

HEALTH AND ADULT SOCIAL CARE OVERVIEW AND SCRUTINY COMMITTEE

12 JANUARY 2023

KENT AND MEDWAY ELECTIVE ORTHOPAEDIC UNIT

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Summary

Attached to this report is a paper from the Kent and Medway Integrated Care Board (Appendix 1) on a proposal to create a Kent and Medway Elective Orthopaedic unit based on the Maidstone hospital site.

The Committee are asked to consider whether these proposals constitute a substantial variation or development of a health service.

1. Budget and policy framework

1.1. Under the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 the Council may review and scrutinise any matter relating to the planning, provision, and operation of the health service in Medway. In carrying out health scrutiny a local authority must invite interested parties to comment and take account of any relevant information available to it, and in particular, relevant information provided to it by a local Healthwatch. The Council has delegated responsibility for discharging this function to this Committee and to the Children and Young People Overview and Scrutiny Committee as set out in the Council's Constitution.

2. Background

2.1 The Local Authority (Public Health, Health and wellbeing Boards and Health Scrutiny) Regulations 2013 place a duty on NHS bodies and health service providers to consult health scrutiny committees on any proposal which they have "under consideration" for a substantial development of or variation in the provision of health services in the local authority's area. The term "under consideration" is not defined and will depend on the facts, but a development or variation is unlikely to be held to be "under consideration" until a proposal has been developed.

Timescales for consultation

- 2.3 The proposer of substantial developments or variations must notify the Committee of the timescales, which must be published by. When consulting on substantial developments or variations, a relevant NHS body or health service provider must notify the Committee of the date by which it requires the Committee to provide comments in response to the consultation and the date by which it intends to make a decision as to whether to proceed with the proposal. These dates must also be published. This is so that local patients and communities are aware of the timescales that are being followed. Any changes to these dates must be notified and published.
- 2.4 It is sensible for health scrutiny to be able to receive details about the outcome of public consultation before it makes its response so that the response can be informed by patient and public opinion.

Responses to consultation

- 2.5 Where the Committee has been consulted on substantial developments or variations, it has the power to make comments on the proposals. Where the Committee makes a recommendation and the consulting organisation disagrees with that recommendation, that organisation must notify the Committee of the disagreement. Both the consulting organisation and the Committee must take such steps as are reasonably practicable to try to reach agreement.
- 2.6 Where the Committee has not commented on the proposal or has commented but without making a recommendation, it must notify the consulting organisation as to its decision as to whether to refer the matter to the Secretary of State and if so, the date by which it proposes to make the referral or the date by which it will make a decision on whether to refer the matter to the Secretary of State.

Referrals to the Secretary of State

- 2.7 Local authorities may refer proposals for substantial developments or variations to the Secretary of State in certain 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
 - 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.

3. Risk management

- 3.1. There are no significant risks to the Council arising from this report.

4. Financial implications

- 4.1. There are no financial implications to Medway Council arising directly from the recommendations of this report.

5. Legal implications

- 5.1. Provision for health scrutiny is made in the Local Authority (Public Health, Health and wellbeing Boards and Health Scrutiny) Regulations 2013 and includes a requirement on relevant NHS bodies and health service providers (including Public Health to consult with local authorities about any proposal which they have under consideration for a substantial development of or variation in the provision of health services in the local authority's area. This obligation requires notification and publication of the date on which it is proposed to make a decision as to whether to proceed with the proposal and the date by which Overview and Scrutiny may comment.
- 5.2. Where more than one local authority has to be consulted under these provisions those local authorities must convene a Joint Overview and Scrutiny Committee for the purposes of the consultation and only that Committee may comment.
- 5.3. The legislation makes provision for local authorities to report a contested substantial health service development or variation to the Secretary of State in certain circumstances, after reasonable steps have been taken locally to resolve any disagreement between the local authority and the relevant responsible person on any recommendations made by the local authority in relation to the proposal. The circumstances in which a report to the Secretary of State is permitted are where the local authority is not satisfied that consultation with the local authority on the proposed substantial health service development or variation has been adequate, in relation to content or time allowed, or where the authority considers that the proposal would not be in the interests of the health service in its area.
- 5.4. Revised guidance for health service Commissioners on the NHS England assurance process for service changes was published in March 2018. The guidance states that broadly speaking, service change is any change to the provision of NHS services which involves a shift in the way front line health services are delivered, usually involving a change to the range of services available and/or the geographical location from which services are delivered.
- 5.5. The NHS England guidance acknowledges that the terms "substantial development" and "substantial variation" are not defined in the legislation. Instead commissioners and providers are encouraged to work with local authorities to determine whether the change proposed is substantial thereby triggering a statutory requirement to consult with Overview and Scrutiny.
- 5.6. The NHS England guidance also states that public consultation, by commissioners and providers is usually required when the requirement to

consult a local authority is triggered under the regulations because the proposal under consideration would involve a substantial change to NHS services.

- 5.7. However, public consultation may not be required in every case, sometimes public engagement and involvement will be sufficient. The guidance says a decision around this should be made alongside the local authority.
- 5.8. Government Guidance on Local Authority Health Scrutiny says that constructive dialogue with health scrutiny when communicating on timescales for comments or decisions in relation to substantial developments or variations should help ensure that timescales are realistic and achievable. In addition, the Guidance says “it sensible for health scrutiny to be able to receive details about the outcome of public consultation before it makes its response so that the response can be informed by patient and public opinion”

6. Recommendation

6.1. The Committee is requested to:

- a) consider the proposal from the Kent and Medway Integrated Care Board set out in Appendix 1 to increase capacity by way of a Kent and Medway Elective Orthopaedic Centre at Maidstone hospital.
- b) decide whether the proposal constitutes a substantial variation or development in the provision of health services in Medway.

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Appendices

Appendix 1 – Report from Kent and Medway Integrated Care Board

Background Papers

None