

### **Joint Health Scrutiny Committees – A Practical Guide**

#### **Purpose of Report**

1. To inform members of new guidance published by the Centre for Public Scrutiny regarding the constitution, formation and purpose of statutory and discretionary joint health overview & scrutiny committees (OSCs).

#### **Background**

2. The County Council has previously made provision for the Health Overview & Scrutiny Committee to participate in joint health OSCs when an issue affects more than one local authority area. However, further guidance has now been published to assist local authorities in putting in place formal arrangements for the composition and running of joint health OSCs, which is summarised below.
3. A number of local authorities within the Bristol health community area (Bristol City, BANES, North Somerset and South Gloucestershire Councils) have been operating under joint health scrutiny arrangements in order to effectively scrutinise a number of local issues. A brief summary of these arrangements is also included below.

#### **Statutory Joint Health Overview & Scrutiny Committees**

4. If a proposal for change by an NHS body is considered substantial by more than one health OSC they are required, under a direction issued by the Secretary of State for Health in July 2003, to form a statutory joint health OSC to respond to the proposals.
5. The legal framework for joint health OSCs is captured in Section 7 of the Health & Social Care Act, 2001, which amended the Local Government Act of 2000 by inserting Section 21 (2)(f). Section 8 of the Health & Social Care Act, 2001 builds upon this power by outlining the framework under which joint health OSCs may be formed.
6. At the point when the NHS is outlining plans for change each individual health OSC should be given the chance to consider whether it views these plans as a substantial change in service. If more than one such authority holds this view that change is substantial they must consider the proposals as a statutory joint health OSC. The NHS body in question must then formally consult the joint health OSC on its proposals.
7. When a joint health OSC has been formed NHS bodies have a duty to provide relevant information regarding the issue to that joint committee only, and not to each individual participating health OSC.

8. Statutory joint health OSCs are required to produce one report reflecting the full range of views of the joint committee. NHS bodies that receive reports from a joint health OSC must respond within 28 working days.
9. A joint health OSC can refer to the Secretary of State for Health under the same conditions as a single committee. In cases of consultation by a foundation trust, the joint health OSC can refer directly to the Independent Regulator. Department of Health guidance indicates that any of the individual OSCs participating in the joint health OSC can also refer to the Secretary of State for Health as appropriate.
10. Social services authorities and NHS partners should develop formal arrangements for information sharing and advanced planning. This will enable OSCs to build in time to decide if proposals are substantial or whether to participate in joint health OSCs. This arrangement may also allow for a more informed effective process of involvement and engagement, which would benefit NHS partners in planning and executing their own statutory patient and public involvement duties.
11. There are no legal requirements around the supporting arrangements for joint health OSCs, but Department of Health guidance suggests local authorities share the costs.
12. The size of the community affected and the degree to which a community is affected by a proposal can be reflected in the make up of the joint health OSC. The lead OSC might be determined by the location of the services or the size of the population affected. But where the variation is around relocating a service from one area to another it may not be appropriate for either OSC to take the lead. In this instance it may be necessary for a lesser-affected OSC to lead the process.
13. Where there is difficulty agreeing which OSC will lead it is possible to appoint an external advisor to facilitate planning, draft terms of reference, advise on evidence gathering and draft the final report.

#### **Joint Health Overview & Scrutiny Arrangements Within the Bristol Health Community Area**

14. In response to a number of particular local issues, Bristol City, BANES, North Somerset and South Gloucestershire Councils have formally agreed a number of principles in order to allow them to participate in joint health OSCs when required.
15. Key to the success of this arrangement is the agreement by all participating local authorities to waive political proportionality requirements for joint health OSCs. In order for this agreement to be reached, each Council was required to approve the waiving of political proportionality, with no member voting against.
16. Furthermore, each of the Councils has agreed to authorise the Chief Executive, in consultation with the Group Leaders (or their nominees), to approve the finalised terms of reference and working arrangements, including resource allocation to enable joint health OSCs to be formed when necessary. The power to make Member appointments to these Committees, reflecting the wishes of the Political Groups and in accordance with the

working arrangements finalised by the local authorities concerned, has also been delegated in this manner.

