

<b>Committee:</b> Health and Social Care Scrutiny Committee	<b>Date:</b> 27/02/2019
<b>Subject:</b> Inner North East London (INEL) Joint Health and Overview Scrutiny Committee (HOSC)	<b>Public</b>
<b>Report of:</b> Andrew Carter, Director of Community and Children's Services	<b>For Information</b>
<b>Report author:</b> Robert J Brown, Senior Scrutiny Policy Officer, LB Newham (on behalf of INEL HOSC)	

## **Summary**

This report presents the recently revised Terms of Reference of the Inner North East London (INEL) Joint Health and Overview Scrutiny Committee (HOSC).

### **Recommendation:**

Members are asked to:

- Note the report.

### **Main Report**

### **Background**

1. The Inner North East London Joint Health and Overview Scrutiny Committee brings together the local authorities of the City of London Corporation, LB Newham, LB Tower Hamlets and LB Hackney. It is proposed that LB Waltham Forest joint the INEL HOSC to reflect structural changes to the Clinical Commissioning Groups which have created a single managing director for the Waltham Forest, Newham and Tower Hamlets footprint.

### **Appendices**

1. INEL HOSC Terms of reference and Substantial Variation Protocol

### **Background Papers**

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## Appendix 1

### INNER NORTH EAST LONDON (INEL) JOINT HEALTH and OVERVIEW SCRUTINY COMMITTEE (JHOSC)

#### TERMS OF REFERENCE

(draft as at 15 February 2019)

#### INTRODUCTION

1. Regulation 30 of the Local Authority ( Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 (Reg 30) ensure that there are sufficient scrutiny procedures and policies in place to cover the cross-Borough wide NHS Sustainability and Transformation Plan (STP).

#### ROLE

2. Consider and respond to any health matter which:
  - 2.1. Impacts on two or more participating local authorities or on the sub region as a whole, and for which a response has been requested by NHS organisations under Section 244 of the NHS Act 2006; and
  - 2.2. All participating local authorities agree to consider as an INEL JHOSC
3. To collectively review and scrutinise any proposals within the STP that are a substantial development / variation of the NBS or the substantial development / variation of such service where more than one local authority is consulted by the relevant NHS body pursuant to Reg 30;
4. To collectively consider whether a specific proposal within the STP that's is not a substantial development or variation is only relevant for one authority and therefore should be referred to that local authority's Health Scrutiny Committee for scrutiny;
5. In the event that a participating local authority considers that it may wish to consider a discretionary matter itself rather than have it dealt with by the joint committee it shall give notice to the other participating councils and the joint committee shall then not take any decision on the discretionary matter (*other than a decision which would not affect the council giving notice*) until after the next full Council meeting of the council giving notice in order that the council giving notice may have the opportunity to withdraw delegation of powers in respect of that discretionary matter;
6. To require the relevant local NHS body to provide information about the proposals under consideration and where appropriate to require the attendance of a representative of the NHS body to answer such questions as appear to it to be necessary for the discharge of its function;
7. Make reports or recommendations to the relevant health bodies as appropriate and/or the constituent authorities' respective Overview and Scrutiny Committees (OSC) or equivalent;
8. Each Council to retain the power of referral to the Secretary of State of any proposed "substantial variation" of service, so this power is not *solely* delegated to the JHOSC.
9. To review the procedural outcome of consultations referred to in any substantial development / variation, particularly the rationale behind contested proposals;



10. To undertake in-depth thematic studies in respect of services to which the NHS Trusts contribute and where a study is done on a Trust wide and cross borough basis;
11. To take account of relevant information available and in particular any relevant information provided by Healthwatch under their power of referral;
12. To maintain effective links with Healthwatch and other patient representative groups and give consideration to their input throughout the Scrutiny process;

## MEMBERSHIP

13. The INEL JHOSC will be a committee serviced by the participating local authorities on a two-yearly cycle – *the current local authority hosting the INEL JHOSC is the London Borough of Newham* in accordance with section 101(5) of the Local Government 1972;
14. The membership shall be made up of three members from each of the larger participating local authorities and one from the City of London Corporation; making a total of 10 members, with each council's membership being politically proportionate and with non-executive councillors making up the membership.
15. Substitutions will be accepted if a councillor is not able to attend a meeting of the JHOSC and that councillor has informed the Chair and Scrutiny Officer five working days in advance of the meeting.
16. Guidance suggests that co-opting people is one method of ensuring involvement of key stakeholders with an interest in, or knowledge of, the issue being scrutinised. This is already a power of overview and scrutiny committees by virtue of the Local Government Act 2000. However, the Guidance also recommends other ways of involving stakeholders by, for example, giving evidence or by acting as advisers to the committee.
17. A Chair (from the host authority) will be appointed by the JHOSC at the first meeting.
18. A vice-Chair (from non host local authorities) will be appointment by the JHOSC at the first meeting. Where agreed, a second vice-Chair may also be nominated to ensure parity across the Membership.

