

A protocol between
Hampshire Health and Adult Social Care
Select (Overview and Scrutiny)
Committee
and
NHS providers and commissioners
serving the population of Hampshire

1. Introduction

With whom this protocol applies:

This Protocol is an agreement between Hampshire County Council's Health and Adult Social Care Select (Overview and Scrutiny) Committee (Hampshire Health Scrutiny Committee) and the following NHS bodies¹ (i.e. commissioners and providers of health services). The Protocol is a living document; therefore additional bodies not named here may be asked to sign up to it in future:

Commissioners:

NHS England (Wessex)
NHS Fareham and Gosport CCG
NHS North East Hampshire and Farnham CCG
NHS North Hampshire CCG
NHS South Eastern Hampshire CCG
NHS West Hampshire CCG

Acute Hospital Trusts:

Frimley Health NHS Foundation Trust
Hampshire Hospitals NHS Foundation Trust
Portsmouth Hospitals NHS Trust
University Hospital Southampton NHS Foundation Trust

Community and Mental Health Trusts:

Solent NHS Trust
Southern Health NHS Foundation Trust
Surrey and Borders Partnership NHS Foundation Trust
Sussex Partnership NHS Foundation Trust

Ambulance Trusts:

South Central Ambulance Service NHS Foundation Trust
South East Coast Ambulance Service NHS Foundation Trust

¹ The organisations cited on this page are not an exhaustive list of those commissioners or providers who may be involved, now or in the future, in the planning, provision, or operation of NHS services in Hampshire, and therefore the protocol should be applicable to any body not listed above who can be categorised as such.

This Protocol applies to how the Hampshire Health Scrutiny Committee will work with NHS bodies who commission or provide services in Hampshire or to its population, specifically in relation to consultation and engagement. This protocol applies not only to extensive public consultations of the kind required by legislation, but also to developments that affect smaller numbers of patients, smaller geographical areas or specific services only.

The Protocol covers changes resulting from commissioning decisions by CCGs or NHS England (Wessex), and provider decisions made by any relevant health service provider that is commissioned by a CCG or NHS England (potentially in conjunction with the Local Authority) to provide services in Hampshire or for Hampshire residents.

Purpose of the protocol

The aim of this protocol is to provide:

- improved engagement and communication across all parties;
- clear standards which set out how all parties will work together;
- better coordination of engagement and consultation with service users, carers and the public; and
- greater confidence in the planning for service change, to secure improved outcomes for health services and communities across Hampshire.

Aim of Health Scrutiny

The most recent guidance on health scrutiny, published by the Department of Health in June 2014, stated that “the primary aim of health scrutiny is to strengthen the voice of local people, ensuring that their needs and experiences are considered as an integral part of the commissioning and delivery of health services and that those services are effective and safe.”

Hampshire County Council’s Health Scrutiny Committee

Membership

The Committee is made up of 20 elected County Councillors and four co-opted District and Borough Councillors. Its Chairman and Vice Chairman are elected at the Annual County Council meeting held in May.

The latest membership of the Committee can be found here:

<http://www3.hants.gov.uk/yourcountycouncillors/committees/committee.htm?id=136>

Terms of Reference

The Constitution of Hampshire County Council sets out the terms in which the Committee operates:

<http://documents.hants.gov.uk/constitution/Chapter5-SelectOverviewandScrutinyCommitteesandHealthOverviewandScrutinyCommittee.pdf>

The Hampshire Health Scrutiny Committee has multiple functions:

- It is a formal consultee in any proposal the NHS or provider of an NHS service may have under consideration which may be considered 'substantial';
- It can make recommendations to the NHS, providers of NHS services, Executive or County Council arising from the scrutiny review process;
- It oversees health and social care integration through scrutiny of the Health and Wellbeing Board;
- It conducts research and analysis of policy issues; and
- It holds the Executive and the Council to account.

Contact Point

The named contact point for health scrutiny in Hampshire County Council is:

Katie Benton
Scrutiny Officer
Telephone: 01962 847336
Email: katie.benton@hants.gov.uk

The scrutiny officers acts as the first point of contact for any issue that the NHS may wish to raise with the Hampshire Health Scrutiny Committee or its Chairman.

Expectations from the NHS

Engagement and Consultation

Section 242 of the NHS Act 2006 (as amended by the Health and Social Care Act 2012) places a statutory duty on commissioners and providers of NHS services to engage and involve the public and service users in:

- the planning and provision of services;
- the development and consideration of proposals to change the provision of those 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.

Section 244 of the NHS Act 2006 (as amended by the Health and Social Care Act 2012) places a statutory duty on commissioners and providers of NHS services to consult the local authority on any proposals for significant development or substantial variation in health services. This is distinctive from the routine engagement and discussion that happens with local authorities as partners and stakeholders.

