

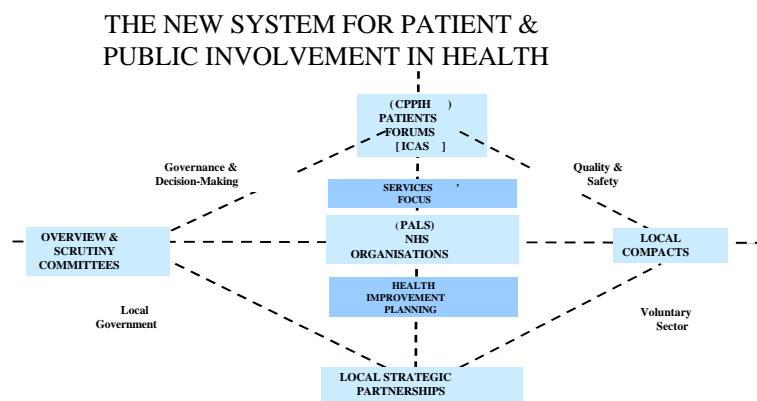


Health Overview and Scrutiny Committee

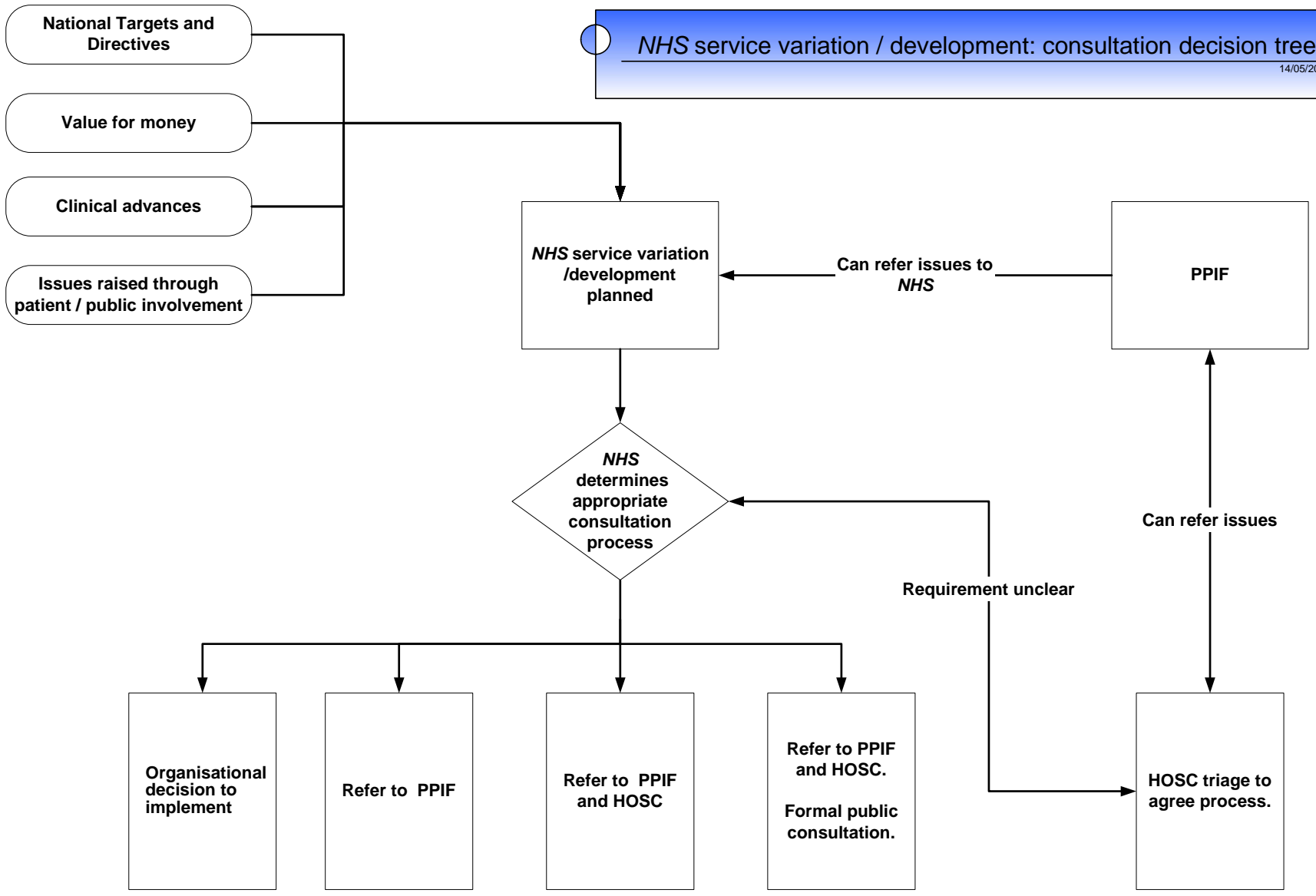
An Agreed Framework for East Sussex NHS bodies and Health Overview and Scrutiny Committee on Substantial Variation

