

PROTOCOL FOR ESTABLISHMENT OF JOINT HEALTH SCRUTINY ARRANGEMENTS FOR CHESHIRE AND MERSEYSIDE

1. INTRODUCTION

- 1.1 This protocol has been developed as a framework for the operation of joint health scrutiny arrangements across the local authorities of Cheshire and Merseyside. It allows for:
- scrutiny of ‘substantial developments and variations’ of the health service; and,
 - discretionary scrutiny of local health services
- 1.2 The protocol provides a framework for health scrutiny arrangements which operate on a joint basis only. Each constituent local authority should have its own local arrangements in place for carrying out health scrutiny activity individually.

2. BACKGROUND

- 2.1 The Health and Social Care Act 2012 and the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 came into effect on 1 April 2013 revising existing legislation regarding health scrutiny.
- 2.2 In summary, the revised statutory framework authorises local authorities to:
- Review and scrutinise any matter relating to the planning, provision and operation of the health service
 - Consider consultations by a relevant NHS body or provider of NHS-funded services on any proposal for a ‘substantial development or variation’ to the health service in the local authority’s area.
- 2.3 Ultimately the regulations place a requirement on relevant scrutiny arrangements to reach a view on whether they are satisfied that any proposal that is deemed to be a ‘substantial development or variation’ is in the interests of the health service in that area, or instead, that the proposal should be referred to the Secretary of State for Health. In instances where a proposal impacts on the residents of one local authority area exclusively, this responsibility lays with that authority’s health scrutiny arrangements alone.
- 2.4 Where such proposals impact on more than one local authority area, each authority’s health scrutiny arrangements must consider whether the proposals constitute a “substantial development or variation” or not. The regulations place a requirement on those local authorities that agree that a proposal is “substantial” to establish, in each instance, a joint overview and scrutiny committee for the purposes of considering it. This protocol deals with the

proposed operation of such arrangements for the local authorities of Cheshire and Merseyside.

3. PURPOSE OF THE PROTOCOL

3.1 This protocol sets out the framework for the operation of joint scrutiny arrangements where:

- a) an NHS body or health service provider consults with more than one local authority on any proposal it has under consideration, for a substantial development/variation of the health service;
- b) joint scrutiny activity is being carried out on a discretionary basis into the planning, provision and operation of the health service

3.2 The protocol covers the local authorities of Cheshire and Merseyside including:

- Cheshire East Council
- Cheshire West and Chester Council
- Halton Borough Council
- Knowsley Council
- Liverpool City Council
- St. Helens Metropolitan Borough Council
- Sefton Council
- Warrington Borough Council
- Wirral Borough Council

3.3 Whilst this protocol deals with arrangements within the boundaries of Cheshire and Merseyside, it is recognised that there may be occasions when consultations/discretionary activity may affect adjoining regions/ areas. Arrangements to deal with such circumstances would have to be determined and agreed separately, as and when appropriate.

4. PRINCIPLES FOR JOINT HEALTH SCRUTINY

4.1 The fundamental principle underpinning joint health scrutiny will be co-operation and partnership with a mutual understanding of the following aims:

- To improve the health of local people and to tackle health inequalities;
- To represent the views of local people and ensure that these views are identified and integrated into local health service plans, services and commissioning;

- To scrutinise whether all parts of the community are able to access health services and whether the outcomes of health services are equally good for all sections of the community; and
- To work with NHS bodies and local health providers to ensure that their health services are planned and provided in the best interests of the communities they serve.

5. SUBSTANTIAL DEVELOPMENT/VARIATION TO SERVICES

5.1 Requirements to consult

- 5.1.1 All relevant NHS bodies and provider of NHS-funded services¹ are required to consult local authorities when they have a proposal for a substantial development or substantial variation to the health service.
- 5.1.2 A substantial development or variation is not defined in legislation. Previous guidance has suggested that the key feature is that it should involve a major impact on the services experienced by patients and/or future patients.
- 5.1.3 Where a substantial development or variation impacts on the residents within one local authority area boundary, only the relevant local authority health scrutiny function shall be consulted on the proposal.
- 5.1.4 Where a proposal impacts on residents across more than one local authority boundary, the NHS body/health service provider is obliged to consult all those authorities whose residents are affected by the proposals in order to determine whether the proposal represents a substantial development or variation.
- 5.1.5 Those authorities that agree that any such proposal does constitute a substantial development or variation are obliged to form a joint health overview and scrutiny committee for the purpose of formal consultation by the proposer of the development or variation.
- 5.1.6 Whilst each local authority must decide individually whether a proposal represents a substantial development/variation, it is only the statutory joint health scrutiny committee which can formally comment on the proposals if more than one authority agrees that the proposed change is “substantial”.
- 5.1.7 Determining that a proposal is not a substantial development/variation removes the ability of an individual local authority to comment formally on the proposal and exercise other powers, such as the power to refer to the Secretary of State. Once such decisions are made, the ongoing obligation on the proposer to consult formally on a proposal relates only to those authorities

