Meeting:	**Social Care Health and Housing Overview & Scrutiny Committee**
Date:	**15 October 2009**
Subject:	**Substantial Variations and Developments of Health Services**
Report of:	**Director of Business Transformation**

Summary: The Overview and Scrutiny of Health was a new power given to the Local Authorities with responsibility for Social Services with effect from 1 January 2003. It was recognised as an important part of the Government's commitment to place patients and members of the public at the centre of health services and seen as a means by which democratically elected community leaders may voice the views of their constituents and require local NHS bodies to listen and respond.

In order to facilitate Health Overview and Scrutiny in Central Bedfordshire, and to ensure that it operates efficiently and effectively in line with Ministerial Guidance, Central Bedfordshire Council and in the later stages of development of this guidance, Bedford Borough Council, Bedfordshire Local Involvement Networks (LINks) together with NHS organisations need to develop and agree best practice guidelines and a protocol outlined in this report.

Contact Officer:	Cheryl Powell, Overview & Scrutiny Officer
Public/Exempt:	Public
Wards Affected:	All
Function of:	Council

RECOMMENDATION:

1. **That the Social Care Health and Housing Overview & Scrutiny Committee note the contents of this report for information.**

2. **That the Social Care, Health and Housing Overview & Scrutiny Committee suggests a framework for discussion with local NHS bodies and the Local Involvement Network to assist in reaching agreement on what constitutes "substantial" in the local context and how such consultation should be carried out**

Reason for Recommendation:	*The Committee is requested to comment on the issues raised in paragraphs 4 – 10 and to agree to consult Bedford Borough and Luton Borough Council's, the LINk, the Strategic Health Authority, the NHS Trusts and the Children, Families and Learning Overview and Scrutiny Committee on a continual basis.*

What is a substantial variation in service?

1. Under the LGPiH Act there is still no definition of what constitutes a 'substantial development' or 'variation' which means that NHS bodies are still required to consult relevant Overview and Scrutiny Committees about proposals for substantial changes to services.

2. The Guidance on Overview and Scrutiny of Health recommends that local NHS organisations should aim to reach a local understanding or definition with their Overview and Scrutiny Committee(s) on this issue and that this should be informed by discussions with other key stakeholders.

3. The following guidelines, taken from the Guidance on Overview and Scrutiny of Health may help to inform these discussions and provide a provisional framework within which NHS organisations, Overview and Scrutiny Committees and stakeholders should consider whether a proposal is substantial. Generally, the degree of impact of the change upon patients, carers and the public who use, or have the potential to use, a service should be considered. Issues for specific consideration include:

    - **Changes in accessibility of services** e.g. both reductions and increases of services on a particular site or changes in opening times for a particular clinic. Communities attach considerable importance to the local provision of services, and local accessibility can be a key factor in improving population health, especially for disadvantaged and minority groups. At the same time, development in medical practice and in the effective organisation of health care services may call for reorganisation including the relocation of services. It is recognised that changes to service locations can often be controversial. Therefore there should be a discussion of any proposal, which involves the alteration to, or withdrawal of, primary care, in-patient, day patient or diagnostic facilities.

    - **The impact of the proposal on the wider community** and other services, including economic impact, transport, regeneration.

    - **The degree to which patients are affected** may affect the whole population (such as changes to Accident and Emergency Services) or a small group of patients accessing a specialist service. If changes affect a small group of patients, the change may still be considered substantial, particularly if patients need to continue accessing that service for many years (e.g. access for patients to renal services).

    - **Changes to service models and methods of service delivery** e.g. altering the way a service is delivered may be a substantial change – for example, moving a particular service into community settings rather than being hospital based. The views of patients and the general public, including the LINk will be essential in such cases.

Procedure

4. The NHS body informally advises the Scrutiny Officer for the Social Care, Health and Housing Overview and Scrutiny Committee (SCH&H OSC) of the proposal, in advance of the consultation process. Section 10.1.2 of the Ministerial Guidance states that NHS bodies should consult the SCH&H OSC at an early stage[1] to agree whether the proposal is substantial. These early discussions should include:

   - Agreement about the length of time the consultation will last
   - Identification of the population which may be affected
   - And methods to be used taking into account local needs

5. The SCH&H OSC Chairman and Members are advised of the proposal and provided with any supporting papers supplied by the NHS body. At the beginning of the second phase of consultation, the Scrutiny Officer will write to the Project Manager dealing with the consultation for the NHS body to request a response to a set of questions within a given timeframe[2]

6. The SCH&H OSC will consider the formal consultation document and may raise additional queries by way of a further letter to the health body. Answers will be requested within a specified timescale. The SCH&H OSC will respond to NHS consultation within the stipulated timescale, and if it does not support the proposals, it will provide reasons and evidence for its view.

