

Central Bedfordshire Council

**SOCIAL CARE, HEALTH & HOUSING OVERVIEW & SCRUTINY
COMMITTEE**

Monday, 20 March 2017

Joint Health Overview and Scrutiny Proposal

Report of Cllr Peter Hollick, Chairman of the SCHHOSC

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This report relates to a Key issue

Purpose of this report

1. This report outlines a proposal to establish a Joint Health Overview and Scrutiny Committee (JHOSC) to scrutinise the Sustainability and Transformation Plan (STP) for Bedfordshire, Luton and Milton Keynes.

RECOMMENDATIONS

1. That the Committee consider the options detailed in the report and support the preferred option 3 with a view to proposing the establishment of a discretionary JHOSC with statutory scrutiny powers.
2. That the Committee comment on the appended terms of reference and memorandum of understanding of such a JHOSC should it be minded to establish one.

Sustainability and Transformation Plans (STPS)

2. The NHS and local councils have come together in 44 areas (footprints) covering all of England to develop proposals and make improvements to health and care. These proposals, called sustainability and transformation plans (STPs), are place-based and built around the needs of the local population.
3. Central Bedfordshire is located in the Bedfordshire, Luton and Milton Keynes STP footprint for which plans are currently being developed linked to the five local priorities local partners have identified. These priorities are:
 - Priority 1: Illness prevention and health promotion: Preventing ill health and promoting good health by giving people the knowledge

and ability, individually and through local communities, to manage their own health effectively

- Priority 2: Primary, community and social care: Delivering high quality and resilient primary, community and social care services across Bedfordshire, Luton and Milton Keynes
- Priority 3: Secondary care: Delivering high quality and sustainable secondary (hospital) care services across Bedfordshire, Luton and Milton Keynes
- Priority 4: Digital programme: Working together to design and deliver a digital programme, maximising the use of information technology to support the delivery of care and services in the community and in primary and secondary care
- Priority 5: Demand management and commissioning: Working together to make sure the right services are available in the right place, at the right time for everyone using health and social care in Bedfordshire, Luton and Milton Keynes

Legislative requirements for health scrutiny

4. NHS organisations are required to consult local authority health OSCs as a statutory consultee on any 'substantial' change to local health services.
5. OSCs can make recommendations to the NHS about proposals for change, to which the NHS must respond. Health OSCs can also refer a proposal for change to the Secretary of State for Health which will then prevent any implementation of the proposals until the matter is considered by an Independent Reconfiguration Panel.
6. If two or more local authority OSCs consider that a proposal amounts to a substantial variation, then they must form a JHOSC and cannot be consulted separately. However, councils can decide when establishing a JHOSC to retain the power to refer matters to the Secretary of State for Health and do not have to delegate that to a JHOSC.

Why a JHOSC may be required with regards to the STP

7. NHS England's guide on 'Engaging Local People' specifically refers to the existing engagement and consultations requirements for proposals developed as part of the STP, and not for the STP overall. It is therefore implied that STPs are not 'substantial reconfiguration' plans as a whole and therefore not subject to the full public consultation process. Separate proposals that are developed under the auspices of the STP

would be considered as they arose, following the model already used for local CCG commissioning.

8. Given the scale and breadth of the STP, it is likely that there will be some proposals for change that could be regarded as 'substantial'. Given the demands on the NHS to reform, the drivers for change and for integration, as well as the financial and demographic pressures then it is possible that there will be higher numbers of proposals coming forward than has been seen in the past.
9. NHS organisations continue to be required to consult health OSCs on service change. For each proposal in areas where residents are potentially affected by the proposal the health OSC would need to consider the proposal, reach a view on whether it was substantial for their residents and, where two or more OSCs consider it to be substantial, must establish a JHOSC. In theory this could see multiple JHOSCs considering separately proposals for change.
10. Where a JHOSC is required as a statutory consultee, the legislation is clear that there is no duplication of roles and the separate local authority health OSC is not also a statutory consultee.
11. It is also possible under the health scrutiny legislation for local authorities to establish a 'discretionary' JHOSC. These are standing committees, established to carry out a broader role than solely the statutory consultations that may arise in the area. These JHOSCs are delegated to consider more strategic issues relating to local health (e.g. financial performance, quality of local healthcare) and also consider whether or not a proposal for change to services is substantial. It is usual that these discretionary JHOSCs are delegated general health scrutiny powers to require information and attendance from NHS representatives and therefore there is no duplication with the work of the local health OSC of that authority if it chooses to continue to have one.

Options for consideration

12. There are three possible models for reviewing the proposals arising from the STP. It is a statutory requirement for a JHOSC to be formed where proposals cut across more than one local authority area. However the following options provide the opportunity for Members to consider adding discretionary as well as statutory powers to a JHOSC.

Option 1: Separate OSC arrangements

13. Under option 1 each OSC covered by the footprint would separately consider each service proposal as it came forward and set up a JHOSC

for each one individually if more than one authority thought it to be a substantial change.