Early Engagement

The Hampshire Health Scrutiny Committee would expect a principle of 'no surprises' to operate. It would expect to know of any issues at the earliest possible stage, with an onus on both providers and commissioners to flag upcoming proposals. This will foster a good working relationship between the Hampshire Health Scrutiny

Committee and the any provider or commissioner of the health service, and support a credible scrutiny process. This approach should be through the Chairman and Scrutiny Officer supporting the Hampshire Health Scrutiny Committee.

The Health Scrutiny Committee is able to give a view on whether proposals are likely to amount to a substantial change in service, and the information that will be required for consideration by the Committee.

Call Out for items to the Committee

A call out will be sent to NHS representatives at least six weeks in advance of the upcoming Health Scrutiny Committee in order that items on the agenda from the work programme can be confirmed, and notice can be given to the NHS for any other items to come forward. The NHS will use this call out to communicate any issues that it feels requires scrutiny by the Health Scrutiny Committee, and to confirm scheduled work programme items.

Attendance before the Committee

Appearances before the Committee will be agreed at least three weeks in advance in alignment with the Health Scrutiny work programme, unless an urgent item is required from the NHS.

Notice should be given from the NHS in advance should an appearance or item need to be delayed, together with the reason for this delay.

Information to be provided to the Committee

The format for information to be provided to the Committee will be agreed in conjunction with the scrutiny officer. All items requiring a decision from, or the support of, the Committee, must be in a report format which is received in advance of the agenda distribution to allow Members to consider the information prior to the meeting.

The Health Scrutiny Committee will intend to give 20 working days notice, except in very urgent circumstances, of its requirement for:

- A written report to the Committee
- A presentation to the Committee
- A representative to speak to an item

The deadline for papers to the Committee is eight working days in advance (bank holidays permitting). The deadline for presentations to the Committee is two working days in advance of the meeting. A lead-in timetable will be produced before the beginning of each municipal calendar year.

Scrutiny Reports and Recommendations

Local NHS organisations have a duty to respond to reports and recommendations made by the Health Scrutiny Committee within 28 working days of receiving them. A longer timescale may be agreed to allow for the NHS to consider a request for

information or recommendation, but this must be communicated to the scrutiny officer when a report or recommendation is first received.

Board Papers

The NHS will make arrangements for Members of the Health Scrutiny Committee to be provided with relevant board agendas and papers, and any briefings and information that they think helpful to the Committee.

Alternatives to Formal Meeting Items

As the Hampshire Health Scrutiny Committee meets six times a year and has a substantial amount of business to progress in this time, there may be opportunities outside of the formal meeting structure to provide information or updates to Members. This may include, but is not limited to:

- Inclusion of information items in the 'HASC bulletin', circulated to members fortnightly.
- The circulation of written briefings on the day of formal meetings.
- Informal events held by NHS organisations.
- NHS organisation items being heard as part of the Health and Social Care Member Briefing Programme.

Substantial Variation or Developments in Service

Defining Substantial Variation or Development

There is no formal definition of what constitutes a substantial development or variation in health services. What is 'substantial' will vary by local authority area. However, the Department of Health has issued guidance on what may be considered 'substantial', parts of which are copied below:

- Changes in accessibility of the service. For example, both reductions and increases on a particular site or changes in opening times for a particular clinic. There should be a discussion of any proposal which involves the withdrawal of in-patient, day patient or diagnostic facilities for one or more speciality from the same location.
- Impact of the service on the wider community and other services.
- Number of patients/service users affected. Changes may affect the whole population (such as changes to accident and emergency) or a small group (patients accessing a specialised service). If change affects a small group it may still be regarded as substantial, particularly if patients need to continue to access that service long term (for example, renal services). There should be an informed discussion about whether this is the case and which level of impact is considered substantial.
- Methods of service delivery, such as moving particular services into a community setting from an acute hospital setting.
- Closure or decommissioning of services.

The Hampshire Health Scrutiny Committee has published a framework which aims to guide the NHS on this matter:

http://www3.hants.gov.uk/councilmeetings/advsearchmeetings/meetingsitemdocuments.htm?sta=&pref=Y&item_ID=4831&tab=2&co=&confidential=

Under the 'no surprises' principle, the Hampshire Health Scrutiny Committee will expect all NHS bodies to notify it as early as possible of any proposals for service change, to allow the Hampshire Health Scrutiny Committee to determine whether or not it believes the proposal represents 'substantial variation' and to help shape the timing and content of the consultation process.

Where there is any question of whether or not it is 'substantial,' the NHS body is asked to discuss the proposals with the Hampshire Health Scrutiny Committee.

