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**Manchester City Council  
Report for Resolution**

**Report To:** Health and Well-being Overview and Scrutiny Committee – 4  
March 2010

**Subject:** Update on the Substantial Variation Protocol

**Report of:** NHS Manchester

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**Purpose of the report**

The purpose of this report is to provide members with information about the joint protocol for substantial variations to NHS service changes.

**Recommendations**

The committee is asked to agree the draft substantial variation protocol.

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**Wards Affected:**

All

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**Background documents (available for public inspection):**

None

## **1. Introduction**

- 1.1 At its July meeting, the Health and Well-being Overview and Scrutiny Committee made a recommendation to ask NHS Trusts across Manchester and the Manchester Local Involvement Network to work with them to produce a local protocol to set out how substantial changes to NHS services in Manchester are managed.

### **1. Progress**

- 2.1 A draft protocol (appendix 1) has been agreed between NHS Manchester and the Manchester LINK. The protocol sets out a process for NHS bodies to engage with the Manchester LINK and the Committee about proposals for substantial variations in service. This would assist them in reaching agreement on what constitutes “substantial” in the local context and how such consultation should be carried out.
- 2.2 It is intended that the relevant NHS Trust will be asked to consult with NHS Manchester and the LINK before a decision is made regarding service changes, specific to Manchester. Once it has been agreed whether the service change represents a substantial change in service, the Committee will be informed of proposed substantial service changes via the monthly NHS update report. The Committee will then be able to identify if they require any further consultation on any individual service variation to a future meeting of the Committee.
- 2.3 On 17 December 2009, the Chair of the Committee hosted a workshop with representatives from six out of seven of the Trusts that provide services in Manchester. The purpose of the workshop was to ask the representatives of each NHS Trust to commit to the protocol. There were some discussions about the detail of the protocol and these amendments have been incorporated into the final draft.
- 2.4 Each of the representatives was asked to take the protocol back to their Trusts to seek the commitment of senior management and to provide feedback to the Committee with any comments. We have received one response from the Manchester Mental Health and Social Care Trust with a minor change to the draft protocol, and this has been included in the version appended to this document. Any further feedback will be reported to the Committee at the meeting. Members are asked to agree the draft protocol.

## Appendix 1 - DRAFT

### Joint protocol to identify 'substantial variation/development' and to approve public engagement activity in relation to NHS service change

#### Introduction:

The Health and Well-being Overview and Scrutiny Committee plays a key role in scrutinising NHS service change and ensuring that local Trusts engage appropriately with local people. Additionally, it performs a specific function by identifying whether a service change should be considered a 'substantial variation'.

This paper proposed the development of a process, which ensures that engagement around NHS service variations meets legislative requirements and provides sufficient assurance of this to the OSC, the LINK and NHS Manchester.

#### Legislative Context:

The statutory requirement for involvement of patients and the public in the development of local health services is well established.

Under section 242 (1B) of the National Health Service Act 2006 every "relevant English body" (which for the purposes of this section means (i) a Strategic Health Authority (ii) a Primary Care Trust (iii) an NHS trust or (iv) an NHS foundation trust is placed under the following obligation in respect of public involvement and consultation:

*"Each relevant English body must make arrangements, as respects health services for which it is responsible, which secure that users of those services, whether directly or through representatives, are involved (whether by being consulted or provided with information, or in other ways) in—*

- (a) The planning of the provision of those services,*
- (b) The development and consideration of proposals for changes in the way those services are provided, and*
- (c) Decisions to be made by that body affecting the operation of those services".*

This general obligation to consult is qualified as follows:

*Subsection 242 (1B)(b) applies to a proposal only if implementation of that proposal would have an impact on –*

- (a) the manner in which the services are delivered to users of those services, or*
- (b) the range of health services available to those users.*

*Subsection 242 (1B)(c) applies to a decision only if implementation of the decision (if made) would have an impact on –*

- (a) the manner in which the services are delivered to users of those services, or*

(b) *the range of health services available to those users.*

Additionally, Regulation 4 of the OSC Regulations provides that where a “*local NHS body...has under consideration any proposal 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 service, it shall consult the overview and scrutiny committee of that authority*”.

