

By: Paul Wickenden, Overview and Scrutiny Manager

To: NHS and Health Overview and Scrutiny Committee – 7 September 2007

Subject: **Potential to Restructure and Refocus the NHS Overview & Scrutiny Committee**

Introduction

1. Members of the Committee will recall discussing on several occasions the ways in which the enormous workload for the Committee might be discharged without being unduly burdensome and resource intensive on either the County Council or the Health Service and other colleagues who are required to attend meetings of the Overview and Scrutiny Committee.

NHS Overview and Scrutiny Committee

2. (1) The County Council's NHS Overview and Scrutiny Committee was established in November 2001, some 13 months in advance of the enactment of legislation providing the powers to do so (the Health and Social Care Act 2001) on 1 January 2003.

(2) Members of the Committee are reminded that this Act amended Section 21 of the Local Government Act 2000 and made it mandatory for local authorities with social services responsibilities to ensure that their Overview and Scrutiny Committee or Committees had the power to scrutinise the planning, provision and operation of health services.

(3) Committee Members are reminded that its terms of reference are as follows:-

“To review and scrutinise matters relating to the National Health Service in Kent and to exercise the powers to be conferred on Council under the Health and Social Care Act 2001”.

Membership of the Committee

3. (1) In addition to the elected County Members who serve on the Committee, provision was made for four representatives of the 12 Borough and District Councils (representing what were the four existing health economies in Kent under the former Primary Care Trust structure), as well as the Community Health Councils (subsequently replaced by the Patient and Public Involvement Fora) to serve on the Committee.

(2) Members will be aware that the Patient and Public Involvement Fora are to be abolished on 31 March 2008 and will be replaced by a “Local Involvement Network” (LINK), which will have a larger and looser membership. The Committee is reminded that a “LINK” is not just about Patient and Public Involvement in Health but also Social Care.

Joint Committee Arrangements with Medway Council

4. Members will be aware that both this Council and Medway Council have embedded within their Constitutions a framework/protocol for convening a Joint Committee at short notice when there are issues of a strategic geographical-Kent nature which warrant such consideration (see Appendix 1).

Framework for the Operation of Health Overview and Scrutiny across Kent

5. Prior to the Committee's establishment in 2001, a framework in which the Committee would operate, together with protocols for the operation of the Committee, were agreed by the Kent Association of Local Authorities (see Appendix 2). These protocols are embedded in each of the Local Authorities' Constitutions across the County. These protocols need reviewing in conjunction with Health, Borough/District, and Patient and Public Involvement Fora colleagues.

Opportunities for Review and Change

6. (1) It has been evident for some time that the NHS Overview and Scrutiny Committee is in need of a review and that there is potential for restructuring and refocusing.

(2) Drivers for change include:-

- (a) the establishment of two Primary Care Trusts across the administrative County of Kent, focused on commissioning;
- (b) the joint appointment of a Director of Public Health, which presents an opportunity for the Overview and Scrutiny Committee to proactively assist in pulling together aspects of this important agenda and making positive contributions to the reduction of health inequalities;
- (c) the willingness of a number of Borough and District Councils to embrace Health Overview and Scrutiny (e.g. Maidstone, Canterbury and Shepway) and the consequent potential to formally delegate to them some of the statutory powers of the NHS Overview and Scrutiny Committee;
- (d) the Local Government and Public Involvement in Health Bill, which includes:-
 - (i) a proposal to abolish the Patient and Public Involvement Fora at the end of March 2008, replacing them with Local Involvement Networks (LINKs) on 1 April 2008;
 - (ii) a proposed duty to co-operate with scrutiny which impacts on Adult Social Services and Children's Services; and
- (e) the localism agenda and the potential opportunity to streamline a number of democratic processes in which Health issues may have a role.

Overview and Scrutiny of Health

7. (1) The Overview and Scrutiny of Health continues to play an important part in the Government's commitment to place the patient and the public at the centre of Health Services. It is a fundamental way by which democratically elected community leaders may voice the views of their constituents and require local NHS bodies to listen and to respond. Through Overview and Scrutiny of the Health Service, Local Authorities can assist in the reduction of health inequalities and promote and support health improvement.

(2) If Scrutiny is to have an effective and positive impact, those involved need to focus on giving careful and early consideration to the objectives and context for scrutiny.