14. Members should be aware that this option could lead to several JHOSCs being formed across the STP footprint comprising of 2 or more councils considering different elements of the priorities of the STP. It would encourage duplication and add delays into the process of arranging necessary shared meetings.

Option 2: Statutory JHOSC where councils separately consider if the matter is substantial

15. Under option 2 a standing JHOSC would be established only to be used when necessary. NHS commissioners would present a report to each of the relevant OSCs separately where the public may be affected. If the relevant OSCs agree that the change is substantial it is referred to the standing JHOSC for formal consideration.
16. In order to minimise duplication the JHOSC could be given the role of considering whether or not a proposal was substantial, which would be a streamlined approach and allow for consistency between proposals, as opposed to that role sitting with each local authorities' health OSC separately.
17. Where the proposal affected only one authority, it would be referred back to that authority's health OSC.
18. The JHOSC could set up sub-committees for those proposals for 2 or 3 councils on a 'task and finish' basis if it wished.
19. This option does not provide the JHOSC with discretionary powers in relation to the 'strategic' scrutiny of the STP, which would be left to the local authority health OSCs to carry out separately.

Option 3: Discretionary JHOSC with statutory scrutiny powers

20. Under option 3 any proposed changes to services under the auspices of the STP would be presented to the JHOSC as soon as possible setting out the reasons for the review, a preliminary engagement plan and the timetable for the review. The JHOSC would be asked to agree that the change was substantial and review the proposals at a JHOSC meeting.
21. In addition the OSCs would agree to delegate the discretionary powers to consider the strategic issues associated with the STP and to look at the 'inter-connected' issues between the priorities, and scrutinise those elements, such as NHS digitisation or the development of an Accountable Care System/Organisation where there may be large-scale changes but these are not considered by the NHS to qualify as a 'substantial' change to services to patients.

22. This option allows Members to link the strategic scrutiny of the STP to proposals for change, and to consider the inter-dependencies of the priorities across the STP.
23. One JHOSC would enable Members to develop continuing familiarity with the STP and its priorities, and would therefore strengthen their scrutiny of proposals. It could also compare service change proposals to ensure a consistent approach to what constituted substantial, and what good engagement looked like.
24. Option 3 provides a more timely process as the NHS would only need to take issues to one body rather than four and a meeting would be able to consider several proposals at the same time. It would be able to share the administrative requirements of this process too.

Considerations for Members

25. If Members are minded to agree a JHOSC their views are specifically sought on:-
 1. the arrangements for Chairing the JHOSC and who it would be most appropriate take this position, or if it should be rotated around the Councils;
 2. the hosting arrangements of the JHOSC, whether this should be one authority or rotated between the Councils; and
 3. whether a definition of a 'substantial' change is necessary to provide greater clarity of those matters that ought to be referred to the JHOSC.

Reason/s for recommendations

26. The consideration of the options detailed in this report will enable the Council to put in place appropriate arrangements for the scrutiny of the STP and any substantial proposals arising from the STP process.

Council Priorities

27. This report will support the delivery of the Councils priority to protect the vulnerable and improve wellbeing.

Corporate Implications

Legal Implications

28. Under the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 Local authorities are required to form a JHOSC to be consulted on substantial health proposals that cut across more than one area unless an exemption from the duty to consult applies. Where such substantial changes arise from the STP the NHS is legally required to consult with such a JHOSC.

29. The Regulations also allow delegation of the scrutiny of any matter relating to the planning, provision and operation of the health service in its area to another Local Authority or a JHOSC. The legislative requirements may differ between substantial proposals and other proposals and careful consideration of the scope of delegations should take place.
30. Governance of any JHOSC will need to comply with the requirements of the Council's Constitution and further legal advice should be provided on the final terms of both any memorandum of understanding and the terms of reference for the JHOSC.
31. The appointment of members onto a JHOSC and subsequent reporting to the Council's Social Care, Health and Housing OSC should comply with paragraph 5 of Part D1 of the Constitution.
32. The proposals contained in this report will enable the Council to deliver on its statutory duties by forming a JHOSC.

Financial and Risk Implications

33. Any additional costs arising from hosting and officer support to the meetings of the JHOSC can be contained within existing budgets.

Equalities Implications

34. Central Bedfordshire Council has a statutory duty to promote equality of opportunity, eliminate unlawful discrimination, harassment and victimisation and foster good relations in respect of nine protected characteristics; age disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
35. There are no equalities risk implications arising directly from this report. The establishment of a JHOSC will enable the authority to consult a wide range of residents who may be impacted by proposals in a more cohesive and straight-forward manner.

Conclusion and next Steps

36. Following consideration of the report officers will be able to contact colleagues in other authorities with regard our preferred approach to scrutiny of the STP. Should a JHOSC be agreed all non-Executive Members will be invited to take part.

