

YORKSHIRE AND THE HUMBER COUNCILS JOINT HEALTH SCRUTINY PROTOCOL

1. INTRODUCTION

- 1.1 This Protocol has been developed as a framework for carrying out scrutiny of regional and specialist health services that impact upon residents across Yorkshire and the Humber under powers for Local Authorities to scrutinise the NHS contained in the Health and Social Care Act 2001.
- 1.2 The Health and Social Care Act 2001 strengthens arrangements for public and patient involvement in the NHS. Sections 7 to 10 of the Act provide for local authority Overview and Scrutiny Committees to scrutinise the NHS and represent local views on the development of local health services, whilst section 242 of the National Health Service Act 2006 (formally section 11 of the Health and Social Care Act 2001), places a duty on NHS organisations to make arrangements to involve and consult patients and the public in service planning and operation, and in the development of proposals for changes. Section 242 has subsequently been amended by the Local Government and Public Involvement in Health Act 2007. NHS organisations are now required to make arrangements so that users of services are involved in the planning and development of these services.
- 1.3 The Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002 provide for local NHS bodies to consult the Overview and Scrutiny Committee where the NHS body has under consideration any proposal for a substantial development of the health service or for a substantial variation in the provision of such a service in the local authority's area.
- 1.4 The Directions also state that when a local NHS body consults with more than one Overview and Scrutiny Committee on any such proposal, the local authorities of those Overview and Scrutiny Committees shall appoint a Joint Overview and Scrutiny Committee for the purposes of the consultation and only that Joint Overview and Scrutiny Committee may:-
 - (a) Make comments on the proposal consulted on to the local NHS body;
 - (b) Require the local NHS body to provide information about the proposal;
 - (c) Require an officer of the local NHS body to attend before it to answer such questions as appear to it to be necessary for the discharge of its functions in connection with the consultation.

- 1.5 Notwithstanding these arrangements, individual authorities may wish to comment on proposals by NHS bodies under the broader duties imposed on NHS Bodies by Section 242 of the National Health Service Act 2006.
- 1.6 This protocol has been developed and agreed by all the local authorities with responsibility for health scrutiny in the Yorkshire and the Humber region (Bradford, Calderdale, Kirklees, Leeds, Wakefield, York, North Lincolnshire, Barnsley, Doncaster, Rotherham, Sheffield, East Riding, North Yorkshire, North East Lincolnshire and Hull) as a framework for carrying out joint scrutiny of health in the region in response to a statutory consultation by an NHS body.

2. COVERAGE

- 2.1 Whilst this protocol deals with arrangements within the boundary of Yorkshire and the Humber, it is recognised that there may be occasions when consultations may affect adjoining regions. Arrangements to deal with such circumstances would have to be determined and agreed separately, as and when appropriate.

3. PRINCIPLES FOR JOINT HEALTH SCRUTINY

- 3.1 The basis of joint health scrutiny will be co-operation and partnership with a mutual understanding of the following aims:
 - To improve the health of local people and to tackle health inequalities
 - Ensuring that people's views and wishes about health and health services are identified and integrated into plans, services and commissioning that achieve local health improvement.
 - Scrutinising whether all parts of the community are able to access health services and whether the outcomes of health services are equally good for all sections of the community.
- 3.2 The Local Authorities and NHS bodies will be willing to share knowledge, respond to requests for information and carry out their duties in an atmosphere of courtesy and respect in accordance with their Codes of Conduct. Personal and prejudicial interest will be declared in all cases, in accordance with the Code of Conduct.
- 3.3 The scrutiny process will be open and transparent in accordance with the Local Government Act 1972 and the Freedom of Information Act 2000 and meetings will be held in public. Only information that is expressly defined in regulations to be confidential or exempt from publication will be considered in private.
- 3.4 Different approaches to scrutiny reviews may be taken in each case. The Joint Health Scrutiny Committee will seek to act as inclusively as

possible and will take evidence from a wide range of opinion including patients, carers, the voluntary sector, NHS regulatory bodies and staff associations. Attempts will be made to ascertain the views of hard to reach groups, young people and the general public.

4. SUBSTANTIAL VARIATION AND SUBSTANTIAL DEVELOPMENT

- 4.1 When a NHS body is considering proposals to vary or develop health services, those authorities whose residents are affected must be given the chance to decide whether they consider the proposals to be substantial to their communities. Those that do consider the proposals to be substantial must be formally consulted and must form a Joint Health Overview and Scrutiny Committee to respond to the consultation. The decision about whether proposals are substantial (and therefore whether to participate in a Joint Health Overview and Scrutiny Committee) must be taken by the Health Overview and Scrutiny Committees within the relevant authorities.
- 4.2 The primary focus for identifying whether a change should be considered as substantial is the impact upon patients, carers and the public who use or have the potential to use a service. This would include:-

Changes in accessibility of services: any proposal which involves the withdrawal or change of patient or diagnostic facilities for one or more speciality from the same location (other than to any part of same operational site).

