

<b>Committee(s):</b>	<b>Date(s):</b>
Health and Social Care Scrutiny	25 November 2014
<b>Subject:</b>	<b>Public</b>
Review of Health Overview and Scrutiny functions	
<b>Report of:</b>	<b>For Decision</b>
Director of Community and Children's Services	

### **Summary**

The purpose of this report is to highlight to members of the Health and Social Care Scrutiny Sub Committee how recent national developments have impacted on how local authorities exercise their health overview and scrutiny function.

The wider health environment has also changed so that the City of London Corporation is now a commissioner and provider of public health services and thus a body which itself can now be scrutinised.

The report, therefore, proposes that the Health and Social Care Scrutiny Sub Committee should examine how or if its own health scrutiny functions could be enhanced and sets out a two phase approach for how this should take place.

### **Recommendation(s)**

Members are asked to:

- Note the report
- Endorse the proposal that the Health and Social Care Scrutiny Sub Committee should examine how or if its health scrutiny processes could be enhanced in line with the approach proposed in this report.

## **Main Report**

### **Background**

1. The Health and Social Care Act 2012 confirmed the relocation of public health functions, resources and commissioning responsibilities from the NHS into local government. The City was required to discharge its statutory public health responsibilities, detailed in the Public Health Outcomes Framework (2012) from 1 April 2013<sup>1</sup>.

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<sup>1</sup> The framework identifies four specific domains that local authorities are required to focus on: Domain 1: Improving the wider determinants of health; Domain 2: Health improvement; Domain 3: Health protection; Domain 4: Healthcare public health and preventing premature mortality.

2. Also on 1 April 2013, secondary legislation (Regulations 2013)<sup>2</sup> came into force to support local authorities in discharging their health overview and scrutiny functions effectively through connecting across all bodies which have a health related impact.
3. Public accountability and placing patients at the centre of health services are integral to the regulations. To this end, the City, as a commissioner and provider of public health services is now itself within the scope of health scrutiny legislation.
4. In essence, therefore, the duties which apply to scrutinised bodies such as the duty to provide information, to attend before health scrutiny and to consult on substantial reconfiguration proposals will now apply to the City in so far as it is a “relevant health service provider”.<sup>3</sup>

### **Current Position**

5. The new health environment has extended the scope of health scrutiny but has also increased the flexibility of local authorities in deciding how to exercise their scrutiny function. Patients and the public are at the very core of the new health system. So, in parallel, scrutiny is fundamentally about improving outcomes for people and making improvement happen by understanding how services are really experienced on the ground and challenging those responsible to review and improve.
6. The new health landscape also means that overview and scrutiny reviews will increasingly involve services which are jointly commissioned by the NHS, Clinical Commissioning Groups and the City.
7. Significantly, since the Regulations (2013) came into effect, local authority health scrutiny has faced an important and challenging time. The Francis report into the mid-Staffordshire Hospital crisis pointed to a systematic failure by a range of local and national organisations, including the health overview and scrutiny committees of both the county and district authorities. An alarming parallel was again uncovered in the revelation of a cover up of abuse in Rotherham. A clear message in the reports by Robert Francis and Alexis Jay into the mid-Staffordshire and Rotherham enquiries respectively was that these incidents should not be regarded as one off events that could not be repeated elsewhere.
8. In light of these challenges, the Department of Health (DH) published guidance (The Guidance)<sup>4</sup> to support local authorities in the implementation and interpretation of the Regulations (2013). The Guidance does not