(3) Members of Scrutiny Committees need to take a constructive but challenging approach to the role, bringing together evidence and people's experience to identify priority issues, make clear recommendations and drive forward improvement. To achieve this, it is important that Members of the Committee (including possible substitutes) gain an understanding of the NHS and the provision of Health Services. Consistency of membership is key to the success of the Committee and substitute members should only be necessary on very rare occasions. This is an area which Members may feel requires review in developing an ongoing training programme.

(4) The Health showcase on 24 July 2007 represented a contribution to this training need. However, the Committee might wish to consider whether it feels it should be mandatory for Members of the Committee to have training before serving on the Committee. This would be similar to the training delivered to Members before they serve on the Planning Applications Committee.

Relationship with the Executive/Council

8. (1) Overview and Scrutiny is not the only, or even the main, form of engagement between Local Authorities and Local NHS bodies. Increasingly, Health and Local Government provide and commission Health and Social Care Services in partnership. They also work together in Local Strategic Partnerships, on the development and the implementation of joint objectives, and on the countywide Local Area Agreement.

(2) It is, therefore, important that the Chairman of the Committee and the Executive Member leading on Health and Health Partnerships have regular contacts to discuss a broad range of issues.

(3) Inevitably Health Overview and Scrutiny Committees looking at Health issues will be holding to account for their actions and decisions their own Local Authorities' Executives, and the wider public sector, as well as NHS bodies.

(4) The Scrutiny function must operate independently of the Executive. However, it is advisable that Health Overview and Scrutiny Committees consider the Council's wider aims and activities in relation to health.

Work Programme, “Ways of Working”, and Meeting Dates

9. (1) The Committee has discussed on a number of occasions the fundamental need to develop an agreed forward work programme.

(2) The Committee may also wish to consider whether the protocols for the Overview and Scrutiny of the NHS need any amendment over and above updating them and correcting factual inaccuracies.

(3) The Chairman of the Committee has met with colleagues both on the Committee and within the two Primary Care Trusts to discuss the “Way of Working” of the Committee, and to consider ideas for a draft work programme. These discussions were highly constructive, and amongst the suggestions made were the following:-

- (a) There was a unanimous view in support of having nine meetings a year, from 10:00 am – 1:00 pm. Members are reminded that meeting dates for the Committee for the remainder of the year are:

12 October;
9 November; and
14 December.

For 2008 the dates proposed are:

11 January;
8 February;
28 March;
9 May;
13 June;
18 July;
5 September;
17 October; and
28 November.

- (b) The Chairman suggested that it might be useful for the Committee to adopt a style of working more akin to that of Parliamentary Select Committee, instead of focussing on presentations and information sharing. To achieve this, health colleagues and other stakeholders would be invited well in advance to submit written information and evidence about the issues selected for each individual meeting. Early discussions with Health colleagues on this style of working have been positive.
- (c) With regard to a draft work programme, there was unanimity that this work programme should start from the perspective of Kent patients and residents. Areas to be looked at would include:-
- (i) *Value for Money / Funding / Efficiency / Productivity / Performance and Management / Staff Issues*

PCT colleagues have indicated that these issues might best be looked at in terms of finance and planning at the November and

February meetings of the Committee. However, finance is an ongoing issue which may warrant the Committee's continuing attention.

- (ii) *Access – Balancing Proximity of Health Service/need for Specialist Services/Economies of Scale/Travel and Transport Links*

The Committee needs to be aware that included in the existing Topic Review work programme for all the Overview Committees is a Select Committee to undertake a focussed piece of work on Access to Health Services. This has been endorsed by the Policy Overview Co-ordinating Committee, but the Project Plan for this piece of work has not yet been prepared. It is currently planned to start the work of the Select Committee in the Autumn of 2007. However, this will not be taken forward until the Committee's views are known on how it wishes to respond to the incremental service changes which are anticipated as part of the review of Health Services across Kent and Medway known as Fit for the Future.

- (iii) *Care – Patients' view of care and patient experience, patient satisfaction, time allocated and availability of services, quality of information, waiting times, infection rates and control*

Members are reminded that one way in which the Committee may involve itself and influence some of these issues is to make a commentary on how each Health organisation across the County is meeting the Health Care Commission Core Standards. The most appropriate meeting to do this would be at the March meeting of the Committee. However, arguably this could be an ongoing process; the Committee's commentary for the Healthcare Commission needs to be evidenced-based, and the gathering of evidence should be a continual year-round process.