7. The SCH&H OSC may also utilise its statutory powers to require a suitable representative(s) from the Health body to attend a meeting of the Committee to provide information.

8. If the SCH&H OSC is satisfied with the information it has received from the Health body and no additional information is required it may then sign-off the proposal.

9. If the SCH&H OSC is not satisfied with the information supplied by the Health body it may request additional information / request the length of the consultation period to be extended or ultimately refer the matter to the SoS for determination.

10. The SCH&H OSC will provide the details of its final decision to the NHS body concerned within the time specified in the NHS consultation. Should the Committee need to refer the matter to the SoS, the relevant NHS body will be given the opportunity to respond to the Committee's comments and an effort at local resolution will be made.

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[1] It is important that NHS bodies inform the OSC very early of any proposal for change, so that their consideration can be properly timetabled.

[2] An example of the type of questions that could be asked are set out in **Appendix 2**

11. Although the procedure in paragraphs 4 – 10 provides a guide to the procedure, the order in which things happen may vary according to the complexity of the issue and other constraints. An overview of the Local Authority procedure in relation to health overview and scrutiny is provided in **Appendix 1.**

Power of referral to the Secretary Of State

12. If the SCH&H OSC is not satisfied with the content of the consultation, that sufficient time has been allowed or that the reasons given for not carrying out consultation are adequate; it may report the matter to the SoS in writing, setting out the reasons for referral. The SoS can require the NHS body concerned to carry out such consultation or further consultation with the SCH&H OSC as appropriate.

13. If the SCH&H OSC considers that the proposal is not in the interest of the health service in its area it may also refer the issue to the SoS in writing, who may make a final decision on the proposal. The SoS can require the NHS body to take such action or refrain from taking such action as he (or she) may direct. Decisions of this nature made by the SCH&H OSC are formally recorded and are available to the public. The SoS may ask an Independent Reconfiguration Panel (IRP) to take a judgement on the matter. This is a body that has been specifically set up to deal with referrals of this type. (Although automatic referral was introduced in 2007, in 2008 the SoS has retained the right on whether to refer the matter to the reconfiguration panel or not).

Joint committees

14. Where a service change impacts on more than one Health Overview and Scrutiny Committee (HOSC) area, this will require the establishment of Joint Health Overview and Scrutiny Committee (JHOSC) to consider the change. JHOSC's exercise all the powers of a HOSC and may not refer back to their 'parent' committees.

15. 'Parent' OSCs can exercise the power of referral to the SoS following the receipt of comments back from the relevant health body(ies). For example at some point NHS Bedfordshire might need to set up a joint PCT committee for proposals involving several areas and the SHA might have a role in ensuring the full and relevant involvement of all stakeholders in such case.

The context of consultation

16. Proposals for the development or variations of services are likely to span the whole spectrum of change, from very minor changes such as an extension of the opening hours of a particular clinic through to the reconfiguration of a county-wide specialist services (e.g. specialist cancer services) or major capital (new build) projects.

17. It is good practice for health organisations to notify the Social Care, Health and Housing Overview and Scrutiny Committee(s) (SCH&H OSC) of any proposals for service development or change as early as possible. Early discussions should take place between representatives from the NHS and the Overview and Scrutiny officer on the type of involvement / consultation planned and whether the proposed changes to services are considered to be substantial and therefore require a period of formal consultation[3].

18. It is important to remember that the Section 11 duty to involve and consult patients and the public still applies whether or not a proposal constitutes a substantial variation or development. However the Act does clarify that people do not need to be consulted about changes in service provider where the service delivery and range of services remain the same[4].

Who is responsible for consultation?

19. The Primary Care Trust (PCT) leading the commissioning process will normally be responsible for consultation[5]. Where a proposal for service change spans more than one PCT, they will need to agree a process of joint consultation. The Board of each PCT should formally delegate the responsibility to a joint committee, acting as a single entity and be responsible for making the final decision following consultation. The Strategic Health Authority (SHA) has a responsibility for making sure that NHS Trusts and PCTs involve patients and the public and that consultation is done well, in line with national guidance. SHAs will be required to prepare reports on consultations they have carried out before making commissioning decisions and the influencing factors the consultation may have had on these decisions

When are NHS bodies not required to consult?

20. Some exemptions exist in relation to the requirement for consultation. These are:

- Any proposal to establish or dissolve a NHS Trust or Primary Care Trust unless that establishment or dissolution represents a substantial variation or development.
- Pilot schemes within the meaning of Section 4 of the National Health Service (Primary Care) Act 1997(1).
- Changes in service provider where the manner of service delivery and range of services remain the same.

[3] Government guidance on consultations states that full consultation should last for a minimum of twelve weeks, and that consultation should ensure that groups the NHS has traditionally found hard to reach and the wider community should be consulted.
[4] **Appendix 3** provides examples of the types of service changes which may fall within this continuum of involvement / consultation.
[5] **Appendix 4** gives an example of the stages of a consultation process.

