

Item 6: Adult Mental Health Inpatient Services Review.

By: Tristan Godfrey, Research Officer to the Health Overview and Scrutiny Committee

To: Kent and Medway NHS Joint Overview and Scrutiny Committee,  
30 July 2013

Subject: Adult Mental Health Inpatient Services Review

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## 1. Introduction.

- (a) Under *The Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002 (S.I. 2002/3048)*<sup>1</sup> 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*<sup>2</sup> 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. These were the regulations in force when the Kent and Medway NHS Joint Overview and Scrutiny Committee began its current review.
- (c) These regulations mean 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) On 9 March 2012 the Health Overview and Scrutiny Committee at Kent County Council determined that the proposals for a review into adult mental health inpatient services in Kent and Medway constituted a substantial variation of service. On 27 March 2012 the Health and Adult Social Care Overview and Scrutiny Committee at Medway Council made the same decision.
- (e) 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.<sup>3</sup>

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

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

<sup>2</sup> *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](http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalassets/dh_4066609.pdf)

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

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- (f) The Joint Committee consists of 12 Members: 8 from Kent County Council and 4 from Medway Council.
- (g) Coming into force on 1 April 2013, *The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 (SI 2013/218)*<sup>4</sup> came into force and revoked the 2002 regulations. Under these new regulations, where more than one local authority is consulted on a substantial variation of service, “those local authorities must appoint a joint overview and scrutiny committee for the purposes of the consultation.”<sup>5</sup>

**2. Kent and Medway NHS Joint Overview and Scrutiny Committee, Terms of Reference**

- (a) To receive evidence in relation to consultations initiated by local NHS bodies regarding proposals for substantial development or variation of the health service which effect both Medway and a substantial part of Kent.
- (b) To make comments on behalf of the relevant Overview and Scrutiny Committees of Medway and Kent on any such proposals to the NHS body undertaking the consultation.
- (c) To undertake other scrutiny reviews of health services if requested to do so by the relevant Overview and Scrutiny Committees of both Medway and Kent
- (d) To report on such other scrutiny reviews to the relevant Overview and Scrutiny Committees of Medway and Kent.

**3. Kent and Medway NHS Joint Overview and Scrutiny Committee.**

- (a) The first meeting of this Committee took place on 3 July 2012 and it was established to consider the review into adult inpatient mental health services. It is a standalone Committee convened to look at this specific issue. Its Terms of Reference are above.
- (b) A visit to Medway Maritime Hospital’s A-Block and Dartford’s Little Brook Hospital was arranged for JHOSC Members on 25 June 2012. Individual JHOSC Members have also undertaken fact-finding visits on other occasions to these and other sites.
- (c) At the meeting of 3 July 2013, the Committee agreed the following recommendation:
  - “That the Committee approves the NHS decision to take the proposals in the report to three months public consultation between

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<sup>4</sup> *The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 (SI 2013/218)*, <http://www.legislation.gov.uk/ukxi/2013/218/contents/made>

<sup>5</sup> Ibid. Section 30(5).

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late July and late October 2012 and looks forward to a consultation document which will take into account the concerns expressed at this meeting and that these concerns will also be addressed by the further information to be provided and the further site visits to be arranged.”

- (c) The second meeting was held on 13 February 2013. The Committee agreed the following recommendation:
- “That the Committee convene another meeting in the near future to receive responses to the questions raised by Members.”
- (d) The third meeting was held on 19 March 2013. The draft Minutes for this meeting are contained in this Agenda. According to these draft Minutes, the Committee agreed the following recommendation:
- “That:
    - i. the outcome of the Bed Sensitivity Analysis and Quality Impact Assessment should be reported to the Joint HOSC before it takes a final view on the proposed option for reconfiguration of adult mental health inpatient services and before the CCGs meet in May;
    - ii. the NHS should meet with Medway Council to informally discuss options for local bed provision and;
    - iii. simultaneously the advice of an independent expert be sought on the review of adult mental health inpatient services and the proposed option for future provision.”
- (e) Information relating to parts i and ii above will be available to Members prior to the meeting.
- (f) In relation to part iii above, the Committee commissioned an independent report from Mental Health Strategies. This report will be available to Members prior to the meeting.

#### **4. Options for the Committee**

- (a) At the end of the current meeting, a number of options are available to the Committee. These include:
- i. Support the NHS proposals.
  - ii. Support the NHS proposals with comments.
  - iii. Support the NHS proposals with a recommendation.
  - iv. Reject the NHS proposals.

