

## Considerations for patient and public participation in NHS service change in England - An executive briefing for NHS Wakefield CCG 09 January 2020

### Introduction

- 0.0 The drivers requiring NHS bodies to involve and consult patients and the public are a mix of legislation, policy, promise, guidance and public (case) law.
- 0.1 Decisions made by NHS bodies can be referred to the Secretary of State for review or challenged in court. Involvement and consultation processes are often a feature of these cases.

“Public involvement in commissioning is about enabling everyone who uses services or may do so in the future, including carers and families, to voice their views, needs and wishes, and to contribute to plans, proposals and decisions about services.”

Patient and Public Participation in Commissioning Statutory Guidance  
NHS England, 2017

### 1 Patient and public involvement legislation

- 1.1 NHS commissioners and service providers have a duty<sup>1</sup> to involve patients and the public (by means of providing information, consultation, or in other ways”) in:



- a) Planning;
- b) The development and consideration of proposals for changes to services;
- c) Decisions they make.

### 2.0 Policy and guidance

- 2.1 *Planning, assuring and delivering service change for patients* (NHS England, 2018) sets out the detail and process for all the tests, checks and considerations that NHS bodies must undertake in developing of proposals for change.
- 2.3 *Patient and public participation in commissioning health and care: statutory guidance for CCGs and NHS England* (NHS England, 2017) sets out step-by-step approaches to meeting the statutory duty to involve patients and the public in planning, developing change proposals and decision making.

<sup>1</sup> Section 242/13Q/14Z2 of the Health Service Act 2006 (as amended by the Health and Social Care Act 2012)

### **3.0 Equality and health inequality law**

- 3.1 The 'public sector equality duty'<sup>2</sup> requires CCGs in the exercise of its functions, to have due regard to the need to:
- eliminate discrimination, harassment, victimisation and other prohibited conduct,
  - advance equality of opportunity, and
  - foster good relations.
- 3.2 CCGs must in the exercise of their functions have regard<sup>3</sup> to the need to:
- a) Reduce inequalities with respect to their ability to access health services, and
  - b) Reduce inequalities between patients with respect to the outcomes achieved for them by the provision of health services.

### **4.0 Local Authority Scrutiny Regulations**

- 4.1 NHS bodies must<sup>4</sup> consult local authorities where they have under consideration proposals for substantial variations to services. 'Substantial' has not been defined, but there is a logical case that the local authority's view as to whether the proposed changes are substantial should prevail. Local authorities have the power to refer the matter to the Secretary of State for review.

*"Consultation is a dynamic process of public dialogue with the clear objective of influencing decisions, policies, or programmes of action."*

The Consultation Institute

### **5.0 Public law**

- 5.1 Requirements for conducting a public consultation lawfully are informed by an extensive and growing body of case law, including the four Gunning Principles:
1. Proposals must be at a formative stage
  2. Consultors must provide sufficient information to allow consultees 'intelligent consideration' of the proposals
  3. Consultors must allow sufficient time for consultation
  4. Consultors must conscientiously consider the output of the consultation
- 5.1 Consultors have to make good on their promises and their own stated policy and process. In addition to national guidance, if a local policy or statement sets out an organisational promise around change, the public and indeed courts can expect them to adhere to it.

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<sup>2</sup> Section 149 of the Equality Act 2010

<sup>3</sup> Section 14T of the Health Service Act 2006 (as amended)

<sup>4</sup> R23, The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013