

Health Overview and Scrutiny Committee (HOSC) – **PROPOSED NEW**
TERMS OF REFERENCE

Health Overview
and Scrutiny
Committee
(HOSC)

- 17.133 Membership: 13 Members; plus, Borough/District Council representatives: 4.
- 17.134 None of the following may be an ordinary or substitute Member of HOSC, or any Sub-Committee or Task and Finish Group of it:
- (a) An Executive Member of Kent County Council.
 - (b) A member of the Kent Health and Wellbeing Board.
 - (c) A member of any Joint Health and Wellbeing Board on which Kent County Council is represented.
- 17.135 The membership exclusions set out in 17.134 also apply to any Joint Health Overview and Scrutiny Committee established with any other authority or authorities.
- 17.136 Where there is a risk of a member of the Committee having a conflict of interest, the appropriate rules and guidance must be followed. Examples of potential conflicts of interest include the member being:
- (a) An employee of an NHS body.
 - (b) A member or non-executive director of an NHS body.
 - (c) An executive member of another local authority.
 - (d) An employee or board member of an organisation commissioned by an NHS body or local authority to provide services.
- 17.137 This Committee reviews and scrutinises 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) and operates according to Part 4 of The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 (as amended). The Committee may consider and scrutinise the work of the Health and Wellbeing Board where relevant.
- 17.138 The Committee will work with the NHS and other local system partners in accordance with the following principles:
- (a) Outcome focused.
 - (b) Balanced.
 - (c) Inclusive.
 - (d) Collaborative.
 - (e) Evidence informed.
 - (f) Transparent.
 - (g) Accountable.
 - (h) Deliverable.

- 17.139 This Committee 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 Committee's attention, as well as taking into account the referral of issues by Healthwatch and other third parties.
- 17.140 This Committee cannot consider or handle individual complaints relating to health services. Individuals will be asked to use the complaints process of the relevant organisation.
- 17.141 Task and Finish Groups may be established with the approval of the Committee, 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 the Committee. Task and Finish Groups cannot exercise any formal health scrutiny powers.
- 17.142 Commissioners and providers of local health services are required to provide the Committee with such information as it may reasonably require in order to discharge its relevant functions.
- 17.143 The Committee may require any member or employee of a local health service commissioner or provider to appear before the Committee to answer such questions as are necessary for discharging its relevant functions.
- 17.144 Nothing in 17.142-143 requires the provision of any information where the disclosure is prohibited under any enactment or where a living individual would be identifiable, subject to Section 26 of the 2013 Regulations.
- 17.145 Healthwatch shall have the right to refer issues to the Committee:
- (a) Issues referred by Healthwatch will receive an acknowledgment within 20 working days and Healthwatch will be kept informed of any actions taken.
 - (b) Where the Committee includes an item on its agenda as a result of a referral from Healthwatch, a representative from Healthwatch is entitled to address the Committee.

HOSC:
Healthwatch

Reports and Recommendations

- 17.146 The Committee may make evidence-based reports and recommendations to relevant NHS bodies and require a response within 28 days, or longer at the Committee's discretion. The following information will be included in a report or accompanying any recommendations:
- (a) An explanation of the matter reviewed or scrutinised.
 - (b) A summary of the evidence considered.
 - (c) A list of the participants involved in the review or scrutiny.
 - (d) An explanation of any recommendations on the matter reviewed or scrutinised.

Substantial Variations of Service

- 17.147 NHS commissioners and providers are required to consult with the HOSC on proposed substantial variations of services affecting the population of the area. Exclusions from the definition of 'substantial variations of service' are set out at 17.151-152.
- 17.148 The Committee will determine whether any given proposal, or element thereof, constitutes a substantial variation of service and so requires consultation with the Committee. The Committee's decision will be based on information provided by the relevant NHS organisations.
- 17.149 Once the Committee has deemed a proposal a substantial variation of service, the NHS shall consult with the Committee prior to the final decision being made by the NHS. A timetable for consultation will be agreed between the Committee and NHS, with the NHS informing the Committee of the date on which they intend to make their final decision.
- 17.150 In considering substantial variations of service, the Committee will take into account the resource envelope within which the relevant NHS organisations operate and will therefore take into account the effect of the proposals on the sustainability of services, as well as on their quality and safety. The NHS must take the comments of the Committee into account when making its final decision.
- 17.151 The NHS is not required to consult with the Committee where the NHS has acted because of a risk to patient safety or to ensure the welfare of patients or staff. Where this has been the case, the Committee shall be informed as soon as possible.
- 17.152 In addition, the designation of 'substantial variation of service' will not apply in the following circumstances:
- (a) Establishment, dissolution, or change to the constitution, of an NHS Trust or Integrated Care Board. However, any consequential service variation may be determined a 'substantial variation of service' in line with usual Committee practice.
 - (b) Any proposals contained in a Trust Special Administrator's report or draft report and any recommendations made under a health special administration order.

