Appendix A

Annex B:
Terms of Reference and Protocol for Health Overview and Scrutiny in Kent

Terms of Reference for Health Overview and Scrutiny Committee (HOSC)

"To review and scrutinise matters relating to the planning, provision and operation of health services in Kent through exercising the powers conferred on Kent County Council under Section 244 of the National Health Service Act 2006 as amended by the Health and Social Care Act 2012."

Protocol for Health Overview and Scrutiny

1. Core Principles.

(1) This protocol puts into effect the statutory obligations of Kent County Council under section 244 of the National Health Service Act 2006 (as amended by the Health and Social Care Act 2012).

(2) The operation of the protocol is underpinned by Part 4 of The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 (as amended from time to time).

(3) The work of the HOSC is built around the following four principles:

(a) Democratic legitimacy – Membership is drawn from elected representatives.

(b) Institutional memory – a strand of continuity as well as a body of knowledge and experience is built up cumulatively over time.

(c) Strategic perspective – HOSC is a statutory body able to scrutinise health matters as they affect the whole county.

(d) Operational freedom – an independent perspective is brought to the scrutiny of health issues through the ability to treat commissioners and providers of health services equally.

2. Key Tasks and Work Programme

(1) The work programme of the HOSC is underpinned by the four principles and reflects the key tasks outlined below:

(a) To examine the strategic direction for local health services, how the key objectives and priorities have been determined and whether there exists the means to achieve them, in terms of plans, resources, skills, and capabilities.

(b) To examine policy proposals affecting local health services, review areas of emerging policy, or where existing policy is deficient, make proposals.

(c) To examine the performance of the commissioners and providers of local health services, and the relationships between spending and delivery of

outcomes.

(d) To conduct scrutiny of plans for substantial variations of service.

(e) To review the implementation and impact of substantial variations of service and changes to the provision of health services.

(f) To produce timely reports to inform debate in County Council and the Health and Wellbeing Board, and to examine matters raised.

(g) To assist the County Council in better engaging with the public by ensuring that the work of the HOSC is accessible to the public.

(2) The HOSC is responsible for setting its own work programme, giving due regard to the requests of commissioners and providers of health services to bring an item to the HOSC's attention, as well as taking into account the referral of issues by Health Watch and other third parties.

(3) The HOSC will not consider individual complaints relating to health services. All individual complaints about a service provided by the NHS should be directed to the NHS body concerned.

3. Operating Arrangements.

(1) The exercise of formal health scrutiny powers shall be through meetings of the whole HOSC. Exceptions are set out in paragraph 3(2), below.

(2) Informal Member Groups may be established with the approval of the HOSC, in order to consider issues in more depth and can include elected representatives from KCC or Borough/City/District Councils in Kent who are not members of HOSC. Informal Member Groups cannot exercise any formal health scrutiny powers.

(3) Agenda items present at the request of health bodies shall be accompanied by a clear indication of the outcome sought from the HOSC and sufficient information provided for inclusion in the agenda to enable the HOSC to respond appropriately.

(4) Commissioners and providers of local health services are required to provide the HOSC with such information about the planning, provision and operation of health services in the area of that authority as the authority may reasonably require in order to discharge its relevant functions.

(5) Nothing in paragraph 3(4) requires the provision of:

(a) confidential information which relates to and identifies a living individual, unless at least one of the conditions specified in paragraph 3(6) applies; or

(b) any other information the disclosure of which is prohibited by or under any enactment, unless paragraph 3(7) applies.

(6) The conditions referred to in paragraph 3(5)(a) are:

(a) the information is or can be disclosed in a form from which the identity of the individual cannot be ascertained; or

(b) the individual consents to the information being disclosed.

(7) This paragraph applies where:

(a) the prohibition on the disclosure of information arises because the information is capable of identifying an individual; and

(b) the information is or can be disclosed in a form from which the identity of the individual cannot be ascertained.

(8) In a case where the disclosure of information is prohibited by paragraph 3(5), the HOSC may require the person holding the information to put the information in a form from which the identity of the individual concerned cannot be identified in order that the information may be disclosed.

(9) Paragraph 3(4) does not apply in relation to:

(a) information contained in, or relating to, a trust special administrator's report or draft report under sections 65F or 65I of the National Health Service Act 2006;

(b) information contained in, or relating to, recommendations by a health special administrator on the action which should be taken in relation to a company subject to a health special administration order under section 128 of the Health and Social Care Act 2012.

(10) Subject to paragraph 3(14), the HOSC may require any member or employee of a local health service commissioner or provider to attend before the HOSC to answer such questions as appear to the HOSC to be necessary for discharging its relevant functions.

(11) Subject to paragraphs 3(12) and 3(13), it is the duty of any such member or employee to comply with any such requirement.

(12) The HOSC may not require a person to attend in accordance with paragraph 3(10) unless reasonable notice of the intended date of attendance has been given to that person.

(13) Nothing in paragraph 3(11) requires any person to answer any question put to that person by the local authority:

(a) to the extent that the answer requires the provision of information of a type specified in paragraph 3(5); or

(b) if that person would be entitled to refuse to answer in, or for the purposes of, proceedings in a court in England and Wales.

(14) The HOSC may not require a member or employee of a responsible person to attend before it to answer questions in relation to:

(a) a trust special administrator's report or draft report under sections 65F or 65I of the National Health Service Act 2006;

(b) a health special administration order under section 128 of the Health and Social Care Act 2012, or recommendations by a health special administrator on the action which should be taken in relation to a company subject to such an order.

(15) Where appropriate, the HOSC may also request information for agenda items and attendance at formal meetings from organisations and individuals not specified in statutory regulations. Whenever information is either required or requested, sufficient notice shall be given to enable the relevant information to be gathered and attendees confirmed along with a clear indication of the outcome sought.

