



NCT Briefing: Appeals by Health Overview and Scrutiny Committees

Under the NHS Health and Social Care Act 2001, NHS organisations in England and Wales are required to consult with their local authority Health Overview and Scrutiny Committees (HOSC) on any proposals for substantial developments or variations to local health services. This was underpinned by regulations issued in 2002 and guidance issued in July 2003. This briefing explains how the committees work, how to use HOSCs, the appeals process and the key players involved in making decisions in the appeals process.

Purpose of the HOSCs

The government developed HOSCs to enable Councils to take a stronger role in scrutinising public services outside their own organisation. The Health and Social Care Act 2001 provided HOSCs with statutory powers to call in witnesses from local NHS bodies, and make recommendations that NHS organisations must consider as part of their decision-making processes.

The HOSCs focus on health improvement and reducing health inequalities within the local authorities' population and is made up of a selection of local councillors. They ensure that local healthcare trusts are held accountable.

The HOSCs cannot continuously monitor every change that healthcare trusts make or propose. They will choose to scrutinise those issues and proposals that they consider important and significant.

What to do if you have concerns about planned changes to local services

If you have concerns that the (proposed) changes to maternity services will have a significant impact on local women and families you must ensure that your local HOSC is aware of concerns and is prepared to consider them.

Contacting the HOSC

1. The best access route is through a sympathetic supportive **local councillor**, particularly if they are on the local HOSC. If not, they may have links with the HOSC and can help put you in touch with a sympathetic member.
2. **Contact the HOSC directly.** The council website will have the contact details of the HOSC support officer who can advise you on how to make your concerns known. They may also give you other helpful advice on how to approach the HOSC Chair
3. **Local MPs** also tend to have good links to the HOSC and local councillors. They will also be concerned about issues concerning their constituents and can help increase support on the issue if they are sympathetic to your cause.
4. **Maternity Services Liaison Committees (MSLCs)** are now formally recognised, in England, as having a role in Strategic Needs Assessment of Maternity Services (see "*Maternity Matters: Choice, Access and Continuity of Care*". Department of Health. April 2007 Pg 18 www.dh.gov.uk/publications). They have a formal advisory role to Primary Care Trusts (see "*National Guidelines for MSLC's*" Section 3.1 www.dh.gov.uk/publications). The Chair of an MSLC is in a powerful position to write to the HOSC expressing concern about proposals for local

maternity services, and the HOSC will almost always consider that seriously. Healthcare trusts should be represented on MSLCs so obtaining overall MSLC agreement might be difficult. As an alternative, it is not unknown for a lay chair of an MSLC to be persuaded to write a letter on behalf of users or a 'users group' on the MSLC.

5. **Local political and campaign pressure** can help. The HOSC is comprised of local politicians who need to be re-elected so they are predisposed to respond to local concerns, especially if picked up by the local media

Providing Evidence to the HOSC

If they are willing to consider the (proposed) changes, they will then need to be convinced that the changes proposed are a 'substantial variation' to health service provision. They may ask for written or oral evidence from you, the NCT, or other local groups to support the claim.

You may need to provide evidence to your contact (supportive councillor, local MP, MSLC, local press) to help them raise the issue effectively. HOSC members have the right to speak at the committee, so keeping them fed with important things to say on your behalf is vital. After your first councillor contact, your aim is to develop enough supportive councillors to sway a majority on the HOSC. Take the councillors' advice on this as they often lobby each other for support.

If the HOSC is convinced that the proposals are a 'substantial variation' to health service provision they may ask for written or oral evidence from members of the public, local or national groups. The most successful approach to evidence is likely to be one that focuses on the overall maternity needs of all local women to ensure that it falls into the categories set out to qualify for an appeal. The aim is to persuade a majority of councillors in the room to support your cause.

What next?

If the HOSC has carried out its evidence gathering and evaluation process and decides they are not satisfied with the content of the consultation or the time that has been allowed or believe that the proposed changes are not in the interests of the local health service, the case may be referred to the Secretary of State for Health.

When the referral reaches the Secretary of State, s/he will either determine the matter personally or ask the Independent Reconfiguration Panel (IRP) for advice. Sometimes the very idea of exposure to wider public scrutiny and all the additional work involved in an IRP review is enough to make NHS managers re-negotiate their proposals with HOSC and local activist groups.

What does the IRP do?

The IRP offers independent advice to the Secretary of State on whether due process has been followed in formulating proposals to change NHS services and/or on the merits of a reconfiguration proposal.

An IRP review will take two to three months to research. The IRP considers whether proposed changes to health services ensure the provision of safe, sustainable and accessible services for local people. The focus of all reviews is the patient and quality of care. As part of the review process the IRP considers written evidence from all relevant NHS bodies and bodies who are contesting the reconfiguration plans, visits the main sites involved and meets with interested parties including; representatives of NHS bodies, the local HOSC, patient groups and staff groups, to gather information. Following collection of evidence the IRP will submit a report containing recommendations to the Secretary of State.

If the referral is not deemed suitable for a review by the IRP, the IRP will explain why a full review is not being recommended and, where possible, provide advice to the Secretary of State regarding further action to be taken locally. The IRP may advise the Secretary of State that the existing proposals should be implemented at a local level.

As well as formally reviewing contested cases referred by the Secretary of State, the IRP also provides advice to organisations involved in developing proposals for NHS service change. The aim is to provide support, spread good practice and avoid cases being contested and referred formally at a later date. The IRP only covers reconfiguration of services in England.

How does the IRP form its advice?

The IRP considers a number of factors when formulating its advice. Particular attention is paid to:

- If the proposals ensure safe, sustainable and accessible services for the local population
- Clinical and service quality, capacity and waiting times
- National policies e.g. National Service Frameworks
- The rigour of consultation processes
- Patient and public involvement in the decision making process
- The wider configuration of the NHS and other services locally, including likely future plans
- Other issues Ministers note in relation to service reconfigurations (general and specific).
- Relevant Government policy:
 - *Keeping the NHS Local - a New Direction of Travel* [Department of Health, February 2003]
 - *Strengthening Accountability - Involving Patients and the Public* [Department of Health, February 2003]
 - *Creating a Patient Centred NHS : Delivering the NHS Improvement Plan* [Department of Health, March 2005]
 - *Our health, our care, our say: a new direction for community services* [Department of Health, January 2006]
 - *Maternity matters: choice, access and continuity of care in a safe service* [Department of Health, April 2007]

Who sits on the IRP?

The IRP is made up of a small team of experienced clinicians, managers and lay members who have wide-ranging expertise in clinical healthcare, NHS management, involving the public and patients, and handling and delivering successful changes to the NHS.

The current Chair of the IRP is Dr. Peter Barratt, currently Chair of Nottingham University Hospitals NHS Trust and a former GP and Chair of Nottingham Health Authority. A full list of panel members including brief biographies can be found at: <http://www.irpanel.org.uk/view.asp?id=47>

Who makes the final decision?

The IRP is an advisory Non-Departmental Public Body (NDPB), and can offer advice only. The IRP's advice to the Secretary of State for Health will be submitted on an agreed date and published on its website. The final decision on any contested proposal rests with the Secretary of State; s/he is not bound to accept the Panel's advice and is solely responsible for the final decision.

References and further sources of information:

For further information, please see the Independent Reconfiguration Panel website:

<http://www.irpanel.org.uk/view.asp?id=0>

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File Path: U:\Document Summaries/MS8 Appeals by HOSCs updated with user advice

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