

COUNCIL

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ESTABLISHMENT OF A NEW JOINT HEALTH OVERVIEW AND SCRUTINY COMMITTEE – KENT, MEDWAY, EAST SUSSEX AND BEXLEY

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Summary

This report seeks approval to the establishment of a new Joint Health Overview and Scrutiny Committee of Kent County Council, Medway Council, East Sussex County Council and Bexley Council to meet the requirements of health scrutiny legislation in relation to consultation by the NHS with these local authorities on proposed changes to Hyper Acute and Acute Stroke Services in Kent and Medway.

1. Budget and Policy Framework

- 1.1 The establishment of committees, the determination of their size and terms of reference, the allocation of seats to political groups and the appointment of Members to serve on committees is a matter for decision by the Council.
- 1.2 The establishment of a Joint Committee involving more than one local authority has to be approved by each of the participating Councils.

2. Background

- 2.1 In the Summer of 2015 Kent County Council's Health Overview and Scrutiny Committee and Medway Council's Health and Adult Social Care Overview and Scrutiny Committee determined that changes being proposed by the NHS to Hyper Acute and Acute Stroke Services in Kent and Medway amounted to a proposal for a substantial variation to the health service across both areas.
- 2.2 Whenever a responsible person (in this case the NHS) has under consideration any proposal for a substantial development of, or variation to the health service a duty to consult with the relevant local authority is triggered under Regulation 23 of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013.
- 2.3 Regulation 30 stipulates that where a responsible person consults more than one local authority pursuant to Regulation 23 those local authorities must appoint a joint overview and scrutiny committee for the purpose of the consultation and only that joint overview and scrutiny committee may make comments, require the provision of information and the attendance at meetings by the responsible person.

- 2.4 During 2016 and 2017 the Kent and Medway Joint Health Overview and Scrutiny Committee (HOSC) has been meeting to consider and comment on the review of Hyper Acute and Acute Stroke Services, the emerging case for change and possible options for a new model of care which would meet national standards.
- 2.5 On 12 December 2017 the Kent and Medway Joint HOSC was advised that the Joint Clinical Commissioning Group (CCG) Committee overseeing the Stroke Review (initially comprising the eight Kent and Medway CCGs) had been expanded to include Bexley CCG and High Weald Lewes Havens CCG as activity modelling had highlighted the extent of external flows of stroke patients to Kent and Medway from Bexley and East Sussex. As a consequence of this further analysis the Health Overview and Scrutiny Committees in East Sussex and Bexley were advised of the review and both determined that the emerging proposals to reconfigure stroke services in Kent and Medway constituted a substantial variation to these services for their areas. This has generated a statutory requirement to set up a new Joint Health Overview and Scrutiny Committee involving Kent County Council, East Sussex County Council Medway Council and Bexley Council for the purpose of consultation by the NHS with Overview and Scrutiny on the Stroke Review.
- 2.6 It should be noted that there is no definition in law of what constitutes a substantial development of, or variation to, the health service in an area. The latest guidance on Local Authority Health Scrutiny published by the Department of Health (DoH) in June 2014 says that many local authority scrutiny bodies and their NHS counterparts have developed joint protocols or memoranda of understanding about how the parties will reach a view on whether or not a proposal constitutes a substantial development or substantial variation. Although there is no requirement to develop such protocols the guidance states it may be helpful for both parties to do so. The guidance also says a development or variation is unlikely to be held to be “under consideration” until a proposal has been developed.
- 2.7 The previous DoH guidance on health scrutiny (published in July 2003) provided more detailed advice on what should be taken into account when determining whether or not a proposal is substantial including changes in accessibility of services, impact on the wider community, patients affected and methods of service delivery. The earlier guidance was clear that changes affecting a small group of patients may be substantial particularly if patients need to continue accessing that service for many years.
- 2.8 Medway has developed a questionnaire for the responsible person to complete to assist in assessing whether or not a proposal is substantial. Kent County Council, East Sussex County Council and Bexley Council will have their own local arrangements.

