

DATE: 13 November 2007

Mental Health Reconfiguration- Consultation Arrangements

Ward(s) All

Portfolios: Councillor McCracken - Social Care, Health and Housing

Summary of report:

The Health Scrutiny Panel has its powers delegated to it from the Health Social Care and Inclusion Scrutiny Panel (19 June 2007).

The Health Scrutiny Panel has agreed that it considers the proposed Dudley / Walsall Mental Health Partnership Trust constitutes a substantial variation in NHS Services. As the Health Scrutiny Panel has determined that proposals constitute a substantial variation, a 'statutory joint overview and scrutiny committee' needs to be established to consider and respond to the consultation document on the future of Mental Health Services in Dudley and Walsall.

The Health Social Care and Inclusion Panel are asked to approve the formation of a joint committee with Dudley Council.

Background papers:

- Progress report from Walsall/Dudley mental health partnership work (19 July 2007)
- Minutes of Health Scrutiny Panel (30 March 2006)
- Minutes of Health Scrutiny Panel (25 September 2007)
- Report to Health Scrutiny Panel (6 November 2007)
- CfPS joint health scrutiny committees, a practical guide
- CfPS substantial variations and developments of health services, a guide

Reason for scrutiny:

At its meeting on 30 March 2006, the Health, Social Care and Inclusion Scrutiny and Performance Panel resolved that the Health Scrutiny Panel be delegated the authority to consider the reconfiguration of mental health services in the first instance and that the matter be referred back to the Health, Social Care and Inclusion Scrutiny and Performance Panel when formal consultation proceeds.

Section 7 of the Health and Social Care 2001 Act requires NHS bodies to consult relevant overview and scrutiny committees on any proposals for substantial variations or developments of Health services.

Where people from more than one local authority area may be affected by proposed variations or developments to NHS services, all health scrutiny committees consulted must decide whether they consider the proposals to be 'substantial'. A 'substantial variation or development' is not defined in regulations, meaning that each Health Scrutiny Panel must decide if it considers proposals to be substantial. Those health scrutiny committees that do consider them to be substantial must form 'statutory joint health scrutiny committees' to deal with the consultation and respond on behalf of their communities.

Resource and legal considerations:

Depending on the outcome of the report it has been agreed that any cost implications relating to the administration of a joint overview and scrutiny committee would be shared between Dudley and Walsall Council.

Citizen impact:

When responding to consultation members of joint committees would be representing the views of their electorate.

Environmental impact:

None applicable.

Performance management:

If established, the statutory joint committee would respond to consultation on the future configuration of mental health services in Dudley and Walsall. This would have an impact on the improvements in mental health services, in particular specialist services. Performance management reporting arrangements would need to be considered alongside any consultation to ensure the authority maintains a robust approach to performance management.

Equality Implications:

None applicable.

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1. Background

2. Mental health services are currently provided by integrated Council and Primary Care Trust (PCT) Services in the Borough areas of Dudley, Walsall and Wolverhampton and by the Sandwell Mental Health NHS and Social Care Trust for people resident in Sandwell.
3. In January 2005, senior officers from the Black Country Primary Care Trusts, local authorities and the Sandwell Mental Health Care Trust formed a Project Board to review the current configuration of mental health services. A pre-consultation document was published in April 2006 and a seminar for Cabinet members and Scrutiny Chairs took place in June 2006.
4. The creation of a single mental health trust providing specialised mental health was recommended by the Project Board, but both Wolverhampton and later Sandwell opted not to join. The boroughs of Dudley and Walsall then agreed to further explore the option of a single mental health partnership trust.
5. The proposal is to bring together these services into a Dudley-Walsall NHS Partnership Trust by April 2008. This proposal is supported as the preferred option by senior officers in the Local Authorities and PCTs in Walsall and Dudley.
6. A larger partnership trust would be financially stronger than separate borough organisations, would deliver economies of scale and would be better equipped to take forward significant improvements in mental health services, in particular specialist services, whilst still being local enough to offer people services close to home.
7. Many NHS Mental Health Trusts will become Foundation Trusts (FTs) by 2008. A mental health service comprising Dudley and Walsall would be able to apply for Foundation Trust status from 2009.
8. The partnership trust would provide all current mainstream health and social care services for mental health in Dudley and Walsall - primary care, community mental health, social work, day care, therapies and care in hospital.
9. Partnership Agreements under Section 31 of the Health Act 1999 would be drafted to cover the two Boroughs subject to PCT and Local Authority approval. Similar agreements already exist separately in Dudley and Walsall.
10. The proposed trust would report to the elected Members of the two Councils on progress and performance of Mental Health services.
11. A Project Board was established in January 2007. A full time Project Director was appointed in late February 2007. A joint interim Chief Executive has recently been appointed across Dudley and Walsall Mental Health services to oversee progress towards the new organisation.

