

## **Health and Adult Social Care Overview and Scrutiny Committee**

**7 August 2024**

### **Kent and Medway Integrated Care Board Community Services Transformation Update**

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#### **Summary**

Attached to this report is a paper from the Integrated Care Board (ICB) which gives an update on the procurement of community services. Also attached is an updated substantial variation assessment questionnaire for the Committee's consideration.

#### **1. Recommendations**

##### **1.1 Members are asked to:**

- a) note the update from the Integrated Care Board, as set out in Appendix 1 to this report.
- b) consider the updated proposals from the Integrated Care Board and decide whether these proposals constitute a substantial variation or development in the provision of health services in Medway.

#### **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 At a special meeting of this Committee in September 2023 Members decided that proposals from the ICB for the re-procurement of community services constituted a substantial variation or development of a health service. Whilst the information provided by the ICB in the agenda specified that both adults' and children's services were to be included in this re-procurement, the ICB representative clarified at the meeting that the children's services contracts mentioned in the paper did not apply to Medway ([minute no. 254/2023 refers](#)).
- 3.2 At the December 2023 meeting of the Committee, Members considered an updated paper from the ICB seeking to address Members' concerns and proposing an extension of current contracts to the three community providers to allow the ICB to undertake engagement and transformation processes across the community services prior to new contract awards ([minute 444/2023 refers](#)).
- 3.3 The Committee agreed to defer until the January meeting a decision on whether these revised proposals constituted a substantial variation to health services in Medway.
- 3.4 The issue was then presented to the Committee in January of this year, where the Committee agreed that the proposals did constitute a substantial variation or development in the provision of health services in Medway ([minute no. 533/2024 refers](#)).
- 3.5 There has since been a decision to include Children's Services into this procurement exercise for community services and the information from the ICB, attached at Appendix 1, provides some context around this. A Substantial Variation questionnaire is attached at Appendix 2.
- 3.6 Given that the re-procurement now includes children's services this Committee still remains the responsible Committee to lead on the scrutiny of this in line with Committee's terms of reference set out at section 21.2 (c) of Charter 4, Part 5 of the Council's Constitution, which states:
- "The Health and Adult Social Care Overview and Scrutiny Committee will be the lead on scrutiny of health insofar as it relates to the transition between childhood and adulthood or **where consultation by relevant NHS bodies or relevant health service providers bridge services for children and adults, with participation by representatives of the Children and Young People Overview and Scrutiny Committee when such matters are discussed.**"**
- 3.7 The Chairperson, Vice-Chairperson and Opposition Spokespersons of the Children and Young People Overview and Scrutiny Committee have therefore been invited to attend this meeting, in order to participate in the discussion, and the entire Committee have been made aware of the meeting.

#### 4. Substantial developments or variations

- 4.1 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.
- 4.2 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.
- 4.3 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. Kent’s Health Overview and Scrutiny Committee has not deemed the proposals as a substantial variation or development.
- 4.4 Revised guidance ([Planning, assuring and delivering service change for patients](#)) 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.
- 4.5 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.
- 4.6 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.
- 4.7 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.
- 4.8 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 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”.

#### Timescales for consultation

- 4.9 The proposer of substantial developments or variations must notify the Committee of the timescales, which must be published. 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.

#### When consultation is not required

- 4.10 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 trust’s 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

- 4.11 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.

## Referrals to the Secretary of State

- 4.12 The Health and Care Act 2022, amended Schedule 10A of the National Health Service Act 2006 and gave the Secretary of State (SoS) a new power of intervention in the operation of local health and care services. (Previously the SoS was only able to intervene after a referral from a local authority).
- 4.13 Under the new arrangements if the Committee has concerns about the adequacy of change plans, it could ask the Secretary of State to use their power to intervene. The Secretary of State's powers to "call in" proposals will only be used as a last resort, and only when they consider that local methods for resolution have been exhausted.
- 4.14 Government guidance says:
- "Local organisations are best placed to manage challenges related to NHS reconfiguration. A call-in request is highly unlikely to be considered by the Secretary of State before:
- NHS commissioning bodies and local authorities have taken all reasonable steps to try and resolve any issues
  - those making a request or others have tried to resolve any concerns through their local NHS commissioning body or have raised concerns with their local health overview and scrutiny committee".
- 4.15 Where a proposal is "called in", the Secretary of State will consult stakeholders, including local authorities, in considering how the intervention power should be used. The power of the Secretary of State to take decisions under this power includes:
- (a) the power to decide whether a proposal should, or should not, proceed, or should proceed in a modified form;
  - (b) the power to decide particular results to be achieved by the NHS commissioning body in taking decisions in relation to the proposal;
  - (c) the power to decide procedural or other steps that should, or should not, be taken in relation to the proposal;
  - (d) the power to retake any decision previously taken by the NHS commissioning body.
- 4.16 When a notice is issued by the Secretary of State using their power of intervention, the relevant body must comply with that notice. The Committee must be asked for their views before the Secretary of State makes a decision.

## 5. Risk management

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

## 6. Financial implications

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

## 7. Legal implications

7.1 The legal implications are set out in the report.

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### Appendices

Appendix 1 – Submission from Integrated Care Board

Appendix 2 – Updated Substantial Variation or Development Assessment  
Questionnaire

### Background Papers

None