- A decision, which has to be taken immediately because of a risk to the safety or welfare of patients or staff. In such circumstances, the NHS body must notify the SCH&H OSC immediately, in writing, of the decision taken and the reason why no consultation has taken place. If members of the SCH&H OSC are not satisfied that the reasons given are adequate, any difference of opinion may be settled by applying the guidelines, illustrated in Appendix 4 of this report.

Conclusion

21. Members are therefore asked to note the contents of this report for information and consider the process undertaken by local NHS bodies for assessing whether or not health service developments and variations are "substantial" so that it is possible to distinguish proposals that require formal consultation with OSCs from proposals that do not.

22. The Overview and Scrutiny Committee has no desire to create additional layers, which unnecessarily delay the implementation of changes and equally does not wish to overburden committee proceedings with a plethora of consultation exercises. The SCH&H OSC must have an awareness of what proposals are planned and have the opportunity to ensure that local views have been sought and taken into consideration including any information provided by the LINk.

23. This is an important power and is the central element to the Government's proposals to make the NHS more accountable locally. It is therefore vital that there is a local understanding of what constitutes a substantial variation / development and the processes that have been put in place.

CORPORATE IMPLICATIONS

Council Priorities:

Under its terms of reference, the Social Care Health and Housing Overview and Scrutiny Committee's regard for the guidance about Substantial Variations and Developments of Health Services will support the following Council priorities: supporting & caring for an aging population and promoting healthier lifestyles.

Financial:

There are no financial issues arising directly from this report

Legal:

The Local Government and Public Involvement in Health Act 2007 (LGiPH 2007) amended Section 242 of the NHS Act 2006 (previously Section 11 of the Health and Social Care Act 2001) which related to the duty on NHS bodies to involve and consult service users.

A Health OSC has the right, now enshrined in the NHS Act 2006 and Regulations to refer proposals to the Secretary of State for Health if it is not satisfied:

- with the content of the consultation;
- with the time that has been allowed; or
- that the proposals are in the interests of the health service in its area

The Local Government and Public Involvement in Health Act 2007 abolished Patient and Public Involvement Forums and replaced them with Local Involvement Networks (LINks) in every local authority area with social services responsibilities. Key roles for the LINk are to gather the views and experiences of local people using local health and social care and to promote and support the involvement of local people in the commissioning, provision and scrutiny of health and adult social care services.

In October 2008 the Department of Health published statutory guidance for NHS organisations on carrying out their duty to involve. This includes a section explaining the difference between the duty to involve users and the duty to consult OSCs.

Risk Management:

There are no risk management issues arising directly from this report.

Staffing (including Trades Unions):

There are no direct staffing implications.

Equalities/Human Rights:

There are no Human rights or equality implications arising directly from this report.

Community Development/Safety:

There are no issues to consider in this report.

Sustainability:

There are no direct implications arising from this report.

Appendices:

