

IS FORMAL CONSULTATION WITH THE OXFORDSHIRE JOINT HEALTH OVERVIEW AND SCRUTINY COMMITTEE REQUIRED?

A guide to assessing “substantial change” to services (updated February 2015)

Please read the following guidance before completing the attached questions.

A collective approach

The following process was originally designed collectively in 2005 by Primary Care Trusts, NHS Trusts, the Oxfordshire and Area Consortium for Patient and Public Involvement in Health, and the Oxfordshire Joint Health Overview and Scrutiny Committee. It was designed to establish an agreed method for determining whether a proposed *service variation* or *service development* is ‘substantial’ and therefore a matter upon which there should be formal consultation with Oxfordshire Joint Health Overview and Scrutiny Committee (OJHOSC). It was updated in 2014 to reflect the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 and changes in the NHS structures resulting from the Health and Social Care Act 2012.

Please note: this document should be read in conjunction with the Department of Health’s “Local Authority Health Scrutiny Guidance to support Local Authorities and their partners to deliver effective health scrutiny”¹.

Formal consultation with Oxfordshire Joint Health Overview and Scrutiny Committee as opposed to informal consultation with the community

It should be noted that in accordance with Section 242 of the consolidated NHS Act 2006, all parts of the NHS and health service providers should seek to involve and engage the community on any planned service changes, *regardless* of whether substantial or otherwise. Ideally, there should be on-going engagement with service users in developing the case for change and in planning and developing proposals.

The process referred to in this paper relates to *formal* consultation with the Oxfordshire Joint Health Overview and Scrutiny Committee. Informal discussion and consultation between the NHS and OJHOSC is encouraged independent of this official process. This should support Oxfordshire County Council in fulfilling its responsibilities to review and scrutinise matters to the planning, provision and operation of the health service in the area. In particular, Oxfordshire Joint Health Overview and Scrutiny Committee will need to be assured that:

¹ Local Authority Health Scrutiny - Guidance to support Local Authorities and their partners to deliver effective health scrutiny.
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/324965/Local_authority_health_scrutiny.pdf

- A proposal is in the interests of the health service in Oxfordshire.
- Consultation on proposed changes has been adequate in relation to the content and the amount of time allowed.
- Appropriate explanation has been given where an NHS body has not consulted for reasons of urgency relating to the safety or welfare of patients or staff.

If it is self-evident that a proposed service change is ‘substantial’, or that it is not, there is no need to follow the steps outlined below. These have been designed as a tool to assist in circumstances where there is doubt.

Consultation with health scrutiny is not required when:

- 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 – 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.
- there is a proposal to establish or dissolve or vary the constitution of a Clinical Commissioning Group or establish or dissolve an NHS trust, unless the proposal involves a substantial development or variation.
- proposals are part of a trusts special administrator’s report or draft report

How to apply the process

1. An informal meeting should be instigated at an early stage in the proceedings by the appropriate part of the NHS system, to enable the proposed service changes to be drawn to the attention of the Oxfordshire Joint Health Overview and Scrutiny Committee. The meeting would normally be called by the commissioner and service provider responsible for the service in question. The meeting will be open to the Chairman of the Oxfordshire Joint Health Overview and Scrutiny Committee and other appropriate people as required (e.g. Healthwatch, carer/user groups, voluntary organisations etc.).

In preparation for this meeting the Committee would expect to see detailed information regarding the proposals including information on the scale of the proposed change, effects on patients and financial considerations.

2. For the NHS/Health Service providers

The commissioner and provider should jointly undertake the assessment in Annex 1 to assess their position in relation to the series of statements posed, using paragraph 8 below as a guide.

Important note: *It is expected that any formal consultation would be undertaken by the commissioner of the service.*

3. Sending information

At the earliest opportunity the relevant NHS body should provide the Oxfordshire Joint Health Overview and Scrutiny Committee with details in writing of the

proposed service changes, an outline of the proposed timetable for implementation, and a copy of their own assessment (using the agreed method) as to whether or not the proposal is 'substantial'.