Where there is disagreement about whether a proposal constitutes 'substantial variation,' the NHS body will provide the Hampshire Health Scrutiny Committee with information and reasons why it considers the issue is not substantial. The Hampshire Health Scrutiny Committee may seek views from NHS England, so long as they are not the proposer of the change.

If the disagreement is still not resolved, the NHS body and Hampshire Health Scrutiny Committee may ask the Independent Reconfiguration Panel (IRP) for informal advice on whether the issue should be regarded as substantial. Finally, if agreement is still not reached and the Hampshire Health Scrutiny Committee believes the proposal to be 'substantial variation,' it may refer the matter to the Secretary of State on the basis of inadequate consultation. It would then be for the Secretary of State to determine whether it is substantial.

Consultation

When it is decided that a proposal for service change is 'substantial,' the NHS body must consult the Hampshire Health Scrutiny Committee. The NHS body will be required to publish the date by which it intends to make a decision as to whether it will proceed with the proposal and the date by which it would expect the Hampshire Health Scrutiny Committee to provide any comments on the proposal.

Government guidance on consultations indicates a full consultation should last for a minimum of 12 weeks. It is recognised that this may need to be shorter in some circumstances. Any request to reduce the length of consultation should be discussed with the Hampshire Health Scrutiny Committee and underpinned by robust evidence that the NHS body has engaged, or intends to engage local people, in accordance with Section 242 requirements.

Although not formally required in legislation, it is helpful for the Hampshire Health Scrutiny Committee to be informed of the intention by an NHS body to go out to a full 12 week consultation, in order that it may advise on how NHS bodies can address the four tests of service change through this process. Additionally, members may be able to helpfully provide feedback on written materials.

There are exceptions to the requirement to consult the Hampshire Health Scrutiny Committee. These are:

- There is a need for urgent action because of concerns about risks to the safety or welfare of patients or staff. In these circumstances, the NHS body must still inform the Hampshire Health Scrutiny Committee immediately of the decision, explaining why consultation has not taken place.
- It is proposed to establish or dissolve an NHS Trust or CCG, unless such action involves a substantial development or variation of service.
- Any proposals contained in a trust special administrator's report or the final recommendations of a trust special administrator.

Across Hampshire, there may be occasions when a proposed service change affects residents across two or more commissioner area boundaries or across upper tier/unitary local authority boundaries. Where the proposed service change affects residents across such boundaries, it will be important for the Hampshire Health Scrutiny Committee to understand which NHS body will be responsible for considering the consultation responses and taking the final decision.

The County Council, Districts/Borough Councils and the Hampshire Health Scrutiny Committee will be consulted separately as elected representatives and stakeholders, as appropriate. Consultation with the Hampshire Health Scrutiny Committee should not be used as a substitute for consultation of the Health and Wellbeing Board, the Cabinet/Executive of the County Council or the relevant District/Borough Councils or as a substitute for public consultation.

Joint Health Scrutiny Committees

Informal Joint Committees

Hampshire County Council may appoint a discretionary joint health scrutiny committee to carry out specified health scrutiny functions, for example health scrutiny in relation to health issues that cross into the boundaries of its local authority partners. Establishing a joint committee of this kind does not prevent the appointing local authorities from separately scrutinising health issues. However, there are likely to be occasions on which a discretionary joint committee is the best way of considering how the needs of a local population, which happens to cross council boundaries, are being met.

Statutory Joint Committees

Where a proposed service change affects residents across local authority boundaries, the NHS body has a duty to consult all health scrutiny committees affected. In this circumstance, Regulations require all affected local authorities who have determined proposals a substantial change in service to establish a joint health scrutiny committee for the purpose of responding to the consultation.

In this event, the NHS body leading on the consultation should provide sufficient information about the proposal, the evidence used to require the action proposed and the anticipated impact of the variation or development upon existing and future patients and carers to each of the affected Committees at an early stage. This gives each health scrutiny committee ample time to decide whether or not the proposed

change represents a substantial service change for its local authority area population.

When a joint health scrutiny committee has been arranged, and Hampshire's health scrutiny powers have been delegated to this committee, the following requirements are applicable:

- Only the joint committee may respond to the consultation (i.e. rather than each individual local authority responding separately).
- Only the joint committee may exercise the power to require the provision of information by the relevant NHS body or health service provider about the proposal (if this power has been delegated by the local authority).
- Only the joint committee may exercise the power to require members or employees of the relevant NHS body or health service provider to attend before it to answer questions in connection with the consultation.

It will be for each local authority to determine whether they wish to delegate the power of referral to the Secretary of State to the joint committee.

What can be expected from the Health Scrutiny Committee?

