



Department
of Health &
Social Care

Acute Care and Provider Policy
Department of Health and Social Care
39 Victoria Street
London
SW1H 0EU

10th January 2019

Dear Councillor Holloway,

Referral of Mid and South Essex Sustainability and Transformation Partnership – Orsett Hospital proposals

Thank you for your letter of 8th January 2019 in which you refer the above matter to the Secretary of State for his consideration, in accordance with Regulation 23 of The Local Authority (*Public Health, Health and Wellbeing Boards and Health Scrutiny*) Regulations 2013.

It would help us in determining whether this referral is legitimate, if you could set out clearly how your written submission conforms to the requirements of these Regulations.

Your letter states that "*This referral meets the conditions of referral as set out in regulation 23 parts (5)(a)(b)(c) (Local Authority Public Health, Health and Wellbeing Boards and Health Scrutiny Regulations 2013)*". It would be helpful if you could provide evidence of this; for example, the recommendations made to the CCG Joint Committee and the steps taking to reach agreement in relation to the subject of the recommendation. If you believe you did not make a recommendation to the CCG Joint Committee, please refer to Paragraphs (6), (7) and (8) of the Regulations.

To meet the requirements set out in Paragraphs (10) and (11), it would be helpful if you could explain how you have attempted to reach agreement on the proposals. This could include, for example, providing a summary of the evidence considered, copies of (or website links to) the minutes of Council, Thurrock HOSC or JHOSC meetings, and copies of communication with the CCG Joint Committee.

For ease of reference, I have attached Regulation 23 as an Annex to this letter.

Yours sincerely,

Lauren Ging
Acute Care and Provider Policy team
020 7210 2739
Lauren.ging@dhsc.gov.uk

**Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013
– Regulations 23, 24, 25**

23.— Consultation by responsible persons

(1) Subject to paragraphs (2) and (12) and regulation 24, where a responsible person (“R”) has under consideration any proposal for a substantial development of the health service in the area of a local authority (“the authority”), or for a substantial variation in the provision of such service, R must—

- (a) consult the authority;
- (b) when consulting, provide the authority with—
 - (i) the proposed date by which R intends to make a decision as to whether to proceed with the proposal; and
 - (ii) the date by which R requires the authority to provide any comments under paragraph (4);
- (c) inform the authority of any change to the dates provided under paragraph (b); and
- (d) publish those dates, including any change to those dates.

(2) Paragraph (1) does not apply to any proposals on which R is satisfied that a decision has to be taken without allowing time for consultation because of a risk to safety or welfare of patients or staff.

(3) In a case such as is referred to in paragraph (2), R must notify the authority immediately of the decision taken and the reason why no consultation has taken place.

(4) Subject to regulation 30(5) (joint committees) and any directions under regulation 32 (directions as to arrangements for discharge of health scrutiny functions), the authority may make comments on the proposal consulted on by the date or changed date provided by R under paragraph (1)(b)(ii) or (c).

(5) Where the authority's comments under paragraph (4) include a recommendation to R and R disagrees with that recommendation—

- (a) R must notify the authority of the disagreement;
- (b) R and the authority must take such steps as are reasonably practicable to try to reach agreement in relation to the subject of the recommendation; and
- (c) in a case where the duties of R under this regulation are being discharged by the responsible commissioner pursuant to paragraph (12), the authority and the responsible commissioner must involve R in the steps specified in sub-paragraph (b).

(6) This paragraph applies where—

- (a) the authority has not exercised the power in paragraph (4); or
- (b) the authority's comments under paragraph (4) do not include a recommendation.

(7) Where paragraph (6) applies, the authority must inform R of—

- (a) its decision as to whether to exercise its power under paragraph (9) and, if applicable, the date by which it proposes to exercise that power; or
- (b) the date by which it proposes to make a decision as to whether to exercise that power.

(8) Where the authority has informed R of a date under paragraph (7)(b), the authority must, by that date, make the decision referred to in that paragraph and inform R of that decision.

(9) Subject to paragraph (10), the authority may report to the Secretary of State in writing where—

- (a) the authority is not satisfied that consultation on any proposal referred to in paragraph (1) has been adequate in relation to content or time allowed;
- (b) in a case where paragraph (2) applies, the authority is not satisfied that the reasons given by R are adequate; or

(c) the authority considers that the proposal would not be in the interests of the health service in its area.

(10) The authority may not make a report under paragraph (9)—

(a) in a case falling within paragraph (5), unless the authority is satisfied that—

(i) the steps specified in paragraph (5)(a) to (c) have been taken, but agreement has not been reached in relation to the subject of the recommendation within a reasonable period of time;

(ii) R has failed to comply with its duty under paragraph (5)(b) within a reasonable period of time; or

(b) in a case to which paragraph (6) applies, unless the authority has complied with the duty in paragraph (7) and, where applicable, paragraph (8).

(11) A report made under paragraph (9) must include—

(a) an explanation of the proposal to which the report relates;

(b) in the case of a report under paragraph (9)(a) or (b), the reasons why the authority is not satisfied of the matters set out in paragraph (9)(a) or (b);

(c) in the case of a report under paragraph (9)(c), a summary of the evidence considered, including any evidence of the effect or potential effect of the proposal on the sustainability or otherwise of the health service in the area of the authority;

(d) an explanation of any steps the authority has taken to try to reach agreement with R in relation to the proposal or the matters set out in paragraph (9)(a) or (b);

(e) in a case falling within paragraph (10), evidence to demonstrate that the authority has complied with the applicable condition in that paragraph;

(f) an explanation of the reasons for the making of the report; and

(g) any evidence in support of those reasons.

(12) In a case where R is a service provider and the proposal relates to services which a clinical commissioning group or the Board is responsible for arranging the provision of—

(a) the functions of R under this regulation must be discharged by the responsible commissioner on behalf of R; and

(b) references to R in this regulation (other than in paragraph (5)(c)) are to be treated as references to the responsible commissioner.

(13) Where the functions of R under this regulation fall to be discharged by more than one body under paragraph (12)(a), the duties of those bodies under that paragraph may be discharged by those bodies jointly or by one or more of those bodies on behalf of those bodies.

(14) In this regulation—

“service provider” means an NHS trust, an NHS foundation trust or a relevant health service provider;

“the responsible commissioner” means the clinical commissioning group or groups or the Board, as the case may be, responsible for arranging the provision of the services to which the proposal relates.