

HEALTH AND ADULT SOCIAL CARE OVERVIEW AND SCRUTINY COMMITTEE

20 SEPTEMBER 2023

REPROCUREMENT OF COMMUNITY SERVICES CONTRACTS

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Summary

Attached to this report is a paper from the Integrated Care Board (ICB) on the re-procurement of community services contracts.

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

A Member briefing on this issue took place on 30 August.

1. Recommendations

- 1.1. The Committee is requested to consider the proposals from the Integrated Care Board and decide whether these proposals, at this point in time, constitute a substantial variation or development in the provision of health services in Medway.
- 1.2. In the event the Committee decides the proposals are not a substantial variation, to request that the ICB bring to the Committee any proposal which they have under consideration for a substantial development of or variation in the provision of health services in Medway as soon as possible.

2. Budget and policy framework

- 2.1. 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.

3. Background

- 3.1. 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. 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.
- 3.2. 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.
- 3.3. 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.
- 3.4. Revised guidance (<https://www.england.nhs.uk/wp-content/uploads/2018/03/planning-assuring-delivering-service-change-v6-1.pdf>) 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. It also says that any proposed changes should be aligned to Sustainability and Transformation Partnership (STP) Plans.
- 3.5. 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.
- 3.6. 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.
- 3.7. 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.

- 3.8. 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”.

Timescales for consultation

- 3.9 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.
- 3.10 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.

When consultation is not required

- 3.11 Government guidance says that there are certain proposals where consultation with health scrutiny is *not* required. These are:
- Where the relevant NHS body or health service 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 (this might for example cover the situation where a ward needs to close immediately because of a viral outbreak) – in such cases the NHS body or health service provider must notify the local authority that consultation will not take place and the reason for this.
 - Where there is a proposal to establish or dissolve or vary the constitution of a CCG (*now the ICB*) 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 (i.e., when a trust has financial difficulties and is being run by an administration put in place by the Secretary of State) – these are required to be the subject of a separate 30-day community-wide consultation.

Responses to consultation

- 3.12 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.

- 3.13 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

- 3.14 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.

- 3.15 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.

- 3.16 A report and substantial variation questionnaire from the Integrated Care Board are attached at Appendices 1 and 2 to the report.

- 3.17 The community service proposals were also considered by Kent County Council's Health Overview and Scrutiny Committee on 6 September 2023. In terms of a high-level summary from this meeting:

- The Committee did not agree the proposal to be a substantial variation of service.
- The Committee did have concerns around the lack of detail about the finances involved.

- The Committee were keen to be kept informed about the engagement that would be undertaken. They spoke about how co-design of services would work.
- The Committee expressed some concern about the new method of contracting being used in so far as that there was some risk involved as it had not been used before in Kent and Medway.
- The committee were concerned how staff would work on both the day to day job alongside transformation but were assured this was common place.

4. Risk management

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

5. Financial implications

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

6. Legal implications

- 6.1 The legal implications are set out in the report.

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Appendices

Appendix 1 – Report from Integrated Care Board

Appendix 2 – Substantial Variation Questionnaire

Background Papers

None