4. For the Scrutiny Committee

HOSC members and others as appropriate will then meet the commissioner and provider and go through the assessment process to enable the scrutiny group to come to a view as to whether the proposal represents substantial variation.

5. If everyone agrees

If both the NHS group and the scrutiny group are agreed that there **does not** need to be formal consultation, the presumption shall be that consultation with the relevant patient / service user / carer / community bodies will continue, in accordance with Section 242 requirements. The Committee encourages NHS bodies to engage with the Committee even if formal consultation is not required.

6. When and how

If both the NHS commissioner and the scrutiny committee are agreed that there **does** need to be formal consultation due to there being a substantial service variation or development, the scrutiny committee will be informed, as soon as is practicable:-

- of the date by which it requires the health scrutiny body 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. The scrutiny committee must be notified of any changes to dates.
- how the consultation will be conducted);

A copy of the consultation document will be made available to the scrutiny committee as soon as it is available.

7. If there is a difference of opinion

If the scrutiny group **does not** endorse the NHS body's view that formal consultation is not required, the best endeavours of all parties should be directed towards reaching a consensus position. Any views reached by either party should be on the basis of the best interests of the wider community and of a fair and reasonable assessment against the agreed criteria.

8. If an agreed position cannot be reached

If it continues to be impossible to reach agreement upon the need for a formal consultation, both sides may jointly or severally pursue the options open to them under their respective statutory instruments, such as escalation to the Secretary of State for HOSC or escalation to the providers Board.

9. Answering the questions

The questions to be considered fall under several different headings:- (1) the nature of the impact upon patients and public; (2) the rationale behind the proposed service change or development; and (3) clinical factors. *Please bear the following in mind:-*

- All statements are to be 'scored' on a simple 'Yes/No' or 'Not applicable' basis.
- At the foot of the table 'Yes' responses should be totalled in order to establish whether consultation is, or is not, required.
- Comments upon how each question has been "scored" may be included in the middle column.
- This is not an exact science; if the scores are similar, answers may be reconsidered to see whether some responses merit more 'weight' than others.
- It is important not to dwell too long on individual questions – the intention is that the *overall* picture will emerge if all questions are gone through fairly swiftly.
- Don't forget that this is not about *how* to consult, but *whether* to do a formal consultation with Oxfordshire Health Overview and Scrutiny Committee.
- Some questions are highly likely to lead to a conclusion that formal consultation will be needed; these are marked with an asterisk.

This document is for guidance only and is not legally binding.

VERSION FOUR updated December 2014

Agreed by: Health Overview & Scrutiny Committee

Please note your answer to the questions on the LEFT hand side in the left hand 'Yes/No' column; and your answers to the questions on the RIGHT hand side in the right hand 'Yes/No' column.

CHARACTERISTICS LIKELY TO LEAD TO A VIEW THAT FORMAL CONSULTATION IS <u>NOT</u> REQUIRED	'Yes' or 'No'?	COMMENTS (including if 'Not applicable')	'Yes' or 'No'?	CHARACTERISTICS LIKELY TO LEAD TO A VIEW THAT FORMAL CONSULTATION IS <u>REQUIRED</u>
NATURE OF IMPACT UPON PATIENTS AND PUBLIC				
Legal obligations set out under Section 242 of the consolidated NHS Act 2006 to 'involve and consult' have been fully complied with. <i>(Details of the methods of public involvement used must be provided)</i>				Legal obligations under Section 242 have not been implemented, either partially or fully.
Initial responses from <u>service users</u> (or their advocates), Healthwatch and/or other relevant organisations or individuals from the wider community indicate that the impact of the proposed change is not substantial or controversial.			*	Initial responses from service users (or their advocates), Healthwatch and/or other relevant organisations from the wider community indicate that the impact of the proposed service change is substantial or controversial.
Staff delivering the service have been fully involved and consulted during the preparation of the proposals.				Staff delivering the service have not been closely involved or consulted during the preparation of the proposals.