- (iv) *Choice – Availability for Kent Residents of the most advanced treatments and health technology, and the most effective drugs*
- (v) *Public Health Improvement – Role and Responsibilities of NHS, Public Sector Partners, Private and Voluntary Sector, Kent Residents, Assessing Progress and Performance*

(4) Many other issues will need to be looked at by the Committee. Some will fall under Public Health, such as obesity, drug abuse, etc; some, such as chronic pain and out-of-hours services will come under "Access" or "Care"; issues such as "effective Commissioning" will fall under "Value for Money". The Committee will need to decide its priority issues for inclusion in the next 12 months' programme

Developing the Work Programme

10. (1) The NHS Overview and Scrutiny Committee protocols are quite explicit about the way the work programme should be developed, and Members' views are sought on whether this needs to be renegotiated.

(2) One of the challenges for the Committee has always been the sheer volume of activity and how, on the one hand, it needs to be responsive to service changes while, on the other hand, being proactive and finding creative solutions to issues through open and transparent public engagement. The power to scrutinise needs to be applied both robustly and responsibly to focus on its prime aim of improving the health of our residents and addressing health inequalities. Members' views are sought on how the Committee can be focussed strategically and yet respond responsibly to all the other local issues; and whether this is appropriate as was originally intended through a Joint Committee and Select Committee style of operation at a Borough and District level, as set out in the protocols attached to this report.

(3) Representation of Borough and District colleagues on the NHS Overview and Scrutiny Committee was based on these representatives being appointed by a number of Borough and District Councils to represent the four distinct Health Economies across the County. Likewise Patient and Public Involvement Fora were invited to appoint two representatives to the Committee. Both Borough and District Councils, and Patient and Public Involvement Fora representatives have served on the Committee on a non-voting basis.

(4) It is evident from the Health Overview and Scrutiny Committees established across the country that the way in which Committees are structured is different in each Authority. Some have appointed a representative from every Borough and District Council within the area, some allow voting rights for these representatives and others none. Some local authorities (where there are a large number of Borough and District Councils) have invited half of the Local Authorities to serve on the Committee for one year with voting rights, and then the other half the second year on a rotational basis. Other Committees invite individuals and organisations to be co-opted on to the Committee, depending on the issue to be considered. Some Health Overview and Scrutiny Committees have combined their role with that of Social Care overview and scrutiny. This is an issue that the Committee may wish to consider, bearing in mind the proposed establishment of the Local Involvement Networks (LINKs), which are not solely about health, but also relate to Social Care. The relationship of the Committee to the LINK needs very careful consideration.

(5) Bearing in mind the discussions which have taken place to refocus the Committee so that it is much more patient and public focussed, the LINK input into developing the Committee's work programme will be crucial.

Health and Well-Being Partnership

11. (1) Key to the development of the work programme for the Health Overview and Scrutiny Committee is the duty on Primary Care Trusts and Local Authorities to develop Joint Strategic Needs Assessment and for the Local Authority to produce a Local Area Agreement.

(2) There is a move away from national targets to health and well-being targets set at the local level. These priorities will be derived from joint needs assessments and captured in the Local Area Agreements. This Committee will need to decide how it wishes to discharge its role in scrutinising the Local Strategic Partnerships.

Conclusions

12. The opportunities to restructure and reform the Committee have never been greater. This report sets out the issues and areas for a wide ranging debate on how this can be taken forward.

Recommendations

13. Members are asked to consider the suggestions in paragraph 9 above for changing the “Way of Working”, Meeting Dates; and the Draft Work Programme.

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Kent and Medway NHS Joint Overview and Scrutiny Committee

Terms of Reference

1. To receive evidence in relation to consultations initiated by local NHS bodies regarding proposals for substantial development or variation of the health service which effect both Medway and a substantial part of Kent.
2. To make comments on behalf of the relevant overview and scrutiny committees of Medway Council and Kent County Council on any such proposals to the NHS body undertaking the consultation.
3. To undertake other scrutiny reviews of health services if requested to do so by the relevant overview and scrutiny committees of both Medway Council and Kent County Council.
4. To report on such other scrutiny reviews to the relevant overview and scrutiny committees of Medway Council and Kent County Council.