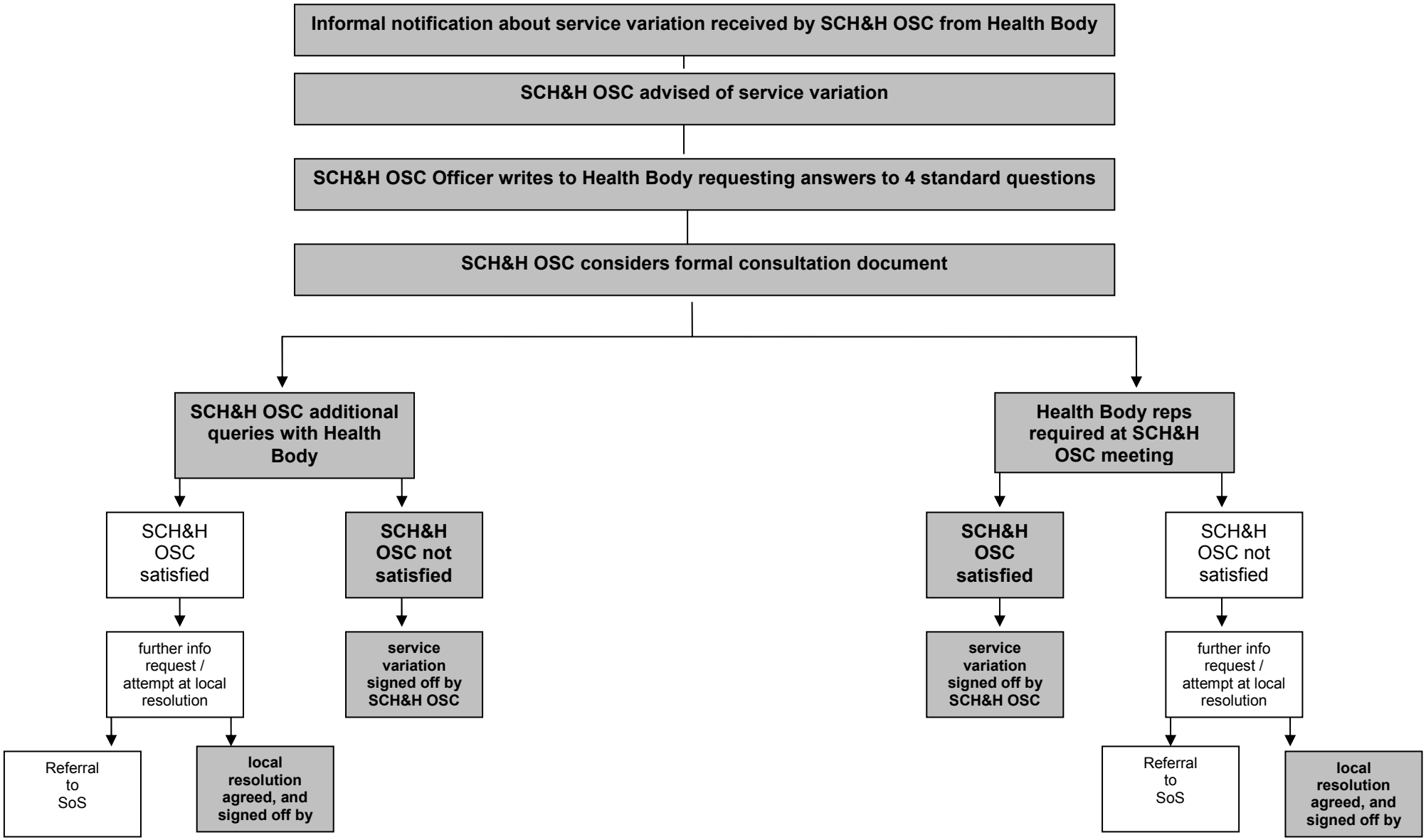
1. Health Service Variations – Local Authority Procedure
2. Examples of questions that may be asked by SCH&H OSC to NHS Bodies
3. Model Continuum of Involvement / Consultation
4. Flow Chart illustrating the stages of consultation

Background Papers (open to public inspection):
Local Government and Public Involvement in Health Act 2007
Department of Health (2003) Overview and Scrutiny of Health Guidance
Department of Health (2003) Strengthening Accountability Policy and Practice Guidance
Health and Social Care Act 2001

Location of papers: Priory House, Chicksands

Appendix 1

Health Service Variations – Local Authority Procedure



Appendix 2

Examples of questions that may be asked by SCH&H OSC to NHS Bodies

At the beginning of any second phase public consultation the Panel would request a response in writing from NHS body(ies) proposing service variations and developments to four basic questions as follows:

1. How the views of the public were obtained in the earlier stages of the change programme, including consultation procedures used, numbers involved, timescales for consultation and the questions asked.

2. What views were expressed by the public, to establish how well informed, clear and representative these views are, and how they bear on the options available to the PCTs.

3. How these views were interpreted by the PCTs and factored into the development of your proposals, whether for or against the proposals.

4. What the public response is now to any proposals that differ from those submitted to the public in the initial round of consultation.

Upon receipt the SCH&H OSC would determine if witnesses would be required to attend a future meeting and give oral evidence.

Model Continuum of Involvement / Consultation

	Examples of issues and potential proposals	Informal involvement	Informal Consultation	Formal Consultation
SCH&H OSC normally involved	Major service reconfiguration e.g. proposals involving reprovision / closure or development of new services			**CATEGORY 4** Formal consultation process required
	Change in demand for specific services e.g. proposal to relocate GP surgery or cessation of some surgery sessions		**CATEGORY 3** Formal mechanisms established to ensure that patients / service users / carers and the public are engaged in planning and decision-making (ref: Section 11 Health & Social Care Act)	
	Need for modernisation of hospital based service e.g. proposal to relocate and modernise day surgery unit on a particular hospital site		**CATEGORY 2** More formalised structures in place to ensure that patients / service users / carers and patient groups views on the issue and potential solutions are sought	
SCH&H OSC may be involved	Changes in demand for specific services (e.g. Baby clinics) e.g. proposal to extend or reduce opening hours of Health Visitor Clinics	**CATEGORY 1** Informal discussions with individual patients / service users / carers and patient groups on potential need for changes to services and solutions		

NB The examples listed on this continuum are not definitive and there may be some local variation in the way they are dealt with

Its envisaged that the health bodies will submit brief details of these proposals to the SCH&H OSC and indicate which category they fall into & why

Flow Chart illustrating the stages of consultation