terms of content or time allowed;
 - the local authority concludes that the proposals would not be in the interests of the local health service; and/ or
 - there was not consultation because a decision was needed without time for consultation with the local authority but the local authority is not content that the reasons given for this are adequate.

Implementation of substantial developments or variations

11. The commissioner should keep the relevant health scrutiny committee up to date with progress of the implementation phase. This may either take place formally at a committee meeting(s) or through more informal channels depending upon what is agreed locally for that particular service change.

Appendix A

Information to be provided to the relevant health scrutiny committee to inform consideration of whether a proposed change constitutes a substantial development or variation to health services

Commissioners need to provide the relevant health scrutiny committee with information as is reasonably necessary to allow it to form a view on whether a change is substantial. Set out below is a list of typical information that a health scrutiny committee will require from commissioners in order to help it to identify whether the issue is likely to be substantial. This list is not intended to be exhaustive and may not be relevant to all proposals for changing services.

- Title of proposal
- Timescales and decision making process
- Description of current service(s)
- Description of proposed change(s)
- Reason why the change is being proposed
- Population affected (service users, carers, families), including the number and proportion of people are affected; which areas they are from
- Assessment of the impact of the proposed change on patient outcomes
- Assessment of the impact of the proposed change on service user/ carer experience
- Equality Impact Assessment(s) carried out
- Whether there will be changes in methods of service delivery as a result of the proposed change e.g. use of technology; type or level of clinician/ practitioner; care pathways
- Whether there will be changes in access as a result of the proposed change e.g. opening times, waiting times, transport, travel time etc
- Assessment of the sustainability of the service(s) affected by the proposal
- Assessment of the impact on other health and social care services
- Whether it is a permanent or temporary change
- Proposals to mitigate any negative impacts arising from the proposed changes
- The cumulative impact when considered alongside other ongoing/recent developments or variations to services
- Evidence of service user/ carer views on the impact of the proposed change – what do they consider the likely impact to be? Do they consider it to be a substantial change?
- Evidence of clinical views on the impact of the proposed change – what do they consider the likely impact to be? Do they consider it to be a substantial change?

Commissioners may also wish to advise the Committee of whether they consider the proposal to be a substantial development or variation to health services and the reasons why.

Appendix B

Additional information to be provided to the relevant health scrutiny committee to inform consideration of whether of a substantial development or variation to health services is in the interests of local health services

In addition to information already provided to the committee to inform the decision about whether the proposed change is substantial or not, it is likely that the committee will want to consider additional information and evidence in order to be able to assess whether the proposed change is in the interests of local health services. The committee may consider evidence from a variety of sources, but below is a list of information that the committee may request from the relevant commissioner. It may also be appropriate to update information previously provided as the proposal develops and more detailed assessment of the impact of the proposal is undertaken.

- Details of engagement and consultation carried out e.g. with service users, carers, families, staff and clinicians, providers, Healthwatch
- Findings and outcomes of engagement and consultation carried out
- How the proposed change is being influenced/ developed in response to the findings of engagement and consultation
- Plans for any further engagement or consultation to be carried out
- Whether service users support the proposal and if there is any aspect that they don't support
- Whether clinicians support the proposal and if there is any aspect that they don't support
- The benefits of the proposed change e.g. on patient experience, service quality, patient outcomes, on local health services
- How the proposed change will improve the health and wellbeing of the population affected
- How the proposed change will contribute to reducing health inequalities
- Any negative aspects/ downsides of the proposed change and how they will be minimised/ mitigated
- Risks associated with the proposed change and how they will be mitigated/ managed
- Impact of the proposed change on other service providers including NHS, local authority, voluntary sector
- Impact of the proposed change on the wider community e.g. housing, transport, environment
- Workforce implications associated with the proposal
- Financial implications associated with the proposal
- Equality Impact Assessment(s)