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- v. Reject the NHS proposals with comments.
  - vi. Reject the NHS proposals with a recommendation and propose a vote on the option of referral of the proposals to the Secretary of State for Health within a timeframe agreed by this Committee should any negotiations with the NHS as set out in (c) below be unsuccessful.
- (b) Options i – v above would bring the deliberations of the Committee on this issue to an end, unless the Committee asked for an update after a specified period of time. Any updates could alternatively be presented separately to the Health and Adult Social Care Overview and Scrutiny Committee at Medway Council and the Health Overview and Scrutiny Committee at Kent County Council as the formal review would have ended
- (c) Under *The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 (SI 2013/218)*, a referral to the Secretary of State for Health can only be made once the following steps have been taken:
1. A recommendation has been made by the Committee to the relevant NHS organisations, the recommendation has been rejected by the NHS and the Committee notified;
  2. The Committee and the NHS (which should include the commissioner of the service) take steps to reach agreement in relation to the subject of the recommendation; and
  3. The Committee has informed the NHS of the date by which it proposes to make a final decision on referral.
- (d) The text of Section 23 of the SI 2013/218 is appended to this report for reference.
- (e) In addition, there may be local protocols which must be adhered to. The protocol for health scrutiny at Kent County Council require that, where practicable, full Council be given the opportunity to comment on the decision to refer.<sup>6</sup>
- (f) Medway Council delegated responsibility to the Health and Adult Social Care and Children and Young People Overview and Scrutiny Committees the right to refer contested service reconfigurations to the Secretary of State without a requirement to notify full Council of the decision to make a referral before that referral is made given the scope for delay this would cause.

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<sup>6</sup> The Constitution of Kent County Council, Appendix 4, Annex B: Protocol for the Health Overview and Scrutiny Committee, 6(10), <https://shareweb.kent.gov.uk/Documents/council-and-democracy/CONSTITUTION.pdf>

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- (g) A referral to the Secretary of State for Health can be made, either by the Joint Committee or by KCC or Medway HOSCs individually on the following grounds:
1. There has not been adequate consultation with the Committee.
  2. Where a consultation was not possible because of a risk to the safety of welfare of patients or staff, the reasons given for the lack of consultation were inadequate.
  3. The Committee considers that the proposal would not be in the best interests of the health service in its area
- (h) Any report to the Secretary of State for Health must include:
1. an explanation of the proposal to which the report relates;
  2. in the case of a report under paragraphs f1 or f2 above, the reasons why the authority is not satisfied;
  3. in the case of a report under paragraph f3 above, 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 of the Committee;
  4. an explanation of any steps the Committee has taken to try to reach agreement with the relevant NHS organisations in relation to the proposal or the matters set out in paragraphs f1 or f2 above;
  5. in a case falling within paragraph f3, evidence to demonstrate that the Committee has taken steps to reach an agreement locally within a reasonable period of time;
  6. an explanation of the reasons for the making of the report; and
  7. any evidence in support of those reasons.
- (i) In addition, any health service reconfiguration is subject to the following four tests, set out by the Secretary of State for Health in 2010:
1. Support from GP commissioners;
  2. Evidence of public and patient engagement;
  3. Clarity about the clinical evidence base; and

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4. Proposals must take into account the need to develop and support patient choice.

**5. Recommendation**

That the Committee consider the report and determine which of the options set out in paragraph 4(a) to agree as a way forward.

**Background Documents**

Agenda, Kent and Medway NHS Joint Overview and Scrutiny Committee, Tuesday 3 July 2012,

<https://democracy.kent.gov.uk/ieListDocuments.aspx?CId=757&MId=4918&Ver=4>

Agenda, Kent and Medway NHS Joint Overview and Scrutiny Committee, Tuesday 13 February 2013,

<https://democracy.kent.gov.uk/ieListDocuments.aspx?CId=757&MId=5155&Ver=4>

Agenda, Kent and Medway NHS Joint Overview and Scrutiny Committee, Tuesday 19 March 2013,

<https://democracy.kent.gov.uk/ieListDocuments.aspx?CId=757&MId=5183&Ver=4>

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**Appendix – Section 23 of *The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 (SI 2013/218)***

**Consultation by responsible persons**

23.—(1) Subject to paragraphs (2) and (12) and regulation 24, where a responsible person (“R”) has under consideration any proposal for a substantial development of the health service in the area of a local authority (“the authority”), or for a substantial variation in the provision of such service, R must—

(a) consult the authority;

(b) when consulting, provide the authority with—

(i) the proposed date by which R intends to make a decision as to whether to proceed with the proposal; and

(ii) the date by which R requires the authority to provide any comments under paragraph (4);

(c) inform the authority of any change to the dates provided under paragraph (b); and

(d) publish those dates, including any change to those dates.