HOSC: Substantial
Variations of
Services

Call-in Requests

- 17.153 Schedule 10A to the NHS Act 2006 provides call-in powers to allow the Secretary of State to intervene in NHS service reconfigurations at any stage. Individuals and organisations, including this Committee, may submit requests that the Secretary of State exercise these powers of intervention in a specific reconfiguration.

- 17.154 This Committee will not submit, or support, a call-in request until it has determined that all attempts to resolve its concerns about the reconfiguration with the NHS locally have been exhausted. Where a call-in request is made by this Committee, evidence of these attempts will be provided.
- 17.155 Any call-in request by this Committee will be submitted in accordance with the requirements set by the Secretary of State, with the content of any request agreed by the Committee.
- 17.156 The Committee will give the relevant NHS organisations a minimum of 15 days notice that the Committee will be meeting to determine whether or not to submit a call-in request.
- 17.157 A call-in intervention will commence when the Secretary of State issues a direction letter to the relevant NHS organisations. Where the direction letter relates to a substantial variation of service which is under review by this Committee under 17.147, the consultation will pause if required by the letter.
- 17.158 Notwithstanding 17.157, when there is a call-in, the relevant NHS bodies may provide the Committee with information to allow the Committee to make representations to the Secretary of State on the proposal which is the subject of the intervention.

Joint Health Overview and Scrutiny Committees (JHOSCs)

- 17.159 Where the relevant Overview and Scrutiny Committee of more than one authority has determined the same proposal(s) to be a substantial variation of service, this will entail the establishment of a Joint Health Overview and Scrutiny Committee (JHOSC). A Kent and Medway JHOSC has been established on a permanent basis to meet when required (19.38-47).
- 17.160 Where a JHOSC has been established, the Kent HOSC is deemed to have delegated its function to scrutinise the specific proposal(s) to the JHOSC. The formal powers of HOSC as set out at 17.142-144 are also delegated in connection with the proposal. However, with the agreement of the relevant NHS organisation(s), the HOSC may continue to receive updates while the JHOSC undertakes its review.
- 17.161 At any stage during its review, and at its conclusion, the JHOSC may make reports and recommendations to the authorities represented on the JHOSC. These recommendations will be reported to a meeting of the Kent HOSC. The Kent HOSC is not required to accept these recommendations but may do so.

Joint Health
Overview and
Scrutiny
Committees
(JHOSCs)

*Health Overview and Scrutiny Committee (HOSC) – **CURRENT TERMS OF REFERENCE***

Health Overview
and Scrutiny
Committee
(HOSC)

- 17.133 Membership: 13 Members; plus, Borough/District Council representatives: 4.
- 17.134 No Executive Member, Member of the Kent Health and Wellbeing Board or the Kent and Medway Joint Health and Wellbeing Board shall be a Member of this Committee, or of any Sub-Committee or Informal Member Group of it, or of any Joint Health Overview and Scrutiny Committee established with any other authority or authorities.
- 17.135 This Committee reviews and scrutinises 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) and operates according to Part 4 of The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013.
- 17.136 This Committee 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 Committee's attention, as well as taking into account the referral of issues by Healthwatch and other third parties.
- 17.137 This Committee cannot consider individual complaints relating to health services.
- 17.138 Informal Member Groups may be established with the approval of the Committee, 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 the Committee. Informal Member Groups cannot exercise any formal health scrutiny powers.
- 17.139 Commissioners and providers of local health services are required to provide the Committee with such information as it may reasonably require in order to discharge its relevant functions.
- 17.140 The Committee may require any member or employee of a local health service commissioner or provider to appear before the Committee to answer such questions as are necessary for discharging its relevant functions.
- 17.141 Nothing in 17.139-140 requires the provision of any information where the disclosure is prohibited under any enactment or where a living individual would be identifiable, subject to Section 26 of the 2013 Regulations.

17.142 Healthwatch shall have the right to refer issues to the Committee.

HOSC:
Healthwatch

17.143 Issues referred by Healthwatch will receive an acknowledgment within 20 working days and Healthwatch will be kept informed of any actions taken.

17.144 Where the Committee includes an item on its agenda as a result of a referral from Healthwatch, a representative from Healthwatch is entitled to address the Committee.

17.145 The Committee may make evidence-based reports and recommendations to relevant NHS bodies and require a response within 28 days, or longer at the Committee's discretion.

17.146 NHS commissioners and providers are required to consult with the HOSC on potential substantial variations of services affecting the population of the area covered by the Committee unless 17.147 applies.

HOSC: Substantial
Variations of
Services

17.147 The exception referred to in 17.146 is where the NHS has acted because of a risk to patient safety or to ensure the welfare of patients or staff. Where this has been the case, the Committee shall be informed as soon as possible.

17.148 The Committee will determine whether any given proposal, or element thereof, constitutes a substantial variation of service. However, the designation of 'substantial variation of service' will not apply in the following circumstances:

(i) Establishment, dissolution, or change to the constitution, of an NHS Trust or Clinical Commissioning Group. However, any consequential service variation may be determined a 'substantial variation of service' in line with usual Committee practice.