12. The responsibility for consulting on boundary and structural changes in local NHS services rests with the Strategic Health Authority on behalf of the Secretary of State for Health. Social Care in Mental Health services is the responsibility of the Metropolitan Borough Councils in the boroughs concerned. Approval of the Cabinet in each Council will be required for Social Care services to become part of the new Partnership Trust, including arrangements for the secondment or transfer of staff.
13. In September 2007, the Strategic Health Authority approved the outline business case for the new Mental Health Trust.
14. Options for the future of mental health services in Dudley and Walsall are now subject to a public consultation under section 11 of the Health and Social Care Act 2001, which is taking place for 13 weeks, commencing on 26 September 2007. A consultation document – ‘A Better Idea’ - has been published, which is attached to this report (Appendix A).
15. Section 7 of the Health and Social Care 2001 Act requires NHS bodies to consult relevant overview and scrutiny committees on any proposals for substantial variations or developments of health services.
16. The Secretary of State issued a direction about joint health overview and scrutiny committees in July 2003 relating to consultations by NHS bodies under the Health and Social Care Act 2001, where people from more than one local authority area may be affected by proposed variations or developments to NHS Services. In these circumstances, all health overview and scrutiny committees must decide whether they consider the proposals to be ‘substantial’. Those health overview and scrutiny committees that do consider them to be substantial must form a statutory joint overview and scrutiny committee to deal with the consultation and to respond on behalf of their communities.
17. The NHS responsibility to overview and scrutiny committees to consult on matters of substantial variation to services is in addition to the duty under Section 242 of the National Health Service Act 2006 to involve and consult patients and the public.
18. Under Section 245 of the National Health Service Act 2006, two or more Councils may appoint a joint overview and scrutiny committee of those authorities.
19. The establishment of the joint committee can be exercised under the powers given to health scrutiny. This is set out in article 6 of the Council’s constitution.
20. The establishment of a Joint Overview and Scrutiny Committee will need to be agreed by the Health and Adult Social Care Select Committee in Dudley and the Health, Social Care and Inclusion Scrutiny and Performance Panel in Walsall.
21. If the Health Scrutiny Panel decides that the changes are ‘substantial’, a statutory joint committee must be established. If a joint committee is not

established the local authority loses its opportunity to respond to the consultation. Decisions about changes to health services could be challenged through judicial review if it can be shown that correct procedures have not been followed by NHS or health scrutiny panels.

Proposals

22. It is proposed that a Joint Overview and Scrutiny Committee of elected members from Walsall and Dudley is established to consider and formulate a response to the consultation document, 'A Better Idea'.
23. The Joint Committee would meet in late November/early December to carry out this task. The Joint Committee's response has to be submitted by 19 December 2007. A follow-up meeting may be possible in January 2008 to consider consultation results.
24. It is suggested that the Joint Committee will consist of five elected Members from each Council, ten in total.
25. The membership of each authority shall generally reflect the political make up of full Council, unless elected members agree to waive that requirement. It is suggested that the Walsall group of Members should comprise three Conservative, one Labour and one Liberal Democrat representative.
26. The terms of reference for the Joint Committee are attached at Appendix B for consideration by the Health Scrutiny Panel.

Recommendations

27. That the Health, Social Care and Inclusion Scrutiny and Performance Panel agree that a joint committee is established as the Health Scrutiny Panel has agreed that the proposals constitute a 'substantial variation' in NHS Services.
28. That the Health, Social Care and Inclusion Scrutiny and Performance Panel agrees membership, suggested as follows;
 - 3 Conservative
 - 1 Labour
 - 1 Liberal Democrat

It is suggested that the membership of the joint committee contains members from the Health Scrutiny Panel.

29. It is recommended that the Health, Social Care and Inclusion Scrutiny Panel approve the arrangements for setting up the Joint Overview and Scrutiny Committee and the terms of reference, as set out in the paragraphs 22 - 26 above and in Appendix B.

APPENDIX B

Reconfiguration of Mental Health Services in Dudley and Walsall

Terms of Reference for a Joint Overview and Scrutiny Committee for Dudley and Walsall Councils.

Introduction and background

1. It is proposed that a new NHS organisation to provide mental health services for the boroughs of Walsall and Dudley is created. Currently, mental health services are provided by Walsall teaching Primary Care Trust (tPCT) and Dudley Primary Care Trust (PCT), in partnership with the respective local authorities.
2. The new organisation would be a NHS Trust holding partnership agreements with Dudley and Walsall local authorities relating the provision and funding of services. It is proposed that the new organisation would provide all elements of mental health services currently delivered by the PCTs.