## QUORUM

19. The quorum for meetings will be one Councillor from three of the four Boroughs.
20. If a quorum is not reached 30 minutes after the time appointed for the start of the meeting, the meeting will stand adjourned.
21. During any meeting, if the Chair counts the number of members present and declares there is not a quorum present, then the meeting will adjourn immediately.
22. Remaining business will be considered at a time and date fixed by the Chair of Council. If he/she does not fix a new date, then the remaining business will be considered at the next meeting.



## DECISION MAKING PROCESS

23. Decisions will be taken by consensus. Where it is not possible to reach a consensus, a decision will be reached by a simple majority of those members present at the meeting. Where there are equal votes the Chair will have the casting vote.

## REPORTING ARRANGEMENTS

24. Prior to the agenda for each meeting of the JHOSC being finalised officers will convene a planning / pre-meeting with the Chairs of the individual HOSC's or their nominee, along with key individuals presenting papers from the NHS and other informal briefings as considered appropriate;
25. In terms of the JHOSC's conclusions and recommendations the Guidance says that one report has to be produced on behalf of the JHOSC. The final report shall reflect the views of all local authority committees involved in the JHOSC. It will aim to be a consensual report.
26. In the event there is a failure to agree a consensual report the report will record any minority report recommendations. At least seven members of the JHOSC must support the inclusion of any separate minority report in the committee's final report.
27. Any report produced by the JHOSC will be submitted to the local authority's council meetings for information.
28. The NHS body or bodies receiving the report must respond in writing to any requests for responses to the report or recommendations, within 28 days (*calendar, not working*) of receipt of the request.
29. In the event that any local authority exercises its right to refer a substantial variation to the Secretary of State, it shall notify the other local authorities of the action it has taken and any subsequent responses.

## FREQUENCY AND ADMINISTRATION

30. INEL JHOSC to meet quarterly, with at least one meeting within a 12 month period aligned with ONEJ JHOSC to consider issues that cover the STP footprint;
31. To constitute and meet as a Committee as and when participant boroughs agree to do so subject to the statutory public meeting notice period;
32. Meetings will usually be led by each authority rotating on a two-yearly basis with the Chair being a councillor from the current lead local authority;
33. The lead authority will be responsible for the servicing of the JHOSC. Suitable officer resources (Legal, Democratic) will be provided to meet the requirements of the committee. This includes (but is not restricted to):
  - 33.1. providing legal advice;
  - 33.2. liaising with health colleagues ahead of the meeting;
  - 33.3. updating action sheets from previous meetings;
  - 33.4. producing agenda papers and co-ordinating public forum;
  - 33.5. creating formal minutes and actions sheets;



34. If there is a specific reason, for example, if the issue to be discussed relates to a proposal specific to the locality of one Local Authority area the meeting venue can change to a more appropriate venue. The lead Local Authority would remain the same, even if the venue changes;
35. Any changes to the host authority must be agreed by the committee;
36. Agenda and supporting papers to be circulated and made publicly available at least five working days before the meeting;
37. Actions to be circulated to those with actions as soon as possible after the meeting – no later than 48hrs following the meeting;
38. Minutes of the meeting to be circulated within 10 working days of the meeting;
39. Meetings to be held in public, with specific time allocated for public questions;

## PETITIONS, STATEMENTS AND QUESTIONS

40. Members of the public and members of council, provided they give notice in writing or by electronic mail to the proper officer of the host authority (and include their name and address and details of the wording of the petition, and in the case of a statement or question a copy of the submission), by no later than 12 noon **ONE WORKING DAY BEFORE** the meeting, may present a petition, submit a statement or ask a question at meetings of the JHOSC. The petition, statement or question must relate to the terms of reference and role and responsibility of the committee;
41. The total time allowed for dealing with petitions, statements and questions at each meeting is thirty minutes;
42. Statements and written questions, provided they are of reasonable length, will be copied and circulated to all members and will be made available to the public at the meeting;
43. There will be no debate in relation to any petitions, statements and questions raised at the meeting but the committee will resolve;
  - 43.1. “that the petition / statement be noted”; or
  - 43.2. if the content relates to a matter on the agenda for the meeting: “that the contents of the petition / statement be considered when the item is debated”;

## RESPONSE TO QUESTIONS

44. If a sufficient response cannot be provided at the meeting to resolve a matter then the Questions will be directed to the appropriate Director. Appropriately redacted copies of responses will be published on the host authority's website within 28 days.
45. Details of the questions and answers will be included on the following meeting's agenda.



