

## **Adults and Health Select Committee Substantial Variation Briefing – September 2017**

### **Role of the Select Committee (as defined in Department of Health guidance) –**

The Select Committee **may** review and scrutinise any matter relating to the planning, provision and operation of the health service in its area.

- Strengthen the voice of local people, ensuring their needs and views are considered
- Taking an overview as to how well integration is working
- Proactively seeking information, challenging and testing
- Focussing on improving outcomes, including general health improvement and how inequalities are being addressed
- Assuring itself of appropriate consultation on substantial developments or variation within the health system

As part of this role, the Select Committee **must** have in place a mechanism to deal with referrals made by local Healthwatch organisations, and must keep the referrer informed of any action taken in relation to the matter. Otherwise, the procedure of review and scrutiny is to be determined by the local authority.

### **What is a substantial development or variation?**

Health service commissioners and providers have a wide statutory duty to consult and involve the public in planning and proposed changes.

In addition, the regulations require relevant NHS bodies and health service providers to consult the Committee on any proposal which they have “under consideration” for a substantial development of or variation in health services in the local authority’s area.

“Substantial development” and “substantial variation” are not defined in the legislation.

This is a matter for local discussion and agreement between the commissioner and the health scrutiny committee. In Surrey, the attached checklist is designed to support this process.

The NHS Hull engagement guide<sup>1</sup> suggests the following should be taken into account:

- Changes in accessibility of services
- Impact of proposal on the wider community
- Numbers of patients affected
- Methods of service delivery

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<sup>1</sup> <http://engagementguide.nhshull.nhs.uk/page/what-is-substantial-development-or-variation>

It also suggests “a change involving only a small number of patients could still be regarded as substantial, particularly if patients would need to continue to access the service for many years.”

### **What powers does the Committee have in respect to a substantial development or variation?**

Legislation confers health scrutiny with the power to refer proposals to the secretary of state. It is able to do so in the following circumstances:

- It is not satisfied with the adequacy of content of the consultation.
- It is not satisfied that sufficient time has been allowed for consultation. (The referral power in the context of inadequate consultation only relates to the consultation with the local authority, and not consultation with other stakeholders.)
- It considers that the proposal would not be in the interests of the health service in its area.
- It has *not* been consulted, and it is not satisfied that the reasons given for not carrying out consultation are adequate.

In the case that the committee has reviewed the proposals and made a recommendation, the proposal may be referred if the commissioner has disagreed with the recommendation.

### **Before it can do so, all reasonably practical steps must be taken to reach an agreement at a local level within in reasonable timeframe.**

If the committee has not commented on the proposals, or has done so without a recommendation, it must inform the relevant NHS body of its intention to either make the referral, or the date by which a decision to make the referral will be made.

### **Background**

‘Local Authority Health Scrutiny: Guidance to help Local Authorities and their partners to deliver effective health scrutiny’ Department of Health, June 2014  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/324965/Local\\_authority\\_health\\_scrutiny.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/324965/Local_authority_health_scrutiny.pdf)

The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013  
<http://www.legislation.gov.uk/uksi/2013/218/contents/made>