Purpose and definition of joint arrangements

3. The purpose of the joint arrangements is to consider and respond to proposals to create a new NHS organisation to provide mental health services for the boroughs of Walsall and Dudley. The creation of a new NHS organisation would cover more than one local authority area and consequently there would be the need for the scrutiny of this to be undertaken by a Joint Overview and Scrutiny Committee. The joint arrangements will be between the Health Scrutiny panels of Dudley Council and Walsall Council.

Type and proposed structure of joint arrangements

4. In order for the joint scrutiny to be as efficient and effective as possible it is necessary for lead members to have the authority to act between meetings of their own committees.

Process for establishing a Joint Overview and Scrutiny Committee

5. The establishment of a Joint Overview and Scrutiny Committee will need to be agreed by the Health and Adult Social Care Select Committee in Dudley and the Health, Social Care and Inclusion Scrutiny and Performance Panel in Walsall.

Role and responsibilities of a Joint Overview and Scrutiny Committee – statutory requirements

6. Section 7 of the Health and Social Care 2001 Act requires NHS bodies to consult relevant overview and scrutiny committees on any proposals for substantial variations or developments of Health services.
7. The Secretary of State issued a direction about joint health overview and scrutiny committees in July 2003 relating to consultations by NHS bodies under the

Health and Social Care Act 2001, where people from more than one local authority area may be affected by proposed variations or developments to NHS Services. In these circumstances, all health overview and scrutiny committees must decide whether they consider the proposals to be 'substantial'. Those Health Overview and Scrutiny Committees that do consider them to be substantial must form a joint overview and scrutiny committee to deal with the consultation and to respond on behalf of their communities.

8. NHS bodies have responsibilities to overview and scrutiny committees to consult on matters of substantial variation to services, this is in addition to the duty under Section 242 of the National Health Service Act 2006 to involve and consult patients and public.
9. Under Section 245 of the National Health Service Act 2006, two or more Councils may appoint a joint overview and scrutiny committee of those authorities.

Membership

10. The local authority areas affected by the proposals are Dudley and Walsall.
11. Representation shall be determined once individual authorities have decided whether the variation or development of the service is considered substantial that local authority area.
12. Under Local Government Act 2000, Overview and Scrutiny Committees must generally reflect the political make up of full Council. However the Local Government and Housing Act 1989 enables local authorities to waive the political balance requirements if all elected Councillors within authorities agree that it need not apply.
13. Where a Joint Overview and Scrutiny Committee is established, the political balance requirements apply for each participating local authority. In this case, it is proposed that the joint committee will be made up of ten members, 5 from each local authority reflecting the political balance of Dudley and Walsall.
14. Executive/Cabinet members are excluded from serving on statutory or discretionary joint health committees.
15. The group may wish to co-opt the joint Chief Executive of Mental Health Services, and/or the Assistant Directors responsible for mental health services for each local authority. Other people can be co-opted as non-voting members.

Quorum

16. To be one third of the membership, with at least one member from each authority. That all other members of the Health, Social Care and Inclusion Scrutiny and Performance Panel be appointed as substitutes for the members appointed to the Joint Scrutiny Committee. Any substitute nominated by a political group should be notified to the scrutiny officer prior to the meeting.

Frequency of meetings

17. The joint committee will meet to compliment the project timetable, and respond to consultation by 19 December 2007.

Aims and objectives

18. The aim of the Joint Overview and Scrutiny Committee between Dudley and Walsall is to consider proposals and respond to consultation on the mental health reconfiguration between Dudley and Walsall.

19. As per the direction made by the Secretary of State in July 2003, joint overview and scrutiny committees may;

- make comments on the proposal consulted on the local NHS body under regulation 4(4) of the Regulations
- require the local NHS body to provide information about the proposal under regulation 5 of the regulations; or
- require an officer of the local NHS body to attend before it under regulation 6 of the regulations to answer such questions as appear to it to be necessary for the discharge of its functions in connection with the consultation

Reporting

20. Joint committees are able to exercise all the powers of a scrutiny panel, but may not refer back to scrutiny panels. Individual scrutiny panels in Dudley and Walsall lose the right to consider the proposal individually. At the end of the scrutiny process, the scrutiny panels can exercise the power of referral to the Secretary of State.

21. Department of Health guidance suggests that Joint Overview and Scrutiny committees must produce only one report reflecting the full range of views of its members.

Support and resources

22. The Guidance on Overview and Scrutiny of Health issued by the Department of Health advocates that local authorities participating in joint committees should share the cost and resource implications of working together with the Primary Care Trust.