Appendices

Appendix - Draft Terms of Reference/Memorandum of understanding

Background Papers

None.

Appendix

Draft Terms of Reference/Memorandum of understanding

These draw on the agreed terms of reference for previous JHOSCs in this local area and are based on option 3 set out above. These could be adapted to be used for any of the models above, taking into account the varying scope of the work.

Membership

1. That the requirement for political proportionality is waived. Each council may apply proportionality in their own appointment process if they wish.
2. That the JHOSC is comprised of Members from Bedford Borough Council, Central Bedfordshire Council, Luton Borough Council and Milton Keynes Council.
3. That each council appoints 3 members to the JHOSC as per their own arrangements. Substitutes will be permitted. (NB: these should be non-executive members of the local authority)
4. That the quorum will be at least one member from three of the four constituent councils.

Chairing, voting, standing orders and meeting schedule

5. The JHOSC will elect its Chair and appoint its Vice Chair each year. The Chair will be from the host authority and the Vice-Chair could rotate between the other member authorities.
6. The JHOSC will operate under the standing orders of the host local authority.
7. Each Member of the Committee will have one vote.
8. The JHOSC will agree the venues, dates and times of its meetings, noting that its work will be subject to the NHS timetable for consultation in some cases.

Support to the JHOSC

9. The host authority and other member authorities will provide administrative and scrutiny support to the JHOSC. The host authority will act as the co-ordinating body for the JHOSC and will provide a named officer for that purpose. Each authority will provide a named officer to act as scrutiny support and liaise with the host authority officer and the JHOSC officer support group as required.
10. The member authorities will share costs equally associated with hosting the JHOSC.
11. Each member authority will publish and distribute committee papers to its own members. The host authority will ensure that the JHOSC papers are published on the internet.

Scope of the JHOSC's Work

12. That the JHOSC will scrutinise the work done under the auspices of the local BLMK STP, across the 5 priorities and the STP governance arrangements.
13. That the JHOSC, for the purposes of statutory consultation on service change proposals arising from the STP, will act as the statutory health scrutiny consultee for those local authorities affected by those proposals. Where only one authority is affected, the matter will be referred back by the JHOSC to the local authority's HOSC.
14. That the JHOSC will, in the course of its work, require attendance from appropriate representatives of NHS organisations and require evidence in writing.
15. That the JHOSC may, as part of its scrutiny of the STP and any statutory consultations arising from the STP, invite interested parties to attend and give evidence to the JHOSC, in person and in writing.

JHOSC Reports

16. At the conclusion of evidence gathering, Members will deliberate and agree in principle, their conclusions, comments and recommendations. The JHOSC will then delegate the responsibility for drafting its final report to the lead scrutiny officer, after consultation with the Chair and Vice-Chair.
17. The JHOSC will endeavour to reach consensus and avoid the need for any minority reports. If unavoidable, a minority report could be prepared by a dissenting JHOSC Member or Members and attached to the final report as an Appendix.
18. The scrutiny officers will collaborate to prepare the draft report, summarising the evidence, conclusions and any comments and recommendations agreed by the JHOSC. The draft report will be circulated to each Member of the JHOSC for comments.
19. Once the final version of the report has been agreed, after consultation with the Chair and Vice Chair, the lead scrutiny officer will forward it directly to the NHS commissioners/responsible body, with a request for a written response within timescales set out in legislation.

Local Resolution and Referral Powers

20. The JHOSC will carry out the process of local resolution with the relevant NHS bodies where it is required under the statutory consultation process.
21. Powers of referral to the Secretary of State for Health are to be retained by each local authority to exercise separately at the conclusion of each statutory consultation, on receipt of the JHOSC report and any relevant minority report from a JHOSC Member or Members.

Press and Media

22. That the host authority will act as the contact point for any press queries arising from the work of the JHOSC and will liaise with the Communications Teams of each participating local authority as required.
23. The JHOSC will approve press releases relating to its work, delegating the responsibility for drafting them to the supporting officer of the lead authority, after consultation with the Chair and Vice-Chair.

Changes to the Terms of Reference

24. Any changes to the ToR can only be made by express agreement of the member authorities.

Memorandum of Understanding

25. It can also be useful to develop a memorandum of understanding between JHOSC member councils to ensure the efficient working of the JHOSC. For example:-
 - Each council could have a lead member on the JHOSC to act as a contact point alongside the Chair and Vice-Chair for matters arising between meetings where the Chair wishes to consult more widely;
 - Officer group is set up to plan for meetings and liaise with NHS colleagues on reports and witnesses to attend meetings and to keep up to date with the timetable of the NHS programme;
 - Pre-meeting briefings for all JHOSC members to consider question-planning and key issues for the meeting, as well as objectives of the meeting;
 - Rotation of meetings around the area, subject to meeting room availability
 - Agree dates of the meetings for the year, noting that given the NHS timetable, these may not all be necessary but allows for Members to plan their diaries.