¹ This includes the NHS Commissioning Board, any Clinical Commissioning Group providing services to the residents of Cheshire and Merseyside, an NHS Trust, an NHS Foundation Trust and any other relevant provider of NHS funded services which provides health services to those residents, including public health.

that have deemed the proposed change to be “substantial” and this must be done through the vehicle of the joint committee.

5.2 Process for considering proposals for a substantial development/variation

5.2.1 Where an NHS body or provider of NHS-funded services has a proposal for a substantial development or variation to its services, it must consult each local authority to determine whether the change is considered substantial.

5.2.2 In consulting with the local authority in the first instance, the NHS body/provider of NHS-funded service is required to:

- Provide the proposed date by which it intends to make a final decision as to whether to implement the proposal
- Provide the proposed date by which it requires comments on the proposals
- Publish the dates specified above
- Inform the local authority if the dates change²

5.2.3 NHS bodies and local health service providers are not required to consult with local authorities where certain ‘emergency’ decisions have been taken. All exemptions to consult are set out within regulations.³

5.2.4 In considering whether a proposal is substantial, all local authorities are encouraged to consider the following criteria:

- *Changes in accessibility of services:* any proposal which involves the withdrawal or change of patient or diagnostic facilities for one or more speciality from the same location.
- *Impact on the wider community and other services:* This could include economic impact, transport, regeneration
- *Patients affected:* changes may affect the whole population, or a small group. If changes affect a small group, the proposal may still be regarded as substantial, particularly if patients need to continue accessing that service for many years.
- *Methods of service delivery:* altering the way a service is delivered may be a substantial change, for example moving a particular service into community settings rather than being entirely hospital based.
- *Potential level of public interest:* proposals that are likely to generate a significant level of public interest in view of their likely impact.

² Section 23 of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013

³ Section 24 *ibid*

- *Changes to governance*: which affect NHS bodies' relationships with the public or local authority OSCs

5.2.5. This criteria will assist in ensuring that there is a consistent approach applied by each authority in making their respective decisions on whether a proposal is “substantial” or not.

6. OPERATION OF A STATUTORY JOINT HEALTH OVERVIEW AND SCRUTINY COMMITTEE

6.1 A joint health overview and scrutiny committee will be made up of each of the constituent local authorities that deem a proposal to be a substantial development or variation. This joint committee will be formally consulted on the proposal and have the opportunity to comment. It will also be able to refer to the Secretary of State for Health if any such proposal is not considered to be in the interests of the health service.

6.2 Powers

6.2.1 In dealing with substantial development/variations, any statutory joint health overview and scrutiny committee that is established can:

- make comments on the subject proposal
- require relevant NHS bodies and health service providers to provide information to and attend before meetings of the committee to answer questions
- make reports and recommendations to relevant NHS bodies/local health providers
- require relevant NHS bodies/local health service providers to respond within a fixed timescale to reports or recommendations
- report to the Secretary of State in writing where it:
 - is not satisfied that consultation with the relevant health scrutiny arrangements on any proposal has been adequate
 - is not satisfied that reasons for an ‘emergency’ decision that removes the need for formal consultation with health scrutiny are adequate
 - does not consider that the proposal would be in the interests of the health service in its area

6.2.2 A committee may also report to the Secretary of State if the NHS body or local service provider does not agree with a recommendation made by the committee and agreement has not been reached on the subject of the recommendation within a reasonable timeframe.

6.2.3 Where local authorities have agreed that the proposals represent substantial developments or variations to services, it is only the joint health overview and scrutiny committee which may exercise these powers.

6.2.4 A statutory joint health overview and scrutiny committee established under the terms of this protocol may only exercise the powers set out in 6.2.1 to 6.2.3 above in relation to the statutory consultation for which it was originally established. Its existence is time-limited to the course of the specified consultation it may not otherwise carry out any other activity .

6.3 Membership – Option 1

6.3.1 Each participating local authority should ensure that those Councillors it nominates to a joint health overview and scrutiny committee reflect its own political balance.⁴ However, overall political balance requirements may be waived with the agreement of all participating local authorities.

