



GOVERNANCE COMMITTEE

Subject Heading:

OVERVIEW & SCRUTINY OF HEALTH SERVICES – responsibility for functions

CMT Lead:

Ian Burns, Assistant Chief Executive

Report Author and contact details:

Ian Buckmaster, Committee
Administration & Member Support
Tel 01708 432431
Email ian.buckmaster@havering.gov.uk

Policy context:

Changes in legislation relating to the scrutiny of health services require review of the functions of the Health Overview & Scrutiny Committee.

Financial summary:

There are no costs associated with the changes now reported.

Has an Equality Impact Assessment (EIA) been carried out? Not applicable

The subject matter of this report deals with the following Council Objectives

Ensuring a clean, safe and green borough	<input checked="" type="checkbox"/>
Championing education and learning for all	<input type="checkbox"/>
Providing economic, social and cultural activity in thriving towns and villages	<input type="checkbox"/>
Valuing and enhancing the lives of our residents	<input checked="" type="checkbox"/>
Delivering high customer satisfaction and a stable council tax	<input checked="" type="checkbox"/>

SUMMARY

The Health & Social Care Act 2012 and Regulations recently made under it have changed the way in which the Council scrutinises the work of local NHS bodies. This report outlines the changes that have been made and their effect upon the Council, the Health Overview & Scrutiny Committee and the scrutiny arrangements that exist jointly with the outer North East London boroughs of Barking & Dagenham, Redbridge and Waltham Forest and the County of Essex (in relation to

Epping Forest and Brentwood, both of which look to hospitals in the North East London sector for health services).

RECOMMENDATIONS

- 1 That the report be noted.
- 2 That the Committee **RECOMMEND to the Council** that:
 - (i) The Health Overview & Scrutiny Committee (and any successor OSC) continue to carry out the day-to-day health scrutiny functions
 - (ii) Responses to any formal consultation by a health service body be reported to the next convenient meeting of the Council for information and, where necessary, endorsement
 - (iii) Where the Health OSC considers that a health service proposal should be referred formally to the Secretary of State, it should report upon the matter to the Council and such referral shall be made only by resolution of the Council.
 - (iv) The Council continue to participate in the activities of the Outer North East London Joint Health OSC and that the Council's Joint Health OSC continue to have authority to enter into other Joint Health O&S arrangements as appropriate.
 - (v) Accordingly, the functions of the Health OSC be amended by the insertion after the current description of the OSC's functions in Section 1.4 of Part 3 of the Constitution of the words:

“(except any referral to the Secretary of State, which is reserved to the Council by resolution)”

REPORT DETAIL

Introduction

- 1 Scrutiny of health services by local authorities was first introduced by the Health & Social Care Act 2001 (the original Act). The original Act uniquely conferred the powers of scrutiny on the Overview & Scrutiny Committee (OSC) carrying out that scrutiny rather than, as in all other cases, upon the Council.
- 2 In particular, the original Act gave the OSC a statutory right to make representations on its own initiative to the Secretary of State where changes were being proposed to a health service about which the OSC had

Governance Committee, 13 March 2013

concerns. That right was exercisable even where the Council collectively, or its Executive, did not wish to object to the changes.

- 3 The Health & Social Care Act 2012 (the new Act) has changed that position. The original Act's provisions conferring powers directly upon the OSC have been altered so that the powers are now conferred upon the Council itself.
- 4 Neither Act required that a particular form of OSC be set up to exercise these health scrutiny powers. At first, the Council gave the powers to the Adult Services & Health OSC but, in 2006, in consequence of a heavy health-related workload, decided to establish a separate Health OSC, which has remained since then.
- 5 The current powers of the Health OSC, as set out in the Constitution, are:

Health	<ul style="list-style-type: none">• Scrutiny of NHS Bodies under the Council's Health Scrutiny function
--------	---

- 6 The new Act, and Regulations recently made under it, do not, of themselves, affect that allocation of functions. It is the way in which the functions are exercised that has changed.
- 7 Issues affecting the provision of health services tend to attract considerable public interest. Locally, the current and future operation of maternity services and accident & emergency services at Queens Hospital have been matters of major concern, prompting several debates and resolutions at Council and leading to the only exercise to date of the right of referral to the Secretary of State by the Health OSC (acting on its own behalf and jointly with the Health OSCs of Barking & Dagenham, Redbridge and Waltham Forest and Essex).
- 8 Under the new legislation, that referral would have been made on behalf of each Council as a whole rather than by the individual Health OSCs acting on their own initiative. An express purpose of the provisions in the new Act was to ensure that, in future, no Health OSC could act unilaterally and take a position different to that of its appointing Council. Although there was no inconsistency between the Health OSC and the view expressed in resolutions by the Council, it appears that such inconsistencies had occurred elsewhere. The possibility of that occurring is now avoided.