Please note your answer to the questions on the LEFT hand side in the left hand 'Yes/No' column; and your answers to the questions on the RIGHT hand side in the right hand 'Yes/No' column.

CHARACTERISTICS LIKELY TO LEAD TO A VIEW THAT FORMAL CONSULTATION IS <u>NOT</u> REQUIRED	'Yes' or 'No'?	COMMENTS (including if 'Not applicable')	'Yes' or 'No'?	CHARACTERISTICS LIKELY TO LEAD TO A VIEW THAT FORMAL CONSULTATION IS <u>REQUIRED</u>
The service to be changed has had little or no financial or 'in kind' support from the local community.			*	The community has a sense of ownership of the service to be changed because of its charitable funding and/or support in kind.
The consultation so far undertaken has presented a range of options for service variation or development upon which comments have been sought.				The consultation so far undertaken (if any) has presented only one realistic option for comment, alongside the 'no change' option.
Option/s presented include proposals to improve patient access (to a site or via opening times) <u>and/or</u> specifically address any adverse impact upon patient travel needs.				Options presented represent a diminution of access to service/s, (to a site or via opening times) including by virtue of patient travel needs.
Proposed change of service has a differential impact that should reduce health inequalities (geographical, social, or otherwise).			*	Proposed change of service has a differential impact that could widen health inequalities (geographical, social, or otherwise).

Please note your answer to the questions on the LEFT hand side in the left hand 'Yes/No' column; and your answers to the questions on the RIGHT hand side in the right hand 'Yes/No' column.

CHARACTERISTICS LIKELY TO LEAD TO A VIEW THAT FORMAL CONSULTATION IS <u>NOT</u> REQUIRED	'Yes' or 'No'?	COMMENTS (including if 'Not applicable')	'Yes' or 'No'?	CHARACTERISTICS LIKELY TO LEAD TO A VIEW THAT FORMAL CONSULTATION IS <u>REQUIRED</u>
Proposed change in service has a positive impact (<i>Please score separately</i>):- <ul style="list-style-type: none"> • Upon other services elsewhere in the NHS system (including within the same organisation) • Upon services provided by the local authorities • Upon services provided by the voluntary sector. 				Proposed change in service has a detrimental impact (<i>Please score separately</i>):- <ul style="list-style-type: none"> • Upon services elsewhere in the NHS system (including within the same organisation) • Upon services provided by the local authorities • Upon services provided by the voluntary sector.
RATIONALE/POLICY BEHIND PROPOSED SERVICE CHANGE OR DEVELOPMENT				
The proposal is that of a <i>principle</i> driven by a national policy initiative upon which consultation is not normally required.				The proposal is the <i>implementation</i> of a national policy initiative of which consultation plans must form an explicit feature.

Please note your answer to the questions on the LEFT hand side in the left hand 'Yes/No' column; and your answers to the questions on the RIGHT hand side in the right hand 'Yes/No' column.

CHARACTERISTICS LIKELY TO LEAD TO A VIEW THAT FORMAL CONSULTATION IS <u>NOT</u> REQUIRED	'Yes' or 'No'?	COMMENTS (including if 'Not applicable')	'Yes' or 'No'?	CHARACTERISTICS LIKELY TO LEAD TO A VIEW THAT FORMAL CONSULTATION IS <u>REQUIRED</u>
The proposed service change or development is <i>primarily</i> driven by clinical factors but also has financial and/or staffing and/or other managerial benefits.				The proposed service change or development is <i>primarily</i> driven by financial, staffing or other managerial factors but also has clinical merit.
This service area has not had any small scale changes made to it recently that could cumulatively have a substantial impact upon patient services.				When viewed as part of the bigger picture, the proposal appears as one of a series of small incremental changes, the cumulative impact of which (upon patients/service users) can reasonably be regarded as substantial.
There is evidence that the proposal will ensure a sustainable service.				There is limited evidence to suggest the service would be sustainable as a result of the proposed changes.
The proposal forms part of a bigger plan upon which appropriate involvement and consultation has already been carried out.				The proposal forms part of a bigger plan, which has not been fully discussed with the wider community.

