
**Manchester City Council
Report for Resolution**

Report To: Health and Well-being Overview and Scrutiny Committee –
16 July 2009

Subject: Manchester LINK referral – Closure of Cedars Ward

Report of: Governance and Scrutiny Support Team

Summary

This report provides a background to the referral from the Manchester Local Involvement Network (LINK) regarding the closure of Cedars Ward and offers some context to the legislation around health scrutiny.

Recommendations

1. To note the report
 2. To acknowledge receipt of the referral from Manchester LINK
 3. To consider whether the closure of Cedars Ward represents a failure by Manchester Mental Health and Social Care NHS Trust (“MMHSC Trust”) to comply with its obligations in respect of public involvement and consultation contained in section 242 of the National Health Service Act 2006.
 4. To consider whether the closure of Cedars Ward represents a failure by the MMHSC Trust to comply with its obligations to consult with the Health and Well-being Overview and Scrutiny Committee contained in regulation 4 of The Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002.
 5. To consider whether MMHSC Trust has complied with any obligations towards the patients of Cedars Ward to carry out a “competency assessment” that it may have under the Mental Capacity Act 2005.
 6. To agree a course of action regarding the LINK referral and the closure of Cedars Ward.
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Wards Affected:

All

Contact Officers:

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Background documents (available for public inspection):

None

1.0 Introduction

The Manchester LINK has requested that the Health and Well-being Overview and Scrutiny Committee consider whether to refer the closure of Cedars Ward by the MMHSC Trust, to the Secretary of State on the grounds that the proposals are “not in the interest of dementia patients in the City of Manchester”.

They are also asking that the Committee investigate whether the MHSCT has complied with the Mental Capacity Act 2005 by undertaking competency assessments of each individual patient to determine the effects that the closure will have on the individual and whether the move to a ward treating a range of functional mental health illness is in their best interests.

2. Background

The Manchester LINK was informed of the closure of Cedars Ward via their network in June 2009. The Cedars Ward is based at the Edale Unit of Manchester Royal Infirmary and provides a specialist inpatient care service for older people with Dementia. The LINK has informed the Committee that patients from Cedars Ward will be transferred to October ward, which will accommodate older people with long and short term mental health issues.

The LINK has expressed concern that MMHSC Trust has not consulted the public about the closure of Cedars Ward. A copy of the referral letter to the Chair of the Committee is appended for information.

The LINK has also expressed concern that there has not been adequate time to consult with, and address the anxieties of the patients and carers as to the effect the closure will have on them.

3. Legislation

3.1 Reference by LINK

Under the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002 (“the OSC Regulations”) the LINK can refer “any matter relating to the planning, provision and operation of health services in the area of its local authority” to the Health and Well-being Overview and Scrutiny Committee (“the Committee”).

Where a relevant matter is referred by the LINK to the Committee, the OSC Regulations require the Committee to

- a) acknowledge receipt of the referral within 20 working days
- b) keep the referrer informed of the committee’s actions in relation to the matter.

Apart from the above obligations, the OSC Regulations provide that the procedure of review and scrutiny in respect of a matter referred to the Committee by the LINK is to be determined by the Committee (acting in accordance with Guidance published by the Secretary of State).

The Committee is invited to consider what action if any, should be taken to resolve the issue. There are a number of ways the Committee can consider this referral should it be accepted. Under the health scrutiny powers set out in OSC Regulations the Committee is able to refer matters to the Secretary of State in certain circumstances which are detailed at point 3.3 below. The Committee can also investigate aspects of the closure and wider implications of the effect on patients without referring to the Secretary of State.

If the Committee decides to refer the matter to the Secretary of State as requested by the LINK, they must establish whether the closure of Cedars Ward represents a “substantial variation” of service and confirm that no agreement can be reached as the future provision. Further guidance on substantial variations is set out in section 3.3.1 below.

The issue could also be referred to the Secretary of State if the Committee considers the proposal to be “not in the interest of dementia patients in the City of Manchester”. The Secretary of State can make a final decision on the proposal and require the Care Trust to take such action, or desist from taking such action, as he or she may direct.

