

From: Kay Goldsmith, Scrutiny Research Officer  
To: Kent Health Overview and Scrutiny Committee  
Subject: Kent and Medway Joint NHS Overview and Scrutiny Committee -  
Terms of Reference  
Date: 17 December 2024

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**Summary:** This paper provides an overview of the changes to health scrutiny and its implications for joint health scrutiny, specifically the Kent and Medway Joint NHS Overview and Scrutiny Committee (JHOSC).

A similar paper will be presented to Medway's Health and Adult Social Care Overview and Scrutiny Committee (HASC) for their views.

**Recommendation:** The Health Overview and Scrutiny Committee is asked to:

- a. CONSIDER the report; and
  - b. AGREE its preferred options concerning changes to the Kent and Medway JHOSC Terms of Reference.
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## 1. Background

- 1.1. NHS bodies must consult their local health scrutiny committee(s) when they are considering a proposal to change health services in the area. HOSCs are required to determine if the proposed changes represent a substantial variation of service for their residents (there is no statutory definition of a 'substantial variation').
- 1.2. Prior to 31 January 2024, Local Authorities had the power to refer substantial variations to the Secretary of State, who could only intervene once a valid referral had been received and been accepted. The Health and Care Act 2022 removed this referral power from Local Authorities and gave the Secretary of State a new power of intervention in the operation of local health and care services – this is known as a 'call-in'.
- 1.3. Health Scrutiny's status as a statutory consultee on reconfigurations remains in place, with NHS bodies required to engage as they did in the past. HOSCs also still need to decide if a proposal represents a significant variation of service.
- 1.4. These changes are explained in greater detail in [the report](#) that was presented to HOSC in February 2024. Changes to the Terms of Reference to this Committee were subsequently agreed by full Council on [28 March 2024](#).

## **2. Call-in requests**

- 2.1. Under the Health and Care Act 2022, any interested party can *request* the Secretary of State call-in a proposed variation to local health services. The decision to issue a call-in rests with the Secretary of State. The guidance states that the purpose of intervention is to unblock local problems and disagreements, which suggests that use of the call-in power to intervene would in most cases be following a call-in request from an interested party.
- 2.2. The Secretary of State can intervene in a proposal at any point during a reconfiguration process, and once called-in, they have the power to make a final decision.
- 2.3. There are no timing requirements for when call-in requests should be submitted - as long as a proposal for reconfiguration exists, a request may be made at any point during that process. However, local attempts to resolve the issue must have been exhausted before this happens.

## **3. Joint health scrutiny**

- 3.1. Under both the old and new regulations, when a responsible body consults more than one local authority on a substantial variation or development, those authorities are required to form a joint scrutiny committee and scrutiny of the proposed change passes to that committee. This does not prevent the home health scrutiny committee from informally scrutinising the proposals, though consideration must be given to the impact on NHS resources to do this.
- 3.2. In order to expedite the scrutiny of variations of service where both Medway and Kent have deemed it substantial, there is a standing joint committee (JHOSC) and its terms of reference as found in the Council Constitution are set out in appendix 1. In light of the changes to the regulations, paragraph 3 of the Terms of Reference as set out in the appendix needs to be updated with reference to the referral power removed.
- 3.3. In addition to amending the powers of health scrutiny bodies, the guidance takes the opportunity to reaffirm the benefits of having in place a Memorandum of Understanding (MoU) between health scrutiny bodies and their NHS counterparts that clarifies the role of health scrutiny and sets out how the parties will reach a view as to whether or not a proposal constitutes a “substantial variation”. At the moment, no such MoU exists between Medway, Kent and the ICB. The development of such a document sits outside the amendments to the Terms of Reference covered by this report, but may be something the Committee wishes to discuss in the future.

## 4. Amendments to the Terms of Reference

4.1. The following paragraphs set out the changes that are required to the JHOSC Terms of Reference along with the options available and their respective advantages and disadvantages.

