

Report for: Overview and Scrutiny Committee – 13 June 2017

Item number:

Title: North Central London Joint Health Overview and Scrutiny Committee (JHOSC) – Amended Terms of Reference

Report authorised by : Cllr Charles Wright, Chair of Overview and Scrutiny Committee

Lead Officer: Robert Mack, Principal Scrutiny Support Officer,
rob.mack@haringey.gov.uk 020 8489 2921

Ward(s) affected: N/A

**Report for Key/
Non Key Decision:**

1. Describe the issue under consideration

- 1.1. Haringey is currently a member of the Joint Health Overview and Scrutiny Committee (JHOSC) for North Central London. The other boroughs that are members are Barnet, Camden, Enfield and Islington.
- 1.2. The need has been identified for a small addition to the terms of reference of the JHOSC to ensure the maintenance of its role in considering referrals to the Secretary of State when responding to formal consultations on substantial developments or variations to local health services.
- 1.3. Under the terms of the Constitution, joint arrangements with other local authorities require the approval of full Council and therefore any changes to the terms of reference will need to be agreed by it.

2. Cabinet Member Introduction

N/A

3. Recommendations

- 3.1 That the Committee recommend to Council that it delegates formally the right of referral to the Secretary of State in responding to formal consultations involving all of the Councils on the JHOSC, pursuant to Regulation 23(9) of the The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013.

4. Reasons for decision

- 4.1 Under the terms of the Constitution, the amended terms of reference for the JHOSC require approval by full Council.

5. Alternative options considered

N/A

6. Background information

6.1 Full Council approved the existing terms of reference for the JHOSC at its meeting on 16 May 2016 following a review by the JHOSC of its role. These are as follows:

1. "To engage with relevant NHS bodies on strategic area wide issues in respect of the co-ordination, commissioning and provision of NHS health services across the whole of the area of Barnet, Camden, Enfield, Haringey and Islington;
2. To respond, where appropriate, to any proposals for change to specialised NHS services that are commissioned on a cross borough basis and where there are comparatively small numbers of patients in each of the participating boroughs;
3. To respond to any formal consultations on proposals for substantial developments or variations in health services across affecting the area of Barnet, Camden, Enfield, Haringey and Islington;
4. The joint committee will work independently of both the Cabinet and health overview and scrutiny committees (HOSCs) of its parent authorities, although evidence collected by individual HOSCs may be submitted as evidence to the joint committee and considered at its discretion;
5. The joint committee will seek to promote joint working where it may provide more effective use of health scrutiny and NHS resources and will endeavour to avoid duplicating the work of individual HOSCs. As part of this, the joint committee may establish sub and working groups as appropriate to consider issues of mutual concern provided that this does not duplicate work by individual HOSCs; and
6. The joint committee will aim work together in a spirit of co-operation, striving to work to a consensual view to the benefit of local people."

6.2 The updated terms of reference removed a reference to a power of referral to the Secretary of State in responding to formal consultations concerned with the North Central London Service and Organisation Review. There was no intention to omit a power of referral from the JHOSC in the revised agreed terms of reference though. It had previously been the practice that *both* local authorities and joint health overview and scrutiny committees that they were a part of had the power to make referrals to the Secretary of State in responding to formal consultations. The omitting of the specific reference to referrals would, in these circumstances, not have been of significance as the power would have been implicit within the JHOSC's power to respond to formal consultations.

6.3 However, the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 stipulate that if a local authority has delegated this power to a joint overview and scrutiny committee, then they may not

subsequently exercise the power of referral. This is also reflected in the Local Authority Health Scrutiny June 2014 Statutory Guidance. Therefore, local authorities can now choose to either delegate their power of referral or retain it. This remedied the previous situation where local authorities could make a referral both through a joint committee that they were part of as well as individually, which was considered to be an anomaly.

6.4 As only joint committees have the power to respond to formal consultations involving more than one borough, it would appear appropriate for the JHOSC to have the power of referral to the Secretary of State. Not delegating the power, although possible, would be likely to cause delay in responding to consultations and reduce the effectiveness of the JHOSC in responding to formal consultations where these involve all of the five boroughs.

6.5 At its meeting on 21st April, the JHOSC therefore agreed to recommend to each of the individual boroughs that are part of it that they delegate formally the right of referral in responding to formal consultations to the JHOSC and that the following amended wording be approved to the terms of reference (addition in italics):

“2. To respond to any formal consultations on proposals for substantial developments or variations in health services across affecting the areas of Barnet, Camden, Enfield, Haringey and Islington and to decide whether to use the power of referral to the Secretary of State for Health on behalf of Councils who have formally agreed to delegate this power to it when responding to formal consultations involving all the five boroughs participating in the JHOSC.”