## PRINCIPLES OF EFFECTIVE SCRUTINY

46. Scrutiny undertaken through the JHOSC will be focused on improving the health and health services for residents in areas served by the JHOSC through the provision and commissioning of NHS services for those residents;
47. Improving health and health services through scrutiny will be open and transparent to Members of the Local Authority, health organisations and members of the public.
48. All Members, officers, members of the public and patient representatives involved in improving health and health services through scrutiny will be treated with courtesy and respect at all times.
49. Improving health and health services through scrutiny is most likely to be achieved through co-operation and collaboration between representatives of the various Local Councils, NHS Trusts, representatives of Healthwatch and the Clinical Commissioning Groups commissioning hospital services;
50. Co-operation and joint working will be developed over time through mutual trust and respect with the objective of improving health and health services for local people through effective scrutiny.
51. All agencies will be committed to working together in mutual co-operation to share knowledge and deal with requests for information and reports for the JHOSC within the time scales set down.
52. The JHOSC will give reasonable notice of requests for information, reports and attendance at meetings.
53. The JHOSC, whilst working within a framework of collaboration, mutual trust and co-operation, will always operate independently of the NHS and have the authority to hold views independent of other Members of representative Councils and their Executives;
54. The independence of the JHOSC must not be compromised by its Members, by other Members of the Council or any of the Councils' Executives, or by any other organisation it works with;
55. Those involved in improving health and health services through scrutiny will always declare any particular interest that they may have in particular pieces of work or investigation being undertaken by the JHOSC and thus may withdraw from the meeting as they consider appropriate;
56. The JHOSC will not take up and scrutinise individual concerns or individual complaints.
57. Where a wider principle has been highlighted through such a complaint or concern, the JHOSC should consider if further scrutiny is required. In such circumstances it is the principle and not the individual concern that will be subject to scrutiny.



## INNER NORTH EAST LONDON (INEL) JOINT HEALTH and OVERVIEW SCRUTINY COMMITTEE (JHOSC)

### Substantial Variation Protocol

#### Background

The Inner North East London (INEL) Joint Health and Overview Scrutiny Committee (the “JHOSC”) is responsible for undertaking the joint health scrutiny function across local authority boundaries, as set out in:

- [National Health Service Act 2006](#);
- [Health and Social Care Act 2012](#);
- [Local Authority \(Public Health, Health and Wellbeing Boards and Health Scrutiny\) Regulations 2013](#);
- [Local Authority Health Scrutiny: Guidance to support Local Authorities and their partners to deliver effective health scrutiny](#).

There is also statutory guidance for NHS commissioners that is relevant to health scrutiny and public consultation:

- [Patient and Public Participation in commissioning health and care: Statutory guidance for Clinical Commissioning Groups \(CCG\) and NHS England \(NHSE\)](#).

The JHOSC is responsible for reviewing and scrutinising any matter relating to the planning, provision and operation of the health services in joint areas and across boroughs.

The 2013 Regulations require that where there are proposed substantial developments / variations to health services in an area, the responsible organisations must consult with the JHOSC.

The health scrutiny guidance is clear that the commissioner is responsible for undertaking the consultation (4.3.1):

*“In the case of substantial developments or variation to services which are the commissioning responsibility of CCGs or NHS England, consultation is to be done by NHS commissioners rather than providers i.e. by the relevant CCG(s) or NHS England. When these providers have a development or variation “under consideration” they will need to inform commissioners at a very early stage so that commissioners can comply with the requirement to consult as soon as proposals are under consideration.”*

The JHOSC must invite the views of interested parties and take into account any relevant information made available to it; including Healthwatch in particular.

The JHOSC has the power to make reports and recommendations, and there is a duty on the local health services and providers to consider and respond formally.

The regulations state where a recommendation is not agreed by the commissioner, it must:

- Notify the committee of the disagreement;
- Work with the committee to take reasonable steps.