### 4.2. Responding to an NHS proposal for substantial change

4.2.1. [Regulation 30 of the 2013 regulations](#) explains that where a joint overview and scrutiny committee has been appointed to scrutinise a substantial variation, only that committee may respond to the consultation and require attendance and information from the relevant NHS bodies. The guidance expands to say best practice would be for all affected scrutiny committees to be consulted before a joint committee response is made.

4.2.2. There are no changes required to the Terms of Reference.

### 4.3. Requesting a call-in

4.3.1. Leading on from section 2 of the report, Medway Council and Kent County Council must decide who will be responsible for submitting call-in requests of jointly scrutinised proposals to the Secretary of State.

4.3.2. Under this Committee's terms of reference, the HOSC has the authority to submit a call-in request. HOSC needs to discuss if this is a power they wish to sub-delegate to the JHOSC or not. This will only apply to proposals that have been subject to scrutiny by the JHOSC.

4.3.3. Table 1: Who will be responsible for submitting call in requests to the Secretary of State

Option	Outline	Advantages	Disadvantages
A	No delegation – The JHOSC conducts the scrutiny of the proposal but each individual local authority health scrutiny committee retains the function of submitting call in requests.	This would mirror the previous system whereby the power to make a referral to the Secretary of State was not delegated to the JHOSC.	The home authorities may not have been involved in scrutiny of the proposal, and rely primarily on the recommendation of the joint committee.
B	Delegation - The JHOSC has delegated powers to request a call in without reference to the HOSC.	The process would be streamlined.  A decision will be made by those that	Member involvement from the home authorities is potentially diminished. This

		<p>have scrutinised the proposals.</p> <p>Should the JHOSC decide not to request a call-in, the option would still be open to the home authority (as any interested party can submit a request under the new regulations).</p> <p>The SoS may give greater weight to requests coming from the Committee which had carried out the scrutiny review (i.e., the JHOSC)</p>	<p>could be reduced if the call in request first has to go through the local health scrutiny committee before being submitted.</p>
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#### 4.4. Procedure following the call-in of a decision

4.4.1. Before making a decision on a called in reconfiguration proposal, the Secretary of State must provide the local authority (among others) the opportunity to make representations in relation to the proposal. The guidance strongly encourages a collaborative approach to representations where multiple authorities have been involved, recommending a lead organisation is appointed for the purposes of representation.

4.4.2. Medway Council and Kent County Council must decide who will make representations to the Secretary of State for a called in reconfiguration that was subject to joint scrutiny.

4.4.3. Table 2: Who will make representations to the Secretary of State for a called in reconfiguration

Option	Outline	Advantages	Disadvantages
<b>A</b>	Each local authority reserves the right to make separate representations.	This allows for the involvement of a wider group of elected members.	HASC and HOSC would not have scrutinised the issue in detail.

		It allows for the option of a lead organisation to make a representation for both.	Members would not have been involved over a period of time.  Where both Councils make representations, these may conflict and potentially reduce the impact/influence.
<b>B</b>	The JHOSC has delegated powers to respond to the Secretary of State with representations.	As the JHOSC would have been involved in scrutinising the issue in detail, it would arguably be best placed to make representations.  Representations coming from a JHOSC comprising two local authorities might have more weight.  Mitigation of the risks associated with potentially having two authorities submit conflicting representations.	Member involvement from the home authorities is potentially diminished without a clear route for their comments to be included in any representations.

## 5. Next steps

5.1. A report similar to this one will be presented to Medway Council's equivalent of HOSC. Following discussion at both Committees, the clerks, in consultation with the Committee Chairs, Vice-Chairs and group spokespeople, will take forward the recommendations for change.

5.2. Where there are disagreements on the revisions, the clerks and Chairs will meet to discuss.

- 5.3. Once an agreement has been reached on these points, both Medway Council and KCC will proceed in amending the terms of reference of the JHOSC by following their respective Constitutional process.
- 5.4. In KCC, a paper with the proposed changes will be taken to the Selection and Member Services Committee before proceeding to full Council.
- 5.5. The changes can only be enacted once both Councils have agreed. The Monitoring Officer would receive a delegation from full Council to make the necessary changes to the Constitution once Medway Council have agreed the same changes where Kent agrees the changes ahead of Medway.