

Divisions Affected – All

OXFORDSHIRE JOINT HEALTH OVERVIEW AND SCRUTINY COMMITTEE

30 JUNE 2023

Consideration of whether to Make a Referral to the Secretary of State for Health and Social Care in Relation to the Closure of Beds at Wantage Hospital

Report by Director of Law and Governance

RECOMMENDATION

1. The Committee is RECOMMENDED to: -

1.1 Consider the recommendation of the Substantial Change Working Group members as to whether to refer the closure of Wantage Hospital Inpatient Services to the Secretary of State for Health and Social Care and, if the decision of the Committee is to make a referral,

1.2 Delegate to the Chair, in consultation with the Director of Law and Governance, the power to write and send a suitable report to the Secretary of State for Health and Social Care prior to when the Committee loses this power.

Executive Summary

2. In July 2016 the Inpatient Services at Wantage Community Hospital were temporarily closed. They have not since re-opened. The Health Overview and Scrutiny Committee (HOSC) has been involved with this issue since to try and find a resolution. Its ultimate power in this matter is that of a referral to the Secretary of State to look at the adequacy of the consultation which has taken place on a change to service provision. This is a power which the Committee is due to lose shortly owing to changes to be implemented in the Health and Care Act, and the Committee is asked to decide whether it wishes to proceed in making such a referral.
3. This paper seeks to advise members on their rights concerning any decision to refer the matter to the Secretary of State in readiness to make any decision on whether to do so.

Background

4. A longer-term history of the activity in relation to the closure on inpatient beds at Wantage Hospital has, as per the Committee's resolution on 08 June been developed and is included as Annex 1 to this report.
5. The more recent history is as follows.
 - 24 November 2022: HOSC considered a report on behalf of the Buckinghamshire, Oxfordshire and Berkshire West ICB concerning the Integrated Care Programme, focusing on how to provide better support for those at home, ensuring the right care in the right place at the right time, reducing the need for people to enter hospital, development of urgent care provision at the Horton site, and aligning demand with capacity. This programme thus covered provision at Wantage Hospital. At the meeting the Committee requested a substantial change toolkit be made available regarding the inpatient unit at Wantage Community Hospital
 - 09 February 2023: HOSC received an update on Wantage Community Hospital from Oxford Health. The outcome was to establish a working group with a membership of: Cllr Hanna, Cllr Champken-Woods, Cllr Haywood, Cllr Barrow to consider the substantial change toolkit.
 - 20 April 2023: The working group met with members of the ICB, Oxford Health and Oxfordshire County Council to discuss the substantial change toolkit. One outcome was the agreement that a co-produced stakeholder event should be held between NHS and local stakeholders to give opportunity for consensus to be developed.
 - 11 May 2023: HOSC held an extraordinary meeting to hear the feedback from working group members concerning its meeting on 20 April. It was agreed by the committee that 'any decision to refer to the Secretary of State would be deferred pending the progress made at the planned co-production stakeholder event, and that there would be an extraordinary meeting in late June to consider views on this.'
 - 08 June 2023: HOSC agreed to hold an extraordinary meeting on 30 June for the purpose of making a decision over whether a referral to the Secretary of State is necessary following the co-production stakeholder event.
6. The co-produced stakeholder event is scheduled to take place on 28 June. The Committee will therefore receive a verbal update from attending members of the working group concerning feedback and their recommendation on whether to make a referral to the Secretary of State is necessary.

Corporate Priorities

7. Improving health and wellbeing of residents and reducing health inequalities are stated ambitions within the Council's Strategic Plan.

Financial Implications

8. There are no financial implications in making a referral to the Secretary of State.

Comments checked by: Lorna Baxter

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Legal Implications

9. The primary source of the Committee's power to make a referral to the Secretary of State derives from The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 ('the 2013 Regulations')

10. Under the 2013 Regulations providers of health services have a responsibility to consult over substantial developments or variations to the provision of health services in an area. Regulation 23(1) states:

"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."

11. Health Overview and Scrutiny Committees (referred to as 'the authority' here) have the power to refer a matter to the Secretary of State under Regulation 23 (9) in the following circumstances:

"The authority may report to the Secretary of State in writing where—

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

[...]

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

12. Should the Committee decide to make a referral to the Secretary of State it must do so as set out in Regulation 23(11) and include the following details:
- (a) an explanation of the proposal to which the report relates;
 - (b) in the case of a report about the adequacy of consultation, the reasons why the authority is not satisfied
 - (c) in the case of a report under about whether the change would be in the interests of the health service in the area, 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 the responsible person
 - (e) an explanation of the reasons for the making of the report; and
 - (f) any evidence in support of those reasons.
13. Under the Health and Care Act 2022 this power to refer disputed reconfigurations to the Secretary of State is to be removed and replaced by an alternative mechanism giving the Secretary of State the power to intervene at any stage. Until the new arrangements take effect, however, the Committee remains empowered to do so. If it wishes to, the Committee must make its submission to the Secretary of State before any change to the law.

Comments checked by: Paul Grant

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Staff Implications

14. None arising from this report.

Equality & Inclusion Implications

15. None arising from this report.

Sustainability Implications

16. None arising from this report.

Risk Management

17. A referral to the Secretary of State is a sign that a negotiated solution has proven impossible. Doing so is likely to have negative consequences on the working relationship between the Committee and NHS stakeholders, and potentially more broadly between the Council and the NHS. This is not a reason in itself to avoid making a referral when it is justified, but the implications of doing so must be weighed carefully when making that decision.
18. Failure to make a referral to the Secretary of State before the loss of referral powers would result in the Committee still being able to write to the Secretary of State on an informal basis. However, this may not have the same import as if it were made under the formal provisions.

Anita Bradley
Director of Law and Governance and Monitoring Officer

Annex: 1. Background History

Background papers: None

Other Documents: None

Contact Officer: Tom Hudson, Scrutiny Manager

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