4. Working with other organisations

(1) It is recognised that Borough/City/District Councils in Kent may wish to engage with health matters in ways other than through overview and scrutiny. The exercise by KCC of the statutory health scrutiny function shall not prejudice this activity, and information shall be shared freely between the HOSC and Borough/City/District Councils.

(2) Health scrutiny activity at the County and Borough/City/District Council level shall seek to be complementary and not unnecessarily duplicate work. The HOSC may determine to delegate the exercising of the health scrutiny function over a specific issue to an overview and scrutiny committee of a Borough/City/District Council. Due regard will be given to the Protocol for Overview and Scrutiny Inter-Authority Co-Operation (contained in Appendix 4 Part 4 Annex A of the Constitution) and the relevant regulations.

(3) Borough/City/District Council representatives shall have rights of participation in a manner to be determined by the County Council.

(4) The role that Health Watch fulfils in promoting effective health care is recognised as is the statutory role of Health Watch on the Health and Wellbeing Board. Information will be shared where appropriate and Health Watch shall have the right to refer issues to HOSC, but there is no automatic right for Health Watch members to formal HOSC membership.

(5) Issues referred by Health Watch will receive an acknowledgment within 20 working days and Health Watch will be kept informed of any actions taken.

(6) Monitor, the Care Quality Commission and other regulatory bodies, undertake valuable roles distinct from that of HOSC. Information may be shared with them, but the operational independence and work programme of HOSC shall not be determined by that of other bodies.

(7) Regular liaison shall be maintained with health scrutiny in Medway and if a Joint HOSC is required by statute, or where it is deemed appropriate by the relevant Committee in each authority, one shall be established in line with the manner agreed between both authorities.

(8) Regular liaison shall be maintained with health scrutiny bodies across the South East region and elsewhere, to consider and share information about broader strategic health matters affecting the entire region.

(9) If a Joint HOSC is required by statute or where it is deemed appropriate by the relevant Committee in each authority concerned, one shall be established in line with the manner agreed between the authorities. Options shall include the establishment of a formal Joint HOSC, or the delegation of the scrutiny function for the specific issue under discussion to another HOSC or equivalent Committee.

5. Relationship with the Health and Wellbeing Board

(1) The strategic reciprocity of the HOSC and the Health and Wellbeing Board (HWB) is recognised in relation to the unique role each fulfils. Membership of one will exclude membership of the other.

(2) The HOSC shall seek to add value to the work of the HWB while maintaining a distinct identity as a 'critical friend'. The HOSC has a role in contributing to the development of the Joint Strategic Needs Assessment (JSNA) and Joint Health and Wellbeing Strategy (JHWS). It may also provide, where appropriate and upon request, a third party perspective on perceived conflicts between the JHWS and health commissioning plans.

(3) The HWB may request (but not require) that the HOSC undertakes specific reviews and makes recommendations.

6. Substantial Variations of Service

(1) Proposed changes to local health services shall be communicated on a regular basis to the HOSC by health service commissioners and providers. The HOSC shall advise where it considers a change to be substantial and it wishes to consider a proposal in more detail.

(2) The HOSC shall advise where, in cases when the relevant health service body has not requested the opportunity to bring a specific proposal to the HOSC, it considers a change to be substantial and it wishes to consider a proposal in more detail.

(3) Where a decision has been taken without allowing time for consultation because of a risk to safety or welfare of patients and staff, the HOSC shall be informed as soon as is practicable.

(4) Where the HOSC deems a given proposed service change as being not substantial, this shall not prevent the HOSC from reviewing the proposed change at its discretion and making reports and recommendations to the relevant health commissioner or provider.

(5) Where a proposed service change is being considered by a Joint HOSC or where there has been delegation of the scrutiny function for the specific issue to another committee or body, it shall be only this Committee or body which shall consider the decision and not the HOSC.

(6) Where the HOSC determines a proposed change of service to be substantial, a timetable for consideration of the change shall be agreed between the HOSC and relevant organisation(s). Changes to the timetable will be possible by mutual agreement. The timetable shall include the proposed date that the relevant organisation(s) intends to make a decision as to whether to proceed with the proposal and the date by which the HOSC will provide any comments on the proposal.

(7) Where the HOSC makes a recommendation on a proposal for a substantial variation of service with which the relevant organisation(s) does not agree, the HOSC shall be notified and such steps as are reasonably practicable taken by all parties to try and reach agreement.

(8) The HOSC's consideration of any substantial variation of service will include the whole context of the local health economy, e.g. whether it delivers lasting

clinical change, is sustainable, and whether it meets the Secretary of State's four tests of service reconfiguration:

(a) that they have support of general practitioner commissioners;

(b) arrangements for public and patient engagement, including local authorities, are strong;

(c) there is clarity about the clinical evidence base underpinning any proposals; and

(d) the proposals take into account the need to develop and support patient choice.

(9) A substantial variation of service may only be referred to the Secretary of State for Health where one of the following applies:

(a) The consultation with the HOSC on the proposal is deemed to have been inadequate in relation to content or time allowed;

(b) The reasons given for not consulting with the HOSC on a proposal are inadequate;

(c) The proposal is not considered to be in the interests of the health services of the area.

(10) The proposer of the substantial variation of service shall be informed of the date on which the HOSC intends to make a determination on referring an issue to the Secretary of State for Health. Full Council will be kept informed of the HOSC's intention to determine whether to refer an issue to the Secretary of State for Health. Where practicable, full Council will be given the opportunity to comment of the HOSC's intention to refer and the HOSC shall consider these comments before making a final determination.

(11) Any report of a referral to the Secretary of State shall be accompanied by full evidence of the case for referral. It will also include evidence all other options for resolution have been explored.