3 Establishment of a new Joint Health Overview and Scrutiny Committee – Kent, Medway, East Sussex and Bexley

- 3.1 Following informal discussion between the four local authorities it is proposed to establish a Joint Health Overview and Scrutiny Committee of Kent, Medway, East Sussex and Bexley with terms of reference as set out in Appendix 1 to this report in order to meet the statutory requirements of the health scrutiny legislation in relation to the review of stroke services. Each local authority wishes to reserve to itself the right of referral to the Secretary of State rather

than confer this power on the Joint HOSC. (This is a power available to local authorities in relation to contested health service reconfigurations in specified circumstances following consultation with Overview and Scrutiny by a responsible person under Regulations 23 or 30).

- 3.2 It has been agreed by the Chairmen of the four local authority Health Overview and Scrutiny Committees to recommend that the new Joint Committee should comprise 12 Members (which is the current size of the Joint Kent and Medway Health Overview and Scrutiny Committee) with a composition of four members each from Kent and Medway and two each from East Sussex and Bexley. This reflects the long held wish of Medway for equality of representation on any Joint HOSC with Kent and the relatively smaller population affected by the stroke review in Bexley and East Sussex.
- 3.3 The Local Government and Housing Act 1989 requires the Council to allocate seats on committees to political groups in accordance with the size of each group on the Council as a whole, unless alternative arrangements are notified to all Members and agreed without any Councillor voting against them. The allocation of the four Medway seats on the new Joint HOSC would therefore be three seats for the Conservative Group and one for the Labour Group. This does not generate a need to make any other changes to the overall allocation of seats across other Council Committees at this point. An overall review of the allocation of seats on Committees will take place at the Annual Council meeting in May as usual.
- 3.4 The Members nominated by the Conservative and Labour Group Whips to serve on this new Committee are as follows:
- Conservative Group: Councillors Purdy, Wildey and Royle
Labour Group: Councillor Murray
- 3.5 Discussion has also taken place with Kent County Council regarding the balance of representation on the Kent and Medway Joint HOSC. Agreement to equality of representation between Kent and Medway on this Joint Committee has been reached. An update will be reported to the Council meeting in April when the establishment of Committees and allocation of Committee seats for 2018/19 is considered. It is expected there will be four Members from each Council appointed to the Committee with effect from the beginning of the new Municipal Year.

4. Financial, legal and risk management implications

- 4.1 There are no financial implications arising from this report.
- 4.2 As set out in paragraph 2.2 of this report whenever a responsible person (in this case the NHS) has under consideration any proposal for a substantial development of, or variation to the health service a duty to consult with the relevant local authority is triggered under Regulation 23 of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013. Regulation 30 stipulates that where a responsible person consults more than one local authority pursuant to Regulation 23 those local authorities must appoint a joint overview and scrutiny committee for the purpose of the consultation and only that joint overview and scrutiny committee may make comments, require the provision of information and the attendance at meetings by the responsible person.

- 4.3 The Local Government and Housing Act 1989 requires the Council to allocate seats on committees to political groups in accordance with the size of each group on the Council as a whole, unless alternative arrangements are notified to all Members and agreed without any Councillor voting against them. The Council is required to observe the following principles so far as is reasonably practicable:-
- a) that not all the seats on the body are allocated to the same political group;
 - b) that the majority of the seats on the body is allocated to a particular political group if the number of persons belonging to that group is a majority of the authority's membership;
 - c) subject to paragraphs (a) and (b) above, that the number of seats on the ordinary committees of a relevant authority which are allocated to each political group bears the same proportion to the total of all the seats on the ordinary committees of that authority as is borne by the number of members of that group to the membership of the authority;
 - d) subject to paragraphs (a) to (c) above, that the number of the seats on the body which are allocated to each political group bears the same proportion to the number of all the seats on that body as is borne by the number of members of that group to the membership of the authority.
- 4.4 Principles (a), (b) and (d) apply to all appointments to the authority's own bodies and to certain outside bodies. However, principle (c) only relates to appointments to the ordinary committees of the Council.
- 4.5 Any proposal to waive the requirements of political balance would require notification to all Members of the Council in advance of the meeting and a resolution of the Council with no member voting against.
- 4.6 There are no risk management implications arising from this report