The regulations do not define what qualifies a substantial development / variation, however, the guidance suggests that a locally agreed protocol is in place between the health scrutiny function and commissioners.

## Principles

This protocol and the guidance on when to submit items to the JHOSC is provided to support the following:

- Give a clear understanding of roles and responsibilities for elected officials, commissioners, providers and health scrutiny members;
- Ensure effective delivery of health scrutiny's primary aim:
  - to strengthen the voice of local people;
  - ensure needs and experiences are considered as an integral part of the commissioning and delivery of health services; and
  - that those services are effective and safe."<sup>1</sup>
- Strengthen and enhance the role of public involvement in respect to commissioning health services;
- Ensure compliance with statutory powers and duties related to substantial developments / variations, as well as modelling best practice in respect to the role of joint health scrutiny.

The guidance encourages early engagement with joint health scrutiny in order to establish how best to consult on any proposals.

It is important to note that any agreement with the joint health scrutiny committee does not alter the wider duty to consult service users placed on NHS organisations. In particular, any decision regarding whether a proposed change does not constitute a "substantial reconfiguration" will not impact on the wider duty to consult as set out under sections 14Z2 and 242 of the NHS Act 2006.

This is important as it will ensure there is a clear record of health scrutiny being involved in early planning discussions, and a clear audit trail in case a decision is challenged in the process. Compliance with the process reduces the risk of decisions being delayed, put on hold or subject to judicial review.



## What are the other Boards?



## Health Scrutiny Board *what is it?*

The primary aim of health scrutiny is to strengthen the voice of local people, ensuring that their needs and experiences are considered as an integral part of the commissioning and delivery of health services and that those services are effective and safe.

Health Scrutiny is part of the accountability of the whole system and needs the involvement of all parts of the system. Engagement of relevant NHS bodies and relevant health service providers with health scrutiny is a continuous process.

Health Scrutiny should be outcome focused, looking at cross-cutting issues, including general health improvement, wellbeing and how well health inequalities are being addressed, as well as specific treatment services.

Local Authority Health Scrutiny June 2014



## Health and Wellbeing Board *what is it?*

The Health and Wellbeing Board is responsible for producing a Joint Strategic Needs Assessment (JSNA) and a Joint Health and Wellbeing Strategy (JHWS). It also has a role in promoting integration between Health and Social care.

Membership of the Health and Wellbeing Board is set out in the [Health and Social Care Act 2012](#) and comprises:

- Elected members;
- Council officers;
- Representatives of partner organisations including:
  - Clinical Commissioning Group;
  - Healthwatch; and in some instances
  - Police; and
  - Local Authority.



**H Hackney**



## What is the JHOSC?



**H Hackney**



## Joint Health and Overview Scrutiny Committee (JHOSC) *what is it?*

The [Inner North East London Joint Health Overview and Scrutiny Committee](#) (INEL JHOSC) is a joint committee made up of a delegated number of scrutiny Councillors from the London Boroughs of Hackney, Newham, Tower Hamlets and the City of London Corporation to consider health scrutiny issues across the subregion.

The Committee's remit is to consider London wide and local NHS service developments and changes that impact all the authorities mentioned above. The Committee meets as required and is established in accordance with section 245 of the NHS Act 2006 and Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002.



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## JHOSC *arrangements and items for scrutiny:*

Local Authorities may appoint a discretionary joint health scrutiny committee (reg 30) to carry out all or specified health scrutiny functions, for example health scrutiny in relation to health issues that cross local authority boundaries. Establishing a joint committee of this kind does not prevent the appointing local authorities from separately scrutinising health issues, however there are likely to be occasions on which a joint committee is the best way of considering how the needs of a local population, which happens to cross council boundaries, are being met. ([Local Authority Health Scrutiny, June 2014](#))

- engagement type papers:
  - where input from councillors is invited but where they have not worked up final proposals and are in the middle of other types of consultation at the same time e.g. PPIs or public consultation
- something that is just about to be formally agreed by a decision maker but goes to Scrutiny first to provide some political cover (the urgent stuff)



# H Hackney



Process for deciding what constitutes a substantial variation and items for consideration:



# H Hackney



## INEL JHOSC *items for consideration:*

Regulation 30 also requires local authorities to appoint joint committees where a relevant NHS body or health service provider consults more than one local authority's health scrutiny function about substantial reconfiguration proposals. In such circumstances, Reg 30 sets out the following requirements:

- ONLY the JHOSC may respond to the consultation and not the individual local authorities;
- ONLY the JHOSC may exercise the power to require the provision of information by the relevant NHS body or health service provider about the proposal;
- ONLY the JHOSC may exercise the power to require members or employees of the relevant NHS body or health service provider to attend before it to answer questions in connection with the consultation.