6.6 The terms of reference will therefore now read:

1. “To engage with relevant NHS bodies on strategic area wide issues in respect of the co-ordination, commissioning and provision of NHS health services across the whole of the area of Barnet, Camden, Enfield, Haringey and Islington;
2. To respond, where appropriate, to any proposals for change to specialised NHS services that are commissioned on a cross borough basis and where there are comparatively small numbers of patients in each of the participating boroughs;
3. To respond to any formal consultations on proposals for substantial developments or variations in health services across affecting the areas of Barnet, Camden, Enfield, Haringey and Islington and to decide whether to use the power of referral to the Secretary of State for Health on behalf of Councils who have formally agreed to delegate this power to it when responding to formal consultations involving all the five boroughs participating in the JHOSC;
4. The joint committee will work independently of both the Cabinet and health overview and scrutiny committees (HOSCs) of its parent authorities, although evidence collected by individual HOSCs may be submitted as evidence to the joint committee and considered at its discretion;
5. The joint committee will seek to promote joint working where it may provide more effective use of health scrutiny and NHS resources and will endeavour to avoid duplicating the work of individual HOSCs. As part of this, the joint committee may establish sub and working groups as appropriate to consider

issues of mutual concern provided that this does not duplicate work by individual HOSCs; and

6. The joint committee will aim to work together in a spirit of co-operation, striving to work to a consensual view to the benefit of local people”

6.7 It is mandatory for local authorities to set up joint committees to respond to formal consultations regarding substantial developments or variations. However, these are required to include all of the local authorities affected. The JHOSC is therefore able to respond to changes that just affect all the boroughs that are a part of it. Should formal consultations be necessary on changes that affect different configurations of local authorities, a separate joint committee would need to be established that reflects this. A separate decision would also need to be undertaken by each local authority in establishing it on the delegation of the power of referral.

7. Contribution to strategic outcomes

7.1 The work of the JHOSC relates to closely to Priority 2: Outstanding for all: Enable all adults to live healthy, long and fulfilling lives

8. Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)

Finance and Procurement

8.1 The Chief Finance Officer has been consulted in the preparation of this report and notes that it is proposed that the JHOSC will not incur costs other than in except in exceptional circumstances agreed in advance. Only those costs for which provision can be found from within existing budgets can be agreed to by this authority

Legal

8.2 Regulation 21 (Review and Scrutiny) of The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 (“The Regulations”) enables a local authority to review and scrutinise matters relating to the planning, provision and operation of the health service in its area. The National Health Service Act 2006, as amended by the Health and Social Care Act 2012, confers the health scrutiny functions on the local authority, as distinct from any overview and scrutiny committee or panel within the local authority section 244 (2ZD). The full council of each authority may choose to delegate the health scrutiny functions to its overview and scrutiny committee or to a joint overview and scrutiny committee (JOSC) appointed by two or more local authorities.

8.3 Overview and Scrutiny Committee has delegated to it the power “To enter into or appoint such joint overview and scrutiny committees that include the London Borough of Haringey and other boroughs for the purpose of responding to consultation by NHS bodies on proposals for substantial variation or development in the provision of health services as required by The Local Authority (Public Health, Health and Wellbeing. Boards and Health Scrutiny)

Regulations 2013. But it is not sufficiently clear whether this includes the power to make referral to the Secretary of State as set out in Regulation 23 below.

- 8.4 Regulation 30 (Joint Committees) enables two or more local authorities to appoint a joint committee (“a joint overview and scrutiny committee”) of those authorities and arrange for relevant health scrutiny functions in relation to any (or all) of those authorities to be exercisable by the joint committee subject to such terms and conditions as the authorities may consider appropriate. Where a responsible person consults more than one local authority pursuant to Regulation 23, those local authorities must appoint a joint overview and scrutiny committee for the purposes of responding to the consultation. The North Central London Joint Health Overview and Scrutiny Committee (JHOSC) has been appointed for this purpose.
- 8.5 Regulation 23 (Consultation by responsible persons) requires consultation of local authorities by responsible persons for substantial developments of the health service or for substantial variations in the provision of the health service. It requires a local authority and responsible person to take steps to try to reach agreement in relation to any recommendations made by a local authority in relation to a relevant proposal. It enables a local authority to report on relevant proposals to the Secretary of State in certain circumstances. This is usually referred to as the power to make a referral to the Secretary of State where the authority is not satisfied that the consultation on the proposal was adequate or that the proposal would be in the best interest of health service in its area.
- 8.6 The referral power rests with the local authority i.e. Full Council. In the absence of any expressed delegation of this power to Overview and Scrutiny Committee or the JHOSC, it is appropriate for this matter to go up to Full Council for a decision. If Full Council decides to delegate this power to the JHOSC, only the JHOSC may make a referral.

Equality

- 8.5 The Council has a public sector equality duty under the Equalities Act (2010) to have due regard to:
- Tackle discrimination and victimisation of persons that share the characteristics protected under S4 of the Act. These include the characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex (formerly gender) and sexual orientation;
 - Advance equality of opportunity between people who share those protected characteristics and people who do not;
 - Foster good relations between people who share those characteristics and people who do not.
- 8.6 The work of the JHOSC should address the above mentioned duties by considering them within its work plan and individual pieces of work. This should include considering and clearly stating;
- How policy issues impact on different groups within the community, particularly those that share the nine protected characteristics;
 - Whether the impact on particular groups is fair and proportionate;

- Whether there is equality of access to services and fair representation of all groups;
- Whether any positive opportunities to advance equality of opportunity and/or good relations between people, are being realised.

9. Use of Appendices

None

10. Local Government (Access to Information) Act 1985