Some service reconfigurations will be controversial and it is important that Hampshire Health Scrutiny Committee members put aside personal or political considerations in order to ensure that the scrutiny process is credible and influential. All Members who believe they have a Disclosable Pecuniary Interest or Personal Interest in any matter to be considered a Committee meeting must declare that interest and, having regard to the relevant sections of the County Council's Members' Code of Conduct, make a decision regarding whether to leave the meeting while the matter is discussed.

When scrutinising any matter, the Hampshire Health Scrutiny Committee will aim to:

- be challenging but not confrontational;
- be politically neutral in the conduct of scrutiny and take account of the total population affected by the proposal;
- make decisions based on evidence and not opinion or anecdote;
- remain focused on the improvements to be achieved in delivering services to the population affected; and
- be consistent and proportionate to the issue being addressed.

The Secretary of State outlined in 2010 the 'four tests' of service change that would shape consultation on substantial variations to health services. When considering its response to a consultation on a proposal for substantial variation, the Hampshire Health Scrutiny Committee will ask the following questions:

1. Has the development of the proposal been informed by appropriate engagement and involvement of local people and those using the service?
2. To what extent have commissioners led, informed and supported the change?
3. How strong is the clinical evidence underpinning the proposal and does it have the support of senior clinicians whose services will be affected by the change?
4. How does the proposed service change affect patient choice, particularly with regard to quality and service improvement?

The Hampshire Health Scrutiny Committee will respond to the consultation by the NHS body's given deadline with its comments and views in writing and will explain the process it has followed, the evidence it has considered and identify any witnesses that have contributed. The response will summarise any areas of disagreement between the Hampshire Health Scrutiny Committee and the NHS body and include recommendations and suggestions for reaching a consensus.

The Hampshire Health Scrutiny Committee will request a report on the outcome of all the consultation undertaken by the NHS body on the proposed service change in order to take a view on how the consulting body has responded to the views it has received and ensure the final decision is in the interests of local people.

At the end of the consultation, the Hampshire Health Scrutiny Committee may conclude that the consultation has not been adequate, or that the final proposals are not in the interests of the local health service in Hampshire. Any decision taken will be based on the evidence presented, and the relevant NHS body will be informed at the earliest stage of this decision.

The Hampshire Health Scrutiny Committee will first try to resolve any conflict with the NHS body, with the input of NHS England where appropriate or necessary. Where the Hampshire Health Scrutiny Committee's response to a consultation includes a recommendation, and the consulting organisation disagrees with that recommendation, that organisation must notify the Hampshire Health Scrutiny Committee of the disagreement. Both the consulting NHS body and the Hampshire Health Scrutiny Committee's will take such steps as are reasonably practicable to try to reach agreement. Where NHS England or a Clinical Commissioning Group is acting on behalf of a provider, the Hampshire Health Scrutiny Committee and NHS England or the Clinical Commissioning Group must involve the provider in the steps they are taking to try to reach agreement.

If resolution cannot be reached, the Hampshire Health Scrutiny Committee has the power to refer the issue to the Secretary of State.

The reasons for which an issue might be referred to the Secretary of State include where the Hampshire Health Scrutiny Committee is not satisfied:

- with the content of the consultation or the time allowed;
- that the reasons given for not carrying out adequate consultation are reasonable.
- that the changes are in the interest of the population or health service in Hampshire.

When making a referral to the Secretary of State, certain information and evidence must be included. The Hampshire Health Scrutiny Committee would be expected to provide very clear evidence-based reasons for any referral, which must include:

- An explanation of the proposal to which the report relates.
- An explanation of the reasons for making the referral.
- Evidence in support of these reasons.

- Where the proposal is referred because of inadequate consultation, the reasons why the Hampshire Health Scrutiny Committee is not satisfied of its adequacy.
- Where the proposal is referred because there was no consultation for reasons relating to safety or welfare of patients or staff, reasons why the Hampshire Health Scrutiny Committee is not satisfied that the reasons given for lack of consultation are adequate.
- Where the Hampshire Health Scrutiny Committee believes that proposals are not in the interests of the health service in its area, a summary of the evidence considered, including any evidence of the effect or potential effect of the proposal on the sustainability or otherwise of the health service in the area.
- An explanation of any steps that the Hampshire Health Scrutiny Committee has taken to try to reach agreement with the relevant NHS body or health service provider.
- Evidence that the Hampshire Health Scrutiny Committee has complied with the requirements which apply where a recommendation has been made.
- Evidence that the Hampshire Health Scrutiny Committee has complied with the requirements which apply where a recommendation has

Should the Hampshire Health Scrutiny Committee make a referral to the Secretary of State it will notify the relevant NHS bodies and provide it with a copy of the referral. Any referral by to the Secretary of State is passed to the Independent Reconfiguration Panel for their initial assessment, and, should it be determined appropriate, full review. More can be found on the IRP here:

<https://www.gov.uk/government/organisations/independent-reconfiguration-panel>