Please note your answer to the questions on the LEFT hand side in the left hand 'Yes/No' column; and your answers to the questions on the RIGHT hand side in the right hand 'Yes/No' column.

CHARACTERISTICS LIKELY TO LEAD TO A VIEW THAT FORMAL CONSULTATION IS <u>NOT</u> REQUIRED	'Yes' or 'No'?	COMMENTS (including if 'Not applicable')	'Yes' or 'No'?	CHARACTERISTICS LIKELY TO LEAD TO A VIEW THAT FORMAL CONSULTATION IS <u>REQUIRED</u>
The proposal is consistent with the NHS body's and/or health service providers' strategic plan.				The proposal is an exception to, or diversion from the NHS body's and/or health service providers' strategic plan.
The proposal has the support of the Health and Wellbeing Board as it aligns with the strategic plan for health services in Oxfordshire.				The proposal doesn't have the support of the Health and Wellbeing Board as it doesn't align with the strategic plan for health services in Oxfordshire.
The proposal is designed to achieve National Service Framework standards.				The proposal has no bearing upon the achievement of National Service Framework standards.
CLINICAL FACTORS				
Initial responses from staff delivering the service indicate that they are in support of the proposed changes.				Initial responses from staff delivering the service indicate that they have serious reservations about the impact of the proposed changes on their patient group.

Please note your answer to the questions on the LEFT hand side in the left hand 'Yes/No' column; and your answers to the questions on the RIGHT hand side in the right hand 'Yes/No' column.

CHARACTERISTICS LIKELY TO LEAD TO A VIEW THAT FORMAL CONSULTATION IS <u>NOT</u> REQUIRED	'Yes' or 'No'?	COMMENTS (including if 'Not applicable')	'Yes' or 'No'?	CHARACTERISTICS LIKELY TO LEAD TO A VIEW THAT FORMAL CONSULTATION IS <u>REQUIRED</u>
The proposed service change improves clinical governance and reduces risk, and is based upon agreed best practice e.g. National Service Framework Standards, National Institute for Health and Care Excellence Guidance.				The proposed service change plays no part in improving clinical governance or reducing risk, and does not support or enable the implementation of e.g. National Service Framework Standards, National Institute for Health and Care Excellence Guidance.
The quality and quantity of service to all related patient/service users is to remain unchanged or to improve.				The opportunity cost of the proposed service change or development is that the quality and quantity of service provided to particular patient groups is to be reduced or compromised.
The proposal is designed to meet the expectations of patients.				The proposal is designed around the <i>critical mass</i> needed to provide the service effectively but may not meet patient expectations.

Please note your answer to the questions on the LEFT hand side in the left hand 'Yes/No' column; and your answers to the questions on the RIGHT hand side in the right hand 'Yes/No' column.

CHARACTERISTICS LIKELY TO LEAD TO A VIEW THAT FORMAL CONSULTATION IS <u>NOT</u> REQUIRED	'Yes' or 'No'?	COMMENTS (including if 'Not applicable')	'Yes' or 'No'?	CHARACTERISTICS LIKELY TO LEAD TO A VIEW THAT FORMAL CONSULTATION IS <u>REQUIRED</u>
OTHER				
The commissioning body is/are aware of and has/have been involved in the drafting of the proposal/s.				The commissioning body is not fully aware of and supportive of the proposal/s.
Detailed consideration given to the degree to which mitigations are in place to reduce any potential negative impacts of the proposed change.				Mitigations not are in place to reduce any potential negative impacts of the proposed change.
TOTAL NUMBER OF 'YES' TICKS FOR THE LEFT HAND COLUMN →				← TOTAL NUMBER OF 'YES' TICKS FOR THE RIGHT HAND COLUMN
Outcome / Decision? Is this considered to be a significant change by provider? Is this considered to be a significant change by HOSC?				

PLEASE NOTE:-

If the response to any of the questions marked with a "*" is 'yes', there is a very strong presumption that consultation IS required