### **‘Substantial variation’/ Substantial development?**

There is no specific definition of substantial variation or substantial development outlined in the legislation. Instead it is recommended that the local NHS and the OSC should work to the same definition of substantial variation so that judgements about the need to consult are likely to be similar. It is worth noting that whether a particular change is considered a substantial variation or not, NHS Trusts must still meet their duty to involve as set out in Section 242 of the NHS Act.

Section 10.6.3 of Local Authority Scrutiny regulations recommend that the following are taken into account when considering whether a development or variation is ‘substantial’:

- Changes in accessibility of services
- The impact of the proposal on the wider community
- The degree to which patients are affected
- Changes to service models and methods of service delivery

NHS North West has indicated that they believe that the local Primary Care Trust should be the key local NHS body to make the judgement. They have also provided some guidance on what constitutes ‘major’ service change in their view. Proposals requiring SHA approval include:

- Directly affecting populations in more than one PCT area (including NW-wide and multiple SHA-wide service changes e.g. specialist services)
- Involving capital investment which requires SHA approval
- Subject to formal public consultation (as agreed with Overview and Scrutiny Committees)
- Likely to generate significant public, political and/or media interest.

The openness of the above guidance makes defining substantial variation less of a scientific exercise and more of an intuitive judgement call. Therefore, rather than producing a restrictive definition, it makes more sense to develop a process which:

- Demands information from the relevant NHS Trust prior to decision being made
- Identifies NHS Manchester and the LINK as the appropriate bodies for assessing the necessary level of engagement
- Provides OSC with the ability to monitor, and be assured of, the engagement activity undertaken by local health bodies.

**Proposed process:**

**Stage 1:** Prior to a decision regarding service change being made, the Trust planning the variation should complete the pro-forma in Appendix 1 and send to NHS Manchester. NHS Manchester to forward the proforma to the LINK for consideration.

**Stage 2:** NHS Manchester and the LINK come to a conclusion within 10 working days on the following issues:

*Decision 1: Is it a substantial variation/ development?*

*Decision 2: Is the service variation exempt from Section 242?*

*Decision 3: Is the engagement plan sufficient to meet Section 242 standards?*

**Stage 3:** NHS Manchester to include summary of all service variations presented to it in the preceding month in the NHS Update paper presented to OSC. OSC to:

*Decision 1: Note the decisions*

*Decision 2: Identify which, if any, of the service variations need to come before OSC?*

*Decision 3: When should they be considered and in what form?*

**Agreeing the protocol:**

The Chair of the Health and Well-being Overview and Scrutiny Committee will invite representatives from all NHS Trusts in the city to a meeting to discuss, refine and agree the protocol. Use of the protocol is planned to begin in January 2010.

**Appendix 1:**

<b>Service Variation pro-forma</b>	
<b>Organisation</b>	
<b>Lead manager and contact details</b>	
<b>Description of service variation</b>	
<b>Reasons for service variation/ Case for Change</b>	
<b>Do you consider the service change to be a 'substantial variation or development'?</b>	
<b>Impact of Change</b> For each section below, please identify what action is being taken to alleviate the impact of any changes.	
<b>Changes in Accessibility</b>  <i>Issues to take into consideration - the effects the proposal might have in terms of levels of inconvenience, the impact on a person's health, or the impact on a person's ability to lead a full life</i>	
<b>Impact on the Wider Community</b>  <i>Issues to take into consideration - The effects of the proposal on transport infrastructure, community safety, the local economy, environment and regeneration need to be assessed</i>	
<b>Number of Patients/Carers Affected</b>  <i>Issues to take into consideration - The number of patients/carers affected by the proposal, the proportion of the population in the area covered by the change or in the population group effected by the change, or of the relevant population group affected</i>	
<b>Changes in Methods of Service Delivery</b>  <i>Depending on the proposal, the effects might be a change in the physical</i>	

<p><i>environment where a service is delivered, a change in the practitioner delivering the service or a change in terms of levels of comfort, levels of convenience, speed of recovery, or outcome in terms of a person's health</i></p>	
<p><b>Impact on how other Services are delivered</b></p> <p><i>This relates to any financial impact on other services (i.e. Community Services) and the sustainability or availability of other services</i></p>	
<p><b>Impact on different communities</b></p> <p><i>Does the proposal affect some communities more than others? This could be geographical communities or communities of interest?</i></p>	
<p><b>Proposed Engagement</b></p> <p>Please include details of engagement carried out and proposed activity</p>	
<p><b>Signed</b></p>	
<p><b>Date</b></p>	