6.3.2 A joint committee will be composed of Councillors from each of the participating authorities within Cheshire and Merseyside in the following ways:

- where 8 or more local authorities deem the proposed change to be substantial – the joint health overview and scrutiny committee will consist of a nominated elected member from each participating authority
- where between 4 and 7 local authorities deem the proposed change to be substantial, each authority will nominate 2 elected members
- where 3 or less local authorities deem the proposed change to be substantial, then each participating authority will nominate 3 elected members.

(Note: In making their nominations, each participating authority will be asked to ensure that their representatives have the experience and expertise to contribute effectively to a health scrutiny process)

6.3.3 Each local authority will be obliged to nominate elected members through their own relevant internal processes and provide notification of those members to the lead local administrative authority at the earliest opportunity.

6.3.4 To avoid inordinate delays in the establishment of a relevant joint committee it is suggested that constituent authorities arrange for delegated decision making arrangements to be put in place to deal with such nominations at the earliest opportunity.

6.4 Membership – option 2

6.4.1 Each participating local authority should ensure that those Councillors it nominates reflect its own political balance.⁵ Efforts will also be made to ensure a joint committee is both proportionately representative of the populations of the local authorities that are participating in the joint scrutiny arrangement and

⁴ Localism Act 2011, Schedule 2 9FA, 6 (b)

⁵ Localism Act 2011, Schedule 2 9FA, 6 (b)

reflects the overall. This will mean that the following criteria will be applied to determine the full composition of each joint committee:

- Each local authority which recognises the change as substantial will nominate one elected member (“core membership”).
- Additional representation will be allocated taking into account both:
 - the respective populations of each of the participating authorities; and
 - the internal political balance of each participating authority and the overall aggregate political balance of the participating authorities as a whole (“additional membership”).

6.4.2 The following sizes are proposed for each committee:

No. of participating authorities.	Proposed size of committee	Core Membership	Additional Membership
9	12	9	3
8	12	8	4
7	10	7	3
6	10	6	4
5	8	5	3
4	8	4	4
3	6	3	3
2	6	2	4

6.4.3 In those instances where additional membership needs to be allocated, the places on the Committee will be allocated in the first instance on a proportional basis based on the populations of the participating authorities. In considering their nominations to fill the additional membership places, each participating authority will be expected to take into account their own internal political balance and the aggregate political balance of the participating authorities as a whole. An example of how this might operate is set out in Appendix A to this document. In the event of a dispute over the allocation of places on a joint committee, the Monitoring Officer of the lead local authority (see section 6.5 below) will be obliged to broker an agreement in consultation with his/ her colleagues in the other participating authorities.

6.4.4 Each local authority will need to nominate elected members through their own relevant internal processes and provide notification of those members to the lead local administrative authority at the earliest opportunity.

6.4.5 To avoid inordinate delays in the establishment of a relevant joint committee it is suggested that constituent authorities arrange for delegated decision making arrangements to be put in place.

6.5 Identifying a lead local authority

6.5.1 A lead local authority should be identified from one of the participating authorities to take the lead in terms of administering and organising a joint committee in relation to a specific proposal.

6.5.2 Selection of a lead authority should, where possible, be chosen by mutual agreement by the participating authorities and take into account both capacity to service a joint health scrutiny committee and available resources. The following criteria should guide determination of the lead authority:

- The local authority within whose area the service being changed is based; or
- The local authority within whose area the lead commissioner or provider leading the consultation is based.

6.6 Nomination of Chair/ Vice-Chair

The chair/ vice-chair of a joint health overview and scrutiny committee will be nominated and agreed at the committee's first meeting. It might be expected that consideration would be given to the chair being nominated from the representative(s) from the lead authority.

6.7 Meetings of a Joint Committee

6.7.1 At the first meeting of any joint committee established to consider a proposal for a substantial development or variation, the committee will also consider and agree:

- The joint committee's terms of reference;
- The procedural rules for the operation of the joint committee;
- The process/ timeline for dealing formally with the consultation, including:
 - the number of sessions required to consider the proposal; and,
 - the date by which the joint committee will make a decision as to whether to refer the proposal to the Secretary of State for Health – which should be in advance of the proposed date by which the NHS body/service provider intends to make the decision.

6.7.2 All other meetings of the joint committee will be determined in line with the proposed approach for dealing with the consultation. Different approaches may be taken for each consultation and could include gathering evidence from:

- NHS bodies and local service providers;
- patients and the public;
- voluntary sector and community organisations; and
- NHS regulatory bodies.

