

Item 8: Mental Health Services Review: Decision on Substantial Variation of Service.

By: Peter Sass, Head of Democratic Services

To: Health Overview and Scrutiny Committee, 9 March 2012

Subject: Mental Health Services Review: Decision on Substantial Variation of Service.

1. Summary

- (a) Under *The Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002 (S.I. 2002/3048)*¹ local NHS bodies must consult the HOSC over any proposals “for a substantial development of the health service in the area of a local authority, or for a substantial variation in the provision of such services.”
- (b) The subsequent *Directions to Local Authorities (Overview and Scrutiny Committees, Health Scrutiny Functions) 2003*² from the Department of Health stated that when an NHS body consulted two or more local authority health scrutiny committees a joint committee “shall” be established. It is only this joint committee which may exercise the health scrutiny powers over the specific issue being consulted on, including that of referral.
- (c) In effect this means that where a service change is proposed that affects an area covered by more than one statutory local authority health scrutiny committee, and where both consider the change to be a “substantial variation,” then a Joint HOSC will need to be established.
- (d) Where only one Committee decides it constitutes a “substantial variation” of service, then that Committee only is able to exercise the full range of scrutiny powers over that issue as the Committee which decided it was not substantial would in effect have delegated its authority to the other Committee.
- (e) If neither decides it is a substantial variation, then while both Committees will be able to be kept informed by the local NHS of how the proposals were being taken forward, they could not exercise the full range of scrutiny powers over that issue, up to and including that of referral.

¹ *The Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002 (S.I. 2002/3048)*,

<http://www.legislation.gov.uk/uksi/2002/3048/contents/made>

² *Directions to Local Authorities (Overview and Scrutiny Committees, Health Scrutiny Functions) 2003*,

http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalassets/dh_4066609.pdf

2. Joint Health Scrutiny Committee with Medway Council

- (a) In order to prepare in advance for a Joint HOSC being required, a Joint Committee with Medway Council was established at the meeting of the County Council of 25 March 2004. The arrangements were updated at County Council on 14 September 2006.³
- (b) The Joint Committee consists of 12 Members: 8 from Kent County Council and 4 from Medway Council.
- (c) This topic will also be presented to the Health and Adult Social Care Overview and Scrutiny Committee at Medway Council at its meeting of 27 March 2012.
- (d) The requirement for a Joint HOSC will be determined by the decisions taken by this Committee today and Medway's Health and Adult Social Care Overview and Scrutiny Committee on 27 March.

3. Recommendation

That the Committee determines whether or not the NHS proposals constitute a substantial variation of service.

³ <http://democracy.kent.gov.uk/Data/County%20Council/20060914/Agenda/sep06-item7.pdf>