Impact of proposal on the wider community and other services: including economic impact, transport, regeneration (e.g. where re-provision of a hospital could involve a new road or substantial house building).

Patients affected: changes may affect the whole population (such as changes to A&E), or a small group (patients accessing a specialised service). If changes affect a small group it may still be regarded as substantial, particularly if patients need to continue accessing that service for many years (for example renal services).

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 entirely hospital based.

Issues likely to be considered as controversial to local people: (e.g. where historically services have been provided in a particular way or at a particular location.)

Changes to governance: which affect NHS bodies' relationships with the public or local authority Overview and Scrutiny Committees (OSC's).

5. RESPONDING TO A STATUTORY CONSULTATION BY AN NHS BODY

5.1 Where a response to a statutory consultation is required on proposals for substantial variation or substantial development affecting two or more local authorities within Yorkshire and the Humber, scrutiny maybe undertaken either by:-

Delegated Scrutiny: The affected local authorities agree to delegate their overview and scrutiny function to a single authority which may be better placed to consider a local priority¹; or

Joint Committee: The affected local authorities establish a joint committee to determine a single response.

5.2 Accordingly, where any substantial variation or substantial development principally affects residents of a single local authority, scrutiny can be delegated to that authority. Whereas, there is a presumption of wider regional variations or developments are dealt with by a Joint Health Scrutiny Committee.

6. DELEGATED SCRUTINY

6.1 Regulations enable a local authority to arrange for its overview and scrutiny functions to be undertaken by a committee from another local authority. Delegation may occur where a local authority believes that another may be better placed to consider a particular local priority and, importantly, the latter agrees to exercise that function. For instance, it might be more appropriate to delegate scrutiny where an NHS body provides a service across two local authority areas but the large majority of those using or affected by the service are in one of those authority areas.

Delegated Powers

6.2 When and where such delegation takes place, the full powers of overview and scrutiny of health shall be given to the delegated committee, but only in relation to the specific delegated function (i.e. a particular inquiry or consultation).

Terms of Reference

6.3 In such circumstances and in accordance with Department of Health guidance, clear terms of reference, clarity about the scope and methods of scrutiny to be used must be determined between the affected local authorities. Formal terms of reference should be drafted and formally agreed by the respective Overview and Scrutiny

¹ Overview and Scrutiny of Health - Guidance. Department of Health, July 2003. P21, para 7.1

Committees of the affected local authorities and subsequently shared with the relevant NHS bodies.

- 6.4 In the context of a proposal for a substantial development or variation to services, where the review of any consultation has been delegated, the power of referral to the Secretary of State where such a proposal is contested is also delegated. The delegating local authority is no longer able to influence the content or outcome of the review².
- 6.5 The delegated authority (the authority undertaking the consultation exercise) will be responsible for conducting scrutiny in accordance with its own set procedures and will be expected to regularly communicate with the delegating authority(ies).

7. JOINT HEALTH SCRUTINY COMMITTEE

- 7.1 Where a wider, joint approach is required to a consultation by an NHS body, a separate Joint Health Scrutiny Committee will be established for each consultation.

Membership of a Joint Health Scrutiny Committee

- 7.2 Under the Local Government Act 2000 provisions, Overview and Scrutiny Committees must generally reflect the make up of full Council. Consequently, when establishing a Joint Health Scrutiny Committee, each participating local authority should ensure that those Councillors it nominates reflects its own political balance. However, the political balance requirements may be waived but only with the agreement of all the participating local authorities³.
- 7.3 In accordance with the above, a Joint Committee will be composed of Councillors drawn from Yorkshire and the Humber local authorities in the following terms:-
- where 9 or more Yorkshire and the Humber local authorities participate in a Joint Health Scrutiny Committee – the Chair (or Chair's representative) of each participating authority's Overview and Scrutiny Committee responsible for health will become a member of the Joint Health Scrutiny Committee;
 - where 4 to 8 local authorities participate - then each participating authority will nominate 2 Councillors; or

² Overview and Scrutiny of Health - Guidance. Department of Health, July 2003. P21, para 7.4

³ Overview and Scrutiny of Health - Guidance. Department of Health, July 2003. P22, para 8.6

- where 3 or less local authorities participate - then each participating authority will nominate 4 Councillors.
- 7.4 Each local authority should make a decision as to whether it should seek approval from its respective full Council or Executive to delegate authority to its relevant Overview and Scrutiny Committee (responsible for health) or another appropriate body to nominate Councillors on a proportional basis to a Joint Health Scrutiny Committee.
- 7.5 From time to time and where appropriate, the Joint Health Scrutiny Committee may appoint non-voting co-optees for the duration of a consultation. In these circumstances, one or more co-optees could be drawn from local patient, community and voluntary sector organisations affected by substantial change or variation.