There should be an initial discussion and agreement between the NHS and local authority Scrutiny Officer about whether or not a proposed change constitutes a substantial development / variation. The commissioner will contact the committee scrutiny officer to discuss the details of the proposed change.



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## INEL JHOSC *items being submitted:*

Does the proposal or formal substantial variation\* cover two or more of the following local authorities: City of London, Hackney, Newham, Tower Hamlets, Waltham Forest?

If no, then it may need to go to the local Health Overview & Scrutiny Committee or to a local Health and Wellbeing Board instead.

If yes, then it needs to come to INEL to endorse a specific proposal or to engage on options being considered.

Consulting Overview and Scrutiny is just one engagement process which you may be required to consider amongst others e.g. full public consultation. Is this paper presenting proposals which INEL now needs to endorse?

If no, then the paper is not ready for submission to JHOSC.

If yes, then please ensure the paper clearly states that INEL is being invited to 'Endorse' the proposal.

Has the paper already been through other consultation or engagement processes and is ready to be presented for endorsement by INEL?

If no, then the paper is not ready for submission to INEL for final endorsement and Councillors won't have had an opportunity to consider patient and public concerns.

If yes, then please ensure the paper clearly summarises the results of your other consultation activity and the recommendation(s) you are making as a result.

\* A substantial variation is considered to be a major change to services that affect patients.

The item will then be referred to the JHOSC Chair and vice-Chairs, along with any recommendations.



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The Chair will make a decision on the basis of the evidence; the following factors should form the basis of their consideration:

- Changes in accessibility of services;
- Impact of proposal on the wider community;
- Numbers of patients affected;
- Numbers of staff affected;
- Methods of service delivery;
- The impact on specific groups of patients, eg: older people, those with mental health conditions or those with a life-long condition.

The scrutiny officer will confirm with commissioners in writing the outcome of this discussion, and schedule an agenda item for a future meeting.

The guidance states that the JHOSC and the commissioner should try to reach a consensus about what qualifies as a substantial variation. Where disagreement arises, it is recommended that the commissioner seek the advice of the Independent Reconfiguration Panel.

The JHOSC reserves the right to make a referral to the Secretary of State if an agreement cannot be reached (sec 224 (2ZA) National Health Services Act 2006 as amended).

The JHOSC may also request items to be brought to a meeting if members feel strongly that certain areas or items need further scrutiny.



# H Hackney



## INEL JHOSC *items being requested:*

On occasion, INEL JHOSC Members may request certain items, which they believe may be consistent with a substantial variation, and which cover two or more of the following Boroughs: City of London Corporation, Hackney, Newham, Tower Hamlets, Waltham Forest.

If NHS Partners believe the item does not meet the criteria for JHOSC, they are able to discuss this further with the JHOSC Chair and Scrutiny Officer. If a joint decision is made that it does NOT meet the criteria, then it will be referred to their respective HOSC.

If the decision is made to Agenda the item, the Scrutiny Officer will work with NHS Partners, the Chair and Witnesses to ensure papers are ready and appropriate timings scheduled.

INEL JHOSC Scrutiny Officer will ensure item is on appropriate Agenda to allow papers to be presented and recommendations to be reviewed.

Following meeting, the Scrutiny Officer will continue to liaise with NHS partners to ensure recommendations are accurately fed back and to ensure INEL JHOSC Members are kept abreast of current issues and receive responses to any additional questions they submit.

\* A substantial variation is considered to be a major change to services that affect patients.

**PROPOSED****Substantial Development / Variation Discussion Pro-forma form:**

Substantial Variation Discussion Pro-forma	
<b>What is the change proposed?</b> <i>(for example relocation of wards, change of service model, closure of services)</i>	
<b>What is the likely impact of the change?</b>	
<b>How many patients are likely to be affected?</b> <i>(include specific groups where identified)</i>	
<b>To date, how have people been involved in the planning for the change?</b>	
<b>What is the timescale for the change and what consultation activity is planned?</b>	
<b>Has this topic been considered by the committee before, and if so what was the outcome?</b>	
<b>What equalities impact analysis has been undertaken, and what were the key findings?</b>	



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**What Recommendations /  
Endorsements are you requesting  
from the JHOSC?**