1. What constitutes a '*substantial development*' or '*variation*' to NHS services is not defined in law. However, 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 including Patients' Forums. This paper provides the basis of an agreed framework and development of an understanding between the NHS bodies and the Health Overview and Scrutiny Committee (HOSC).
2. The approach is to develop sufficiently clear and inclusive guidance to cover the majority of situations. However, it will not be possible to produce water-tight definitions or ones which cover 100% of eventualities. Therefore, a mechanism for dealing with uncertainty has been built in. This allows the local NHS community to discuss with HOSC any situations where the appropriate consultative approach is unclear. The expectation is that, in the early days of operating the system, this mechanism will be used more frequently. However, as mutual understanding and trust develops, this will become the exception not the norm.
3. It must be emphasised that this paper is not about setting down the whole framework for the NHS public consultation process in East Sussex. This agreement is only one part of the full picture of the requirements placed upon NHS bodies with regard to public consultation. This paper only covers NHS bodies' formal consultation with the HOSC. The HOSC, however, recognises its role in ensuring that, where there is variation and development to services, the NHS bodies undertake further appropriate public and patient consultation on those changes.
4. Section 11 of the Health and Social Care Act 2001 provides that the public should be involved in and consulted on (directly or through representatives):
 - Planning service provision
 - Development and consideration of proposals for changes in the way services are provided
 - Decisions to be made affecting the operation of services
5. This is a universal requirement and not limited to those cases where any change might be considered to be substantial. It cannot be discharged by a one-off consultation exercise.
6. As part of the duties required by Section 11 of the Health and Social Care Act 2001 NHS bodies will be expected to consult and involve public and patients, advisory and user groups, Health Overview and Scrutiny Committees (HOSC) and Patient and Public Involvement Forums (PPIFs).

7. HOSCs, in their scrutiny of service changes, will always have regard to the extent to which the duty to consult and involve has been performed by PCTs and NHS trusts. If that statutory duty has been inadequately performed, they will find proposals for the development or variation of services deficient. The same requirement will apply to PPIFs in their scrutiny of service changes.
8. A PPIF may refer a matter to the local HOSC if it considers that the NHS is not carrying out its duties under section 11 or is not doing so in a satisfactory manner.
9. The local HOSC will consider the results of public consultations and subsequent response(s) of NHS organisations to them on any matter referred to it for scrutiny. It will form a judgement about their adequacy before producing its final report.
10. The Department of Health *Overview and Scrutiny of Health – Guidance* (July 2003) also points out that “Section 11 makes it clear to NHS organisations that solely focussing consultation with the Health Overview and Scrutiny Committee would not constitute good practice” (10.1.3).
11. This framework recognises that, because public consultation is a statutory duty under Section 11, it is the responsibility of the NHS bodies to determine appropriate consultation with the public. This suggests that it is the Board of the NHS body which determines the appropriate consultation procedure and the matters on which there is a need for public consultation.
12. It is clear that any consultation on matters referred to the HOSC is not a substitute for public consultation. The intention here is to clarify roles and responsibilities. The HOSC is a representative body. However, it cannot be regarded as satisfying the statutory duty conferred on NHS organisations to consult. Indeed, it is expected practice that patient and public views must feed in to all planning for service change.
13. Consultation on changes to health services is not a new requirement. The Community Health Council Regulations, 1996, required Strategic Health Authorities (previously Health Authorities) to consult on proposals for any substantial development or variation to health services. The following diagram illustrates the various strands and new components in the NHS patient and public involvement process.



NHS service variation / development: consultation decision tree
 14/05/2004



NHS service variation / development: consultation guidance

Organisational decision to implement	Refer to PPIF	Formal public consultation. Refer to PPIF and HOSC
	Moving a facility within the locality. ²	<p>Closure of a facility, where the services it provided will continue to be provided within the locality.</p> <p>Closure of a hospital or facility, where its services will no longer be provided within the locality.</p>
Changes in clinical or administrative practice designed to improve services without reducing accessibility.	Shifting the balance of services from secondary care towards primary, community and self-care.	<p>Complete shift of services from one sector of care to another, eg. Secondary to primary care.</p> <p>Changes to the accessibility of services used or potentially used by the whole population, or of great interest to the general public (such as changes to accident and emergency, acute children's services and maternity services).</p>
	Changes to which professionals deliver aspects of care.	Shifting the balance of services from primary, community and self-care towards secondary care.
<p>Changes nationally exempted from consultation:</p> <ul style="list-style-type: none"> • proposals for pilot schemes • proposals to establish or dissolve an NHS Trust or PCT • when an immediate decision has to be taken on an issue because of a risk to the safety or welfare of patients or staff ¹ 	Implementation of official national guidance (i.e. DoH or NHS) that directs how services should be delivered / configured.	<p>Reconfiguration of services, responding to local and national drivers, including more general national guidance and guidance from learned bodies. This includes withdrawal of in-patient, day patient or diagnostic facilities for one or more speciality from the same location.</p> <p>Strategic, large scale service improvement / change / reconfiguration</p> <p>Implementation of official national guidance (i.e. DOH or NHS) that directs how services should be delivered/configured.</p>

1. These circumstances should be exceptional. The NHS body concerned must notify HOSC of the decision taken and the reason why no consultation has taken place. As good practice, the NHS body will also provide information about how patients and carers have been informed about the change to the service and what alternative arrangements have been put in place to meet their needs. The exemption from the duty to consult only lasts while the variation is a temporary measure.
2. A precise definition of locality cannot be given. In part it is dependent on the nature of the service change under consideration. Ease of access to the alternative for service users, not just distance, is a key factor.
3. Formal public consultation must take place on substantial variation. However, there will be other changes on which each NHS body will need to decide itself, using its own processes and taking account of its statutory duty, whether there is cause or reason to go out to formal public consultation.