Choice of Lead Authority and Chair

- 7.6 Where a Joint Health Scrutiny Committee (as defined by the Health and Social Care Act 2001) is required to consider a substantial development of the health service or a substantial variation, one of the affected local authorities would take the lead in terms of organising and Chairing the joint committee.
- 7.7 Selection of a lead authority, should where possible, be chosen by mutual agreement by the local authorities involved and take into account both capacity to service a Joint Health Scrutiny Committee and available resources. Additionally, the following criteria should guide determination of the Lead Authority:
- The local authority within whose area local communities will be most affected; or if that is evenly spread;
 - The local authority within whose area the service being changed is based; or if that is evenly spread;
 - The local authority within whose area the health agency leading the consultation is based.

Operating Procedures

- 7.8 The Joint Health Scrutiny Committee will conduct its business in accordance with the Overview and Scrutiny Committee Procedure Rules of the Lead Authority.
- 7.9 The Lead Authority will service and administer the scrutiny exercise and liaise with the other affected local authorities.
- 7.10 The Lead Authority will draw up a draft terms of reference and timetable for the scrutiny exercise, for approval by the Joint Health Scrutiny Committee at its first meeting. The Lead Authority will also

have responsibility for arranging meetings, co-ordinating papers in respect of its agenda and drafting the final report.

Meetings of the Joint Health Scrutiny Committee

7.11 At the first meeting of any new inquiry, the Joint Health Scrutiny Committee will determine:

- Terms of reference of the inquiry;
- Number of sessions required;
- Timetable of meetings & venue.

Reports of the Joint Health Scrutiny Committee

7.12 At the conclusion of an Inquiry the Joint Health Scrutiny Committee shall produce a written report and recommendations which shall include:

- an explanation of the matter reviewed or scrutinised
- a summary of the evidence considered
- a list of the participants involved in the review or scrutiny; and
- any recommendations on the matter reviewed or scrutinised.

7.13 Reports shall be agreed by a majority of members of the Joint Health Scrutiny Committee.

7.14 Reports shall be sent to all relevant local authorities, to NHS Yorkshire and the Humber and the relevant health agencies, along with any other bodies determined by the Joint Health Scrutiny Committee and Lead Authority.

7.15 The Joint Health Scrutiny Committee shall request a response to its report and recommendations from the NHS body or bodies receiving the report within 28 working days.

7.16 The Joint Health Scrutiny Committee may, on receipt of the NHS body's response to its recommendations report to the Secretary of State on the grounds that it is not satisfied:

- with the content of the consultation; or
- that the proposal is in the interests of the health service in the area.

7.17 In circumstances where an NHS Body has failed to consult over substantial variation or development, or where consultation arrangements are inadequate or insufficient time provided, then the affected local authority or authorities may decide to make appropriate representations to the NHS Body concerned.

Minority reports

7.18 Where a member of a Joint Health Scrutiny Committee does not agree with the content of the Committee's report, they may produce a report setting out their findings and recommendations and such a report will form an Appendix to the Joint Health Scrutiny Committee's report.

8. DISCRETIONARY JOINT WORKING

8.1 Guidance issued by the Department of Health⁴ states '*that the role of (scrutiny) committees is to take an overview of health services and planning within the locality and then to scrutinise priority areas to identify whether they meet local needs effectively.* This suggests a more proactive role for overview across Yorkshire and the Humber. It is also recognised that individual local authority scrutiny committees may wish to engage with and scrutinise regional NHS/health bodies or look at broader regional health issues.

8.2 In these circumstances, or where a health scrutiny review is initiated that affects more than one authority, then it may be appropriate and more effective for local authorities in Yorkshire and the Humber to agree on an ad-hoc basis, joint arrangements based on this protocol to undertake such work.

8.3 To enable Yorkshire and the Humber local authorities to explore potential opportunities for future joint working, all local authorities should:

- share work programmes of their respective scrutiny committees (health);
- arrange for appropriate officers to meet and liaise on a regular basis; and
- where appropriate, facilitate member level meetings across Yorkshire and the Humber.

⁴ Overview and Scrutiny of Health - Guidance, July 2003