3.2 Section 242(1B) of the National Health Service Act 2006 (public involvement and consultation)

Under section 242 (1B) of the National Health Service Act 2006 every “relevant English body” (which for the purposes of this section means (i) a Strategic Health Authority (ii) a Primary Care Trust (iii) an NHS trust or (iv) an NHS foundation trust is placed under the following obligation in respect of public involvement and consultation:

“Each relevant English body must make arrangements, as respects health services for which it is responsible, which secure that users of those services, whether directly or through representatives, are involved (whether by being consulted or provided with information, or in other ways) in—

- (a) The planning of the provision of those services,
- (b) The development and consideration of proposals for changes in the way those services are provided, and
- (c) Decisions to be made by that body affecting the operation of those services”.

This general obligation to consult is qualified as follows:

Subsection 242 (1B)(b) and applies to a proposal only if implementation of that proposal would have an impact on –

- (a) the manner in which the services are delivered to users of those services, or
- (b) the range of health services available to those users.

Subsection 242 (1B)(c) applies to a decision only if implementation of the decision (if made) would have an impact on –

- (a) the manner in which the services are delivered to users of those services, or
- (b) the range of health services available to those users.

Section 242(1G) provides that a relevant English body must have regard to any guidance by the Secretary of State as to the discharge of the body's duty under subsection (1B). In October 2008 the Department of Health (DoH) published Guidance for NHS organisations on section 242(1B) entitled *Real Involvement: Working with People to Improve Health Services* ("Section 242 Guidance")

In its *Section 242 Guidance* the DoH advises that the above qualifications made to the obligation to consult in respect of subsections 242 (1B)(b) and 242 (1B)(c) mean that:

"There is no requirement to involve users where proposals for change or a decision to be made by an NHS organisation, for example a change of provider, does not result in changes to the service that affect the way in which that service is delivered or the range of services available."

In considering what action to take in response to the referral from LINK the Committee will need to be provided with more evidence as to whether the decision to close Cedars Ward will have an impact on either (a) the manner in which health services are delivered to the service-users or (b) the range of health services available to those users.

3.3 OSC Regulation 4 (Consultation of Committees by local NHS bodies)

In addition to the duty in respect of public involvement and consultation under section 242 of the National Health Service Act 2006 referred to at point 3.2 above, Regulation 4 of the OSC Regulations provides that where a "local NHS body has under consideration any proposal for a substantial development of the health service in the area of a local authority, or for a substantial variation in the provision of such service, it shall consult the overview and scrutiny committee of that authority".

Further guidance on substantial variations is set out in section 3.3.1 below.

OSC Regulation 4(5) provides that if the Committee considers that the decision to close the Cedars Ward constitutes a "substantial variation" upon which the Committee should have been consulted it may refer the matter to the Secretary of State in writing. The Secretary of State can require the MMHSC Trust to carry out such consultation with the Health and Well-being Overview and Scrutiny Committee, as the Secretary of State considers appropriate.

OSC Regulation 4(7) provides that if the Committee considers the proposal to close Cedars ward "would not be in the interests of the health service in the area" then the issue could also be referred to the Secretary of State. The Secretary of State can make a final decision on the proposal and require MMHSC Trust to take such action, or desist from taking such action, as he may direct.

3.3.1 Substantial Variations

What constitutes a 'substantial variation' in service for the purposes of OSC Regulation 4 is not defined in the NHS Act 2006, the Local Government and Public Involvement in Health Act 2007 or the OSC Regulations themselves. The Department of Health's statutory Guidance entitled *Overview and Scrutiny of Health – Guidance* ("Scrutiny Guidance") recommends that a definition is agreed locally between NHS organisations and the overview and scrutiny committee. Where no local definition has previously been agreed, section 10.6.3 of the Scrutiny Guidance recommends that overview and scrutiny committees take the following factors into consideration of whether the change could be considered as substantial:

- **Changes in accessibility of services:** e.g. both reductions and increases of services on a particular site or changes in opening times for a particular clinic. Communities attach considerable importance to the local provision of services, and local accessibility can be a key factor in improving population health, especially for disadvantaged and minority groups. At the same time, development in medical practice and in the effective organisation of health care services may call for reorganisation including the relocation of services. It is recognised that changes to service locations can often be controversial. Thus there should be discussion of any proposal, which involves the alteration to, or withdrawal of, primary care, in-patient, day patient or diagnostic facilities.
- **The impact of the proposal on the wider community** and other services, including economic impact, transport, regeneration.
- **The degree to which patients are affected:** changes may affect the whole population (such as changes to accident and emergency services) or a small group of patients accessing a specialist service. If changes affect a small group of patients, the change may still be considered substantial, particularly if patients need to continue accessing that service for many years (e.g. patient access to a GP branch surgery in a particular locality or access for patients to renal services).
- **Changes to service models and methods of service delivery.** Altering the way a service is delivered may be a substantial change – for example, moving a particular service into community settings rather than being hospital based. The views of patients, Patient and Public Involvement Forums and the general public will be essential in such cases.

3.4 Mental Capacity Act 2005

Manchester LINK has asked the Committee to investigate as to whether Manchester Mental Health and Social Care NHS Trust has complied with the Mental Capacity Act 2005 by undertaking competency assessments of each individual patient to determine the effects that this will have on the individual and whether the move to a ward treating a range of functional mental health illness is in their best interest.

The LINK has been asked to provide further information as to which sections of the Mental Capacity Act apply in this incidence.

4. Conclusion

Representatives from the Manchester LINK, MMHSC Trust, NHS Manchester and the Strategic Health Authority have been invited to attend the meeting to inform the Committee during their deliberations. The Committee is asked to consider what action if any, should be taken to resolve the issue.

Councillor Sue Cooley
C/o Governance and Scrutiny Support Unit
Chief Executives Department
Room 405, Town Hall
Manchester City Council

Date: 22nd June 2009.

Dear Councillor Cooley

Manchester LINK referral to Health and Well-being Overview and Scrutiny Committee – Closure of Cedars Ward

As you may be aware a decision has been taken to close Cedars Ward (an older people's dementia ward based on the Manchester Royal Infirmary site) on the 15th July 2009 without consultation with patients, carers or the public.

A decision has been made by the Manchester LINK Steering Group on the 18th June 2009 to refer this issue to the Health and Wellbeing Overview and Scrutiny Committee for further investigation and for the committee to consider whether this issue should be referred to the Secretary of State.

The reason for this referral is that there has not been any apparent consultation which is legally required and stated in The Local Government and Public Involvement in Health Act 2007 Section 233 "Duty to involve users of health services" of which subsection 1B states:

Each relevant English body must make arrangements, as respects health services for which it is responsible, which secure that users of those services, whether directly or through representatives, are involved (whether by being consulted or provided with information, or in other ways) in—

- (a) The planning of the provision of those services,**
- (b) The development and consideration of proposals for changes in the way those services are provided, and**
- (c) Decisions to be made by that body affecting the operation of those services**

We would also ask you to investigate as to whether Manchester Mental Health and Social Care NHS Trust has complied with the Mental Capacity Act 2005 by undertaking competency assessments of each individual patient to determine the effects that this will have on the individual and whether the move to a ward treating a range of functional mental health illness is in their best interest.

What must also raise concerns is that the lack of engagement of users and carers is in direct contradiction to the key recommendation from the investigation into the situation at Rowan Ward in 2003.

The 2005 Care Services Improvement Partnership report "Moving On: Learning the Lessons from Rowan Ward" stated that users and carers should "have an input into planning, inspecting, performance and outcomes monitoring". This is particularly relevant not because the patients in Rowan Ward were older people with mental health needs in the same category as those on Cedars Ward and for whom specialist provision at Monet Lodge was put in place. No-one is suggesting that there has been any abusive practice on Cedars Ward as was uncovered at Rowan Ward, but it must be a concern that the management of the decision about Cedars Ward displays the same attitudes of keeping users and carers away from involvement.

We look forward to hearing from you as to how these concerns can be addressed and taken forward.

Yours Sincerely

Michael Kelly
Chair of the Manchester LINK Steering Group.