Future exercise of the scrutiny function

- 9 The arrangements for the Health OSC are now no different from those of any other OSC. It is possible for any OSC to take a position on an issue before the Council that is different to that taken by the Cabinet as local Executive; but any such difference of view would need to be settled by the Council.

Governance Committee, 13 March 2013

- 10 Although the legislative position has left the functions unchanged, it is important to ensure that, for the future, there is clarity about the way in which the Health OSC (and any future OSC exercising the health scrutiny function) goes about its work. In particular, it would be useful to define the circumstances in which the OSC should report to the Council rather than act on its own initiative.
- 11 The power conferred upon the Council is to “review and scrutinise any matter relating to the planning, provision and operation of the health service in its area”. In doing so, the Council must take account of relevant information, including information provided by or on behalf of the local Healthwatch organisation (which must be dealt with in specified ways). Reports and recommendations arising from such scrutiny activity may be provided to the Council (if undertaken by a Committee, or jointly with other Councils’ health scrutiny bodies) and to relevant health service bodies.
- 12 Health service bodies are, as at present, obliged to consult the Council on any substantial development of the health service or substantial variation in the provision of such service (except where action is needed urgently because of a risk to the safety or welfare of patients – in which case the reason for urgency must be explained). The Council may respond by a date set for closure of the consultation, or decline to do so. The health service body in question must formally respond to any response by the Council and, should it fail to do so, or its response be considered inadequate, the Council may report its concerns to the Secretary of State.
- 13 The power continues (with some limitations for exceptional circumstances) for the Council to require the attendance of any member or employee of a health service body to answer questions about matters under scrutiny. This existing power has not so far had to be invoked but its existence means that the Council has power to ensure that health service bodies co-operate with scrutiny exercises.

Suggested distribution of scrutiny powers

- 14 To avoid misunderstanding and confusion, it is suggested that Council be invited to approve the following arrangements for the exercise of the health scrutiny function.
- 15 Day-to-day scrutiny activity should continue to be carried out at OSC level. Whether that is by a dedicated Health OSC or by an OSC having health scrutiny functions in addition to others is a matter for review and decision in due course – for now, it is assumed that the Health OSC will continue but operate under the new arrangements.
- 16 Where formal consultation on health service changes is being undertaken, again it is suggested that the day-to-day work on that should continue to be undertaken at OSC level. Due to the need to respond formally to the health service body carrying out the consultation, it is unlikely to be feasible

to report first to full Council before the response is submitted but that response should be reported to the next convenient meeting of the Council for information and, where necessary, endorsement.

- 17 On the (probably) rare occasions that it is intended that the Council should refer a matter to the Secretary of State, that will need to be done by formal resolution of full Council, on the recommendation of the Health OSC. Submitting a report to the Council would give all Members the opportunity to debate the issues and for the Council formally to resolve its policy on the matter. It should be noted that, in consequence, it may be necessary to convene an extraordinary meeting of the Council to do this within the consultation timetables specified by the relevant NHS body and/or Secretary of State.
- 18 A small adjustment to the functions of the Health OSC as listed in section 1.4 of Part 3 of the Constitution is recommended to give effect to his proposed change.
- 18 It is also suggested that the Council should continue to engage with its neighbouring local authorities through the Joint Health OSC. The Joint Health OSC (which is administered by Havering on a cost recovery basis) enables cross-borough discussion, particularly important as the acute hospitals serving Havering residents also serve Barking & Dagenham, Redbridge and Brentwood residents, and many community services are provided by a healthcare trust that also serves Waltham Forest and Epping Forest.
- 19 Finally, from time to time, proposals emerge for wider-ranging Joint Health O&S arrangements. For example, several years ago a London-wide Joint Health OSC was established in response to proposals from a Joint Committee of all London Primary Care Trusts for major changes in hospital provision for cardiac, stroke, major trauma and other specialist services. Havering participated fully in that OSC, which achieved significant modification of the original proposals for the benefit of all London residents. It is suggested that the Council should continue to participate in such initiatives and that the Health OSC should be able to agree to that as the need arises. This is again in line with existing arrangements and current provisions in the Constitution.

IMPLICATIONS AND RISKS

Financial implications and risks:

There are no obvious, direct financial implications. The cost of administering the Joint Health OSC is shared with the participating local authorities on a fully recoverable basis.

Legal implications and risks:

New legislation in the Health & Social Care Act 2012 and The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 alters the way in which the Council scrutinises health service provision but the duty on local authorities to scrutinise health services continues.

Human Resources implications and risks:

There are no HR implications or risks

Equalities implications and risks:

There are no equalities implications or risks

BACKGROUND PAPERS

There are no background papers