5. Recommendations

- 5.1 The Council is asked to agree:
- (i) the establishment of a new Joint Health and Overview and Scrutiny Committee of Kent County Council, Medway Council, East Sussex County Council and Bexley Council with Terms of Reference as set out in Appendix 1 to this report;
 - (ii) that the Committee should comprise 12 seats allocated as follows; Kent County Council 4, Medway Council 4, East Sussex County Council 2 and Bexley Council 2.
 - (iii) the allocation of the Medway seats as follows; three seats to the Medway Conservative Group and one seat to the Medway Labour Group in accordance with the legislation on political balance
 - (iv) the appointment of Councillors Purdy, Wildey, Royle and Murray to the Committee.

- (v) To delegate authority to the Chief Legal Officer to agree any further minor amendments to the Terms of Reference at Appendix 1 in consultation with the Chairman and Vice Chairman of the Council's Health and Adult Social Care Overview and Scrutiny Committee.

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Appendices

Appendix 1 – Proposed Terms of Reference for the Joint HOSC of Kent, Medway, East Sussex and Bexley

Background papers

None

Kent and Medway Stroke Review - Joint Health Overview and Scrutiny Committee (JHOSC)

(a) Terms of Reference

- (1) To consider information and make comments on proposals for a substantial variation to stroke services in Kent & Medway which affect Kent, Medway, East Sussex and Bexley and which are under consideration by a relevant NHS body.
- (2) To exercise the right to make comments under regulations 23(4) and 30(5) of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 (the 2013 Regulations) on behalf of the relevant Overview and Scrutiny Committees of Kent County Council, Medway Council, East Sussex County Council and Bexley Council on proposals relating to stroke services in Kent and Medway under consideration by a relevant NHS body.
- (3) To consider whether the proposal for a substantial variation to stroke services in Kent & Medway affecting the areas covered by Kent, Medway, East Sussex and Bexley should be referred to the Secretary of State under regulation 23(9) of the 2013 Regulations and, if deemed appropriate, to recommend this course of action to the relevant Overview and Scrutiny Committees of Kent County Council, Medway Council, East Sussex County Council and Bexley Council who may each agree to make a referral in line with their respective Constitutions. (Note: the exercise of the power to make a referral to the Secretary of State has not been delegated to the JHOSC).

(b) Rules

- (1) Regulation 30 of the 2013 Regulations states that where a relevant NHS body or a relevant health service provider consults more than one local authority on any proposal which they have under consideration for a substantial development of, or variation to, the provision of a health service in the local authorities' areas, those local authorities must appoint a Joint Overview and Scrutiny Committee (JHOSC) for the purposes of the review and only that Committee may make comments.
- (2) There will be a Joint Health Overview and Scrutiny Committee, for the Kent & Medway Stroke Review, comprising of:
 - 4 Members of Kent County Council
 - 4 Members of Medway Council
 - 2 Members of East Sussex County Council
 - 2 Members of Bexley Council
- (3) The quorum of the Kent, Medway, East Sussex and Bexley Joint Health Overview and Scrutiny Committee is 4 Members with at least one Member from each constituent Authority present.

- (4) The JHOSC will appoint a Chair and Vice-Chair at its first meeting in each municipal year. (It is expected that the Chair and Vice-Chair will be appointed from among the Kent and Medway Members on an annually rotating basis). Where a review is unfinished at the end of a municipal year, the Committee may agree that the previous year's Chair (if still a member of the committee) may continue to preside over consideration of matters relating to that review.
- (5) The formal response of the JHOSC will be reached as far as is reasonably practicable by consensus and decided by a majority vote. If the JHOSC cannot agree a single response to a proposal under consideration then a minority response which is supported by the largest minority, but at least two Members, may be prepared and submitted for consideration by the NHS body or a relevant health service provider with the majority response. The names of those who dissent may, at a Member's request, be recorded on the main response.