6.8 Reports of a Joint Committee

- 6.8.1 A joint committee is entitled to produce a written report which may include recommendations. As a minimum, the report will include:
- An explanation of why the matter was reviewed or scrutinised
 - A summary of the evidence considered
 - A list of the participants involved in the review
 - An explanation of any recommendations on the matter reviewed or scrutinised
- 6.8.2 Reports shall be agreed by the majority of members of a joint committee and submitted to the relevant NHS body/health service provider or the Secretary of State as applicable.
- 6.8.3 Where a member of a joint health scrutiny committee does not agree with the content of the committee's report, they may produce a report setting out their findings and recommendations which will be attached as an appendix to the joint health scrutiny committee's main report.

7. DISCRETIONARY HEALTH SCRUTINY

- 7.1 More generally, the Health and Social Care Act 2012 and the 2013 Health Scrutiny Regulations provide for local authority health scrutiny arrangements to scrutinise the planning, provision and operation of health services.
- 7.2 In this respect, two or more local authorities may appoint a joint committee for the purposes of scrutinising the planning, provision and operation of health services which impact on a wider footprint than that of an individual authority's area.
- 7.3 Any such committee will have the power to:
- require relevant NHS bodies and health service providers to provide information to and attend before meetings of the committee to answer questions
 - make reports and recommendations to relevant NHS bodies/local health providers
 - require relevant NHS bodies/local health service providers to respond within a fixed timescale to reports or recommendations
- 7.4 A discretionary joint committee will not have the power to refer an issue to the Secretary of State for Health.
- 7.5 In establishing a joint committee for the purposes of discretionary joint scrutiny activity, the constituent local authorities should determine the committee's role and remit. This should include consideration as to whether the committee operates a standing arrangement for the purposes of

considering all of the planning, provision and operation of health services within a particular area or whether it is operational for the purposes of considering the operation of one particular health service. In the case of the latter, the committee must disband once its scrutiny activity is complete.

- 7.6 In administering any such committee, the proposed approach identified in sections 6.3 – 6.8 of this protocol should be followed, as appropriate.

8. CONCLUSION

- 8.1 The local authorities of Cheshire and Merseyside have adopted this protocol as a means of governing the operation of joint health scrutiny arrangements both mandatory and discretionary. The protocol is intended to support effective consultation with NHS bodies or local health service providers on any proposal for a substantial development of or variation in health services. The protocol also supports the establishment of a joint health overview and scrutiny committee where discretionary health scrutiny activity is deemed appropriate.
- 8.2 The protocol will be reviewed regularly, and at least on an annual basis to ensure that it complies with all current legislation and any guidance published by the Department of Health.

Example of Allocation of Places on the Joint Committee

For example, in the following scenario there are four participating authorities, - A, B, C and D. The allocation of additional membership places would be worked out as follows:

Authority	Population	%	Allocated Additional Places	Total Places
A	450,000	45	2 (1.8)	3
B	300,000	30	1 (1.2)	2
C	150,000	15	1 (0.6)	2
D	100,000	10	0 (0.4)	1

The political balance of the four participating authorities is as follows:

	Parties				
Authority	Maroon	Lilac	Turquoise	Other	Total
A	68		17	5	90
B	28	40	5	3	76
C	36	9	3		48
D	42	5	9		56
Total	174	54	34	8	270
% Total	64%	20%	13 %	3%	100%

The allocation of the 8 places on the joint committee to reflect overall political balance should therefore be as follows:

	Places by Party				
	Maroon	Lilac	Turquoise	Other	Total
	5.2	1.6	1.0	0.2	8
Rounded	5	2	1	0	8

Taking into account that each authority is likely to nominate a member from its largest party as its core membership representative, the core membership would comprise the following elements per authority and per party

	Core Membership Places by Party and Authority				
Authority	Maroon	Lilac	Turquoise	Other	Total
A	1				1
B		1			1
C	1				1
D	1				1
Total	3	1	0	0	4

Taking into account overall political balance and internal political balances as far as possible, the following allocation of the 4 additional membership places could be suggested:

	Additional Membership Places by Party and Authority				
Authority	Maroon	Lilac	Turquoise	Other	Total
A	1		1		2
B	1				1
C		1			1
D					1
Total	2	1	1	0	4

This would leave an overall allocation as follows:

	Total Membership Places by Party and Authority (Option 1)				
Authority	Maroon	Lilac	Turquoise	Other	Total
A	2		1		3
B	1	1			2
C	1	1			2
D	1				1
Total	5	2	1	0	8

An alternative option would be for a deal to be brokered between authorities B and C which would allow the Lilac Party in authority B to appoint its authority's two representatives and the Maroon Party in authority C to appoint its authority's two representatives as follows:

	Total Membership Places by Party and Authority (Option 2)				
Authority	Maroon	Lilac	Turquoise	Other	Total
A	2		1		3
B		2			2
C	2				2
D	1				1
Total	5	2	1	0	8

DRAFT