(j) Any proposals contained in a Trust Special Administrator's report or draft report and any recommendations made under a health special administration order.

17.149 Where the Committee has decided a proposal does not constitute a substantial variation of service it retains the ability to review the proposed change and can make reports and recommendations on the matter to the relevant health commissioner or provider. Where the NHS changes the proposal, the Committee may reconsider whether or not it deems the proposal a substantial variation of service.

17.150 Once the Committee has deemed a proposal a substantial variation of service, the NHS shall consult with the Committee prior to the final decision being made by the NHS. The NHS always remains the decision-maker though must take comments of the Committee into account.

- 17.151 When the NHS has determined when it will make a final decision on the proposal for a substantial variation of service, this date shall be communicated to the Committee. Sufficient time shall be allowed by the NHS for the Committee to make comments on the proposed decision ahead of this date unless 17.147 applies.
- 17.152 The final decision referred to in 17.151 is to be formally presented at a meeting of the Committee as soon as is practical after it has been taken by the NHS. The Committee will determine its response to the decision and may support the decision, not support the decision, and/or comment on the decision.
- 17.153 Where the Committee does not support the decision at the meeting referred to in 17.152, the Committee may consider referral to the Secretary of State but cannot make a final decision on referral at this meeting. No referral may be proceeded with unless the Committee agrees at this meeting which of the grounds in 17.154 provisionally apply and agrees the reasons why.
- 17.154 A substantial variation of service may only be referred to the Secretary of State for Health and Social Care where one of the following applies:
- (a) The consultation with the Committee 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 Committee on a proposal are inadequate, or
 - (c) The proposal is not considered to be in the interests of the health services of the area.
- 17.155 In the event of a decision by the Committee under 17.153 that one or more of the grounds for referral set out in 17.154 provisionally apply:
- (a) The decision of the Committee made at the meeting held under 17.152 must be communicated to the NHS in writing as soon as possible after the meeting to allow the NHS time to consider and respond to the decision of the Committee.
 - (b) The Committee shall inform the NHS of the date when it will meet to make a final determination as to whether or not to refer the substantial variation of service to the Secretary of State in line with regulations within eight working days of the meeting held under 17.152. This meeting of final determination shall be held as soon as practicable, subject to a minimum of twenty working days after the meeting held under 17.152.
- 17.156 All practical steps shall be taken by the NHS and Committee to come to an agreement between the meeting held under 17.152 and the one at which the Committee will make a final determination on referral, the date for which is set under 17.155(b).

17.157 Prior to any final determination on referral, the Committee shall consider the NHS response to the reasons set out under 17.153 at the meeting arranged under 17.155(b) along with the results on any other discussions between the Committee and NHS that may have taken place. The Committee will then make a final determination as to whether or not the matter is to be referred to the Secretary of State and may only do so when the Committee is satisfied the requirements of 17.154 and 17.158 apply.

17.158 Where the Committee makes a final determination to refer, the following apply:

- (a) Any referral to the Secretary of State shall be accompanied by full evidence of the case for referral.
- (b) Evidence that all other options for resolution have been explored must be included along with all additional requirements for the submission of a referral required by legislation and statutory guidance.
- (c) Where the referral is on the grounds that the Committee believes the proposal is not in the interests of the health service of the area, a summary of the evidence considered must be provided, including any evidence of the effect or potential effect of the proposal on the sustainability or otherwise of the health service of the area.

17.159 Where the Committee makes a final determination not to refer, the following apply:

- (a) The HOSC can request updates on implementation of the service change, along with a response to any comments made in the Committee's final determination.
- (b) Where the NHS makes significant changes to the decision presented to the Committee at the meeting of final determination, the Committee has the ability to deem this a substantial variation of service and require formal consultation with the Committee.

Joint Health Overview and Scrutiny Committees (JHOSCs)

17.160 Where the relevant Overview and Scrutiny Committee of more than one authority has determined the same proposal(s) to be a substantial variation of service, this will entail the establishment of a Joint Health Overview and Scrutiny Committee (JHOSC). A Kent and Medway JHOSC has been established on a permanent basis to meet when required (19.38-47).

Joint Health
Overview and
Scrutiny
Committees
(JHOSCs)

17.161 Where a JHOSC has been established, the Kent HOSC is deemed to have delegated its function to scrutinise the specific proposal(s) to the JHOSC until it has concluded its consideration and made any recommendations to the authorities represented on the JHOSC. These recommendations will be

reported to a meeting of the Kent HOSC. The Kent HOSC is not required to accept these recommendations but may do so.

17.162 The Kent HOSC at no time delegates the power of referral to any JHOSC.

17.163 Following the conclusion of the work of the JHOSC on a given proposal, the HOSC will make a final determination in line with the procedure set out in 17.152-159. No decision to refer may be made at the first meeting of the HOSC when the outcome of the JHOSC is considered as this will be the first occasion the HOSC has been able to consider the proposal formally and the NHS must be able to respond fully to any comments made by the HOSC.