Rules

1. These rules apply to the joint committee and any sub-committee established by it.
2. The committee will appoint a chairman at its first meeting in each municipal year, and that chairman will normally be drawn in rotation from Kent County Council members and Medway Council members. Where a review is unfinished at the end of a Municipal Year, members may agree that the previous year's chairman (if still a member of the committee) may continue to preside over consideration of matters relating to that review.
3. If the joint committee cannot agree a single response to an NHS consultation then a minority response which is supported by the largest minority, but at least three members, may be prepared and submitted for consideration by the NHS body with the majority response. The names of those who dissent may, at a member's request, be recorded on the main response.
4. The response of the joint committee to a consultation will normally be submitted to the chair and spokespersons of the relevant overview and scrutiny committees of Kent County Council and Medway Council prior to its submission to the NHS body and at least ten working days before the closing date of the consultation.
5. Following receipt of the joint committee response by the chair and spokespersons of the relevant overview and scrutiny committees, either of those committees (or an appropriately empowered sub-committee thereof) may meet and resolve to inform their proper officer of views or comments they wish to have incorporated in the joint committee's response. If such a request is received by a proper officer before the closing date of the consultation, those

views or comments will be appended to the joint committee's response and that appendix will form part of the joint committee's response.

6. These rules will take precedence over the rules in the constituent authorities constitutions, which will otherwise apply to the joint committee. Where the rules of the constituent authorities' constitutions are in conflict the chairman's ruling will determine which applies.

Annex B: Protocol for National Health Service Overview and Scrutiny

5B.1 These protocols are agreed within a context that assumes organisationally:

- the bringing into force of the Health and Social Care Act 2001
- the continued development of partnership working, especially between Social Services and NHS bodies
- the continued existence at District/Borough level of local overview and scrutiny committees concerned with NHS matters
- the continued existence of representative organisations operating at sub-county level
- a partnership approach working with not against NHS bodies in the county

5B.2 The protocols are based on the principles that:

- Overview and Scrutiny should focus on supporting the improvement of health services to Kent residents.
- Overview and Scrutiny should minimise the additional administrative burdens on local authorities or NHS bodies.
- Overview and Scrutiny agendas need to be developed jointly by the local authorities and the NHS bodies.
- Overview and Scrutiny needs to operate at different levels within Kent.

STRUCTURES

5B.3 Overview and Scrutiny structures will comprise:

District Council Overview and Scrutiny Committees

To look at local service issues:

- Local co-ordination (or joint committees) to ensure cross-district issues dealt with jointly
- Local KCC Members and CHC representatives to have rights of participation
- Focused on PCTs

KCC Health Service Scrutiny Committee

To look at broad and wide area issues, including from the viewpoint of the County Council's Social Service responsibilities:

- An emphasis on working through themed (topic) reviews conducted by Select Committees (smaller ad hoc groups) including District and Patient members
- DC and CHC representatives to have rights of participation
- Service reconfigurations to be looked at through Select Committees (ad hoc time limited sub-committees including DC and CHC participation) reporting to the KCC Health Service Scrutiny Committee to consider reference to the national Reconfiguration Panel (when the legislation is brought into force)

- Focused on Health Authorities

Medway Overview and Scrutiny Committee

To combine both levels of operation within the Medway area but linked into the co-ordinated system.

CO-ORDINATION

5B.4 Overview and Scrutiny activity at local and Kent level needs free exchange of information and protocols for co-ordination of work and resolution of conflicts. To facilitate this there will be:

- a regular meeting of Committee Chairmen and NHS representatives to agree a programme of work across the county and Medway
- a similar officer forum to support and advise the Chairmen on the work programme and co-ordinate requests for NHS officers to provide papers, information or attend committee meetings

5B.5 The KCC Committee membership allows for DC and CHC membership:

- a permanent representation of three District/Borough Members nominated by KALA and two CHC representatives nominated by the CHCs on a non-voting basis
- a right for the Chairmen of each District/Borough Overview and Scrutiny Committee (or another relevant Member) and each CHC to attend and speak at the KCC Committee (or send a representative) on a matter particularly affecting that area
- appointment of members of relevant District Overview and Scrutiny Committees and CHCs to individual topic reviews (agreed through the Chairmen's meeting)

5B.6 District Committees will allow local KCC Members and CHC representatives to attend and speak at the Committee.