(2) Paragraph (1) does not apply to any proposals on which R is satisfied that a decision has to be taken without allowing time for consultation because of a risk to safety or welfare of patients or staff.

(3) In a case such as is referred to in paragraph (2), R must notify the authority immediately of the decision taken and the reason why no consultation has taken place.

(4) Subject to regulation 30(5) (joint committees) and any directions under regulation 32 (directions as to arrangements for discharge of health scrutiny functions), the authority may make comments on the proposal consulted on by the date or changed date provided by R under paragraph (1)(b)(ii) or (c).

(5) Where the authority’s comments under paragraph (4) include a recommendation to R and R disagrees with that recommendation—

(a) R must notify the authority of the disagreement;

(b) R and the authority must take such steps as are reasonably practicable to try to reach agreement in relation to the subject of the recommendation; and

(c) in a case where the duties of R under this regulation are being discharged by the responsible commissioner pursuant to paragraph (12), the authority and the responsible commissioner must involve R in the steps specified in sub-paragraph (b).

(6) This paragraph applies where—

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(a) the authority has not exercised the power in paragraph (4); or

(b) the authority's comments under paragraph (4) do not include a recommendation.

(7) Where paragraph (6) applies, the authority must inform R of—

(a) its decision as to whether to exercise its power under paragraph (9) and, if applicable, the date by which it proposes to exercise that power; or

(b) the date by which it proposes to make a decision as to whether to exercise that power.

(8) Where the authority has informed R of a date under paragraph (7)(b), the authority must, by that date, make the decision referred to in that paragraph and inform R of that decision.

(9) Subject to paragraph (10), the authority may report to the Secretary of State in writing where—

(a) the authority is not satisfied that consultation on any proposal referred to in paragraph (1) has been adequate in relation to content or time allowed;

(b) in a case where paragraph (2) applies, the authority is not satisfied that the reasons given by R are adequate; or

(c) the authority considers that the proposal would not be in the interests of the health service in its area.

(10) The authority may not make a report under paragraph (9)—

(a) in a case falling within paragraph (5), unless the authority is satisfied that—

(i) the steps specified in paragraph (5)(a) to (c) have been taken, but agreement has not been reached in relation to the subject of the recommendation within a reasonable period of time;

(ii) R has failed to comply with its duty under paragraph (5)(b) within a reasonable period of time; or

(b) in a case to which paragraph (6) applies, unless the authority has complied with the duty in paragraph (7) and, where applicable, paragraph (8).

(11) A report made under paragraph (9) must include—

(a) an explanation of the proposal to which the report relates;

(b) in the case of a report under paragraph (9)(a) or (b), the reasons why the authority is not satisfied of the matters set out in paragraph (9)(a) or (b);

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(c) in the case of a report under paragraph (9)(c), 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 of the authority;

(d) an explanation of any steps the authority has taken to try to reach agreement with R in relation to the proposal or the matters set out in paragraph (9)(a) or (b);

(e) in a case falling within paragraph (10), evidence to demonstrate that the authority has complied with the applicable condition in that paragraph;

(f) an explanation of the reasons for the making of the report; and

(g) any evidence in support of those reasons.

(12) In a case where R is a service provider and the proposal relates to services which a clinical commissioning group or the Board is responsible for arranging the provision of—

(a) the functions of R under this regulation must be discharged by the responsible commissioner on behalf of R; and

(b) references to R in this regulation (other than in paragraph (5)(c)) are to be treated as references to the responsible commissioner.

(13) Where the functions of R under this regulation fall to be discharged by more than one body under paragraph (12)(a), the duties of those bodies under that paragraph may be discharged by those bodies jointly or by one or more of those bodies on behalf of those bodies.

(14) In this regulation—

“service provider” means an NHS trust, an NHS foundation trust or a relevant health service provider;

“the responsible commissioner” means the clinical commissioning group or groups or the Board, as the case may be, responsible for arranging the provision of the services to which the proposal relates.