### **Discretionary Joint Health Scrutiny Committees**

17. Discretionary joint health OSCs may also be formed by a number of individual health OSCs at any time and may review any matter relating to the planning, provision and operation of health services.
18. Discretionary joint health OSCs generally aim to produce only one report, but are not legally required to do so.
19. At the stage where the NHS body is engaging and involving the public under Section 11 of the Health & Social Care Act, 2001, a discretionary joint health OSC may be formed, which could eventually form the basis of a statutory joint health OSC. As with statutory joint health OSCs the lead health OSC would be the one that represents the community likely to be most affected by the proposals or recommendations in question.
20. Two or more health OSCs may choose to form a discretionary joint health OSC. They may be set up to look at services delivered to small numbers of people or from the point of view of particular user groups affected.
21. The same political proportionality requirements exist for discretionary joint health OSCs as for statutory health OSCs, unless all participating OSCs agree to waive them.
22. A discretionary joint health OSC can experiment with innovative ways of seeking evidence and involving the public and service users. Discretionary joint health OSCs are likely to have more time to carry out this work.

### **Principles of Good Health Scrutiny**

23. The principles of good health scrutiny, under which individual health OSCs generally operate, should also be applied to all joint health OSCs.
24. Health OSCs should endeavour to satisfy themselves that all stakeholders have been involved in developing proposals for substantial change and that their involvement has shaped the proposals. Health OSCs must also be satisfied that the formal consultation process is rigorous and inclusive.
25. NHS bodies do not have a statutory requirement to consult joint health OSCs on their Patient & Public Involvement strategy during a consultation on a substantial change, however it is recommended that they do so.
26. Extending the consultation period beyond the minimum 12 weeks may enable joint health OSCs to be informed about the results of wider PPI consultation and to take account of any feed back when formulating its own response.
27. Joint health OSC members have a duty to reflect the interests of the entire population of an area, and to take the widest view. However, listening to the views of individuals and communities will assist the joint health OSC in reaching its own conclusions.

28. It is recommended that joint health OSCs will carry out their own consultation on an issue of substantial change, although they may also draw upon the information gathered by the NHS bodies. There must be a balance between 'joined up' consultation with the NHS and retaining the independence of the joint health OSC.
29. Reports from joint health OSCs carry considerable weight and members will want to demonstrate that their views are informed by those of the wider electorate.
30. Joint health OSCs may need to obtain advice from independent experts. Universities (but not local ones with teaching links to the NHS body involved) are a good source of specialist opinion.
31. It is not necessary for joint health OSCs to wait for the NHS to come to them with issues for joint scrutiny.
32. A county council and a unitary authority can form a joint health OSC to look at cross-cutting issues that affect the population of both areas, and where services provided by each local authority might make a contribution to health.
33. District councillors serving on any form of joint health OSC must be OSC members within their own council.

### **Financial Implications**

34. Any participation in joint health OSCs will be funded under existing health scrutiny budgetary arrangements.

### **Reason for Recommendations**

35. To enable Wiltshire County Council's Health Overview & Scrutiny Committee to actively participate in joint health scrutiny activities with neighbouring local authorities.
36. To recognise and make provision for the likelihood that a number of significant, cross-cutting issues will impact on communities both within Wiltshire and the neighbouring local authorities in the coming months. In particular with regard to a proposal to investigate the possibility of amalgamating the Ambulance Trusts operating in Wiltshire, Gloucestershire and Avon, and in respect of service reconfiguration within the Avon and Wiltshire Mental Health Partnership.

### **Recommendations**

37. Members are recommended to:
  - (i) Note the publication of a new guide on joint committees by the Centre for Public Scrutiny.
  - (ii) Note that Wiltshire County Council's constitution already provides for the establishment of joint committees with other local authorities to undertake overview and scrutiny of health services (Article 6).

- (iii) Agree to develop Wiltshire's protocols for joint health scrutiny arrangements to allow for active and timely participation in joint health scrutiny committees where appropriate, and to accept that this may require the calling of special meetings in order to:
- approve finalised terms of reference.
  - approve working arrangements and resource allocation for joint health OSCs.
  - appoint Members to these Committees accordingly.
  - waive political proportionality (if desirable).

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