5B.7 KCC and DC members on CHCs will be briefed by and feed back to their appointing Councils.

REVIEW PLANNING

5B.8 Overview and Scrutiny will take the form of a programme of reviews. Each review should be preceded by a Review Plan discussed within the officer forum and agreed with the relevant NHS bodies. Any disagreement should be considered by the relevant Overview and Scrutiny Committee after the NHS representative has attended the Committee to express the NHS view and answer member questions.

5B.9 The Review Plan should:

- set the terms of reference for the review including the general nature of the expected outcome
- set an approximate timetable of meetings and a reporting date
- state the officers supporting the review within the local authority, the NHS and the CHCs and estimate the time commitment required of them

- state the main witnesses and information sources expected to be involved

REVIEW ADMINISTRATION

5B.10 The arrangements for meetings of Overview and Scrutiny Committees shall ensure that:

- Dates for witnesses to attend Committee meetings are agreed with witnesses as far in advance as possible
- NHS Chief Executives and other local authorities' Chief Executives arrange for appropriate officers chosen by them to attend to give evidence on the identified topics (subject to any provision to be made in statutory regulations)
- Advance notice is given of the areas to be covered in questioning
- Information is wherever possible distributed to the Committee in writing before the witness attends

MEETING PROTOCOLS

5B.11 All Overview and Scrutiny Committees should incorporate in their Procedure Rules or otherwise ensure that:

- Committee Members should endeavour not to request detailed information from officers of the NHS or another local authority at meetings of the Committee, unless they have given prior notice through the Clerk. If, in the course of question and answer at a meeting of Committee, it becomes apparent that further information would be useful, the officer being questioned may be required to submit it in writing to members of the Committee through the Clerk
- In the course of questioning at meetings, officers of the NHS or another local authority may decline to give information or respond to questions on the ground that it is more appropriate that the question be directed to a more senior officer or Member
- Officers of the NHS or another local authority may decline to answer questions in an open session of the Committee on the grounds that the answer might disclose information which would be exempt or confidential as defined in the Access to Information Act 1985. In that event, the Committee may resolve to exclude the media and public in order that the question may be answered in private session
- Committees may not criticise or adversely comment on any individual officer of another local authority or of an NHS body by name

REPORTING

5B.12 All local authorities should ensure that:

- A record is made of the main statements of witnesses appearing before the Committee and agreed with those witnesses prior to publication or use by the Committee (Committee meetings may be electronically recorded)
- Drafts of Committee reports and recommendations should be made available for comment by the relevant NHS body (or local authority) whose operations might be commented on and any adverse comments or concerns reported to the Committee before the final report is published

- The Chief Executive of any NHS body and/or the Chief Officer of any other local authority involved with the review is given advance notice of the date of publication of the report and consulted on the text of any accompanying press release
- Reports should include an agreed timetable for any NHS body and/or other local authority involved to publish a response to the report's recommendations once confirmed by the appropriate Overview and Scrutiny Committee

SERVICE RECONFIGURATIONS

5B.13 NHS bodies remain responsible for public and other consultation on service reconfiguration proposals.

5B.14 The intention to carry out a consultation will be discussed in the officer forum.

5B.15 The KCC Health Service Scrutiny Committee will consult District/Borough Councils and CHCs for the areas affected by each proposal on whether to:

- consider the matter at a full meeting of the Committee
- set up a KCC Select Committee to consider the proposal
- request a District/Borough Overview and Scrutiny Committee to consider the proposal

5B.16 If a Select Committee is established or a District/Borough Overview and Scrutiny Committee requested to carry out a review:

- paragraphs 8-12 above shall apply to its work programme and proceedings
- the Review Plan shall as far as possible be integrated with the NHS body's consultation programme
- consideration shall be given to:
 - including one or more members of District/Borough Councils on the Select Committee or KCC members on the District/Borough Overview and Scrutiny Committee
 - including CHC members on the Committee
 - other arrangements for ensuring all local authorities and CHCs may express their views and seek information on the proposal
- the review report shall be submitted to the KCC Health Services Scrutiny Committee who will consider the recommendations together with any response by the NHS body and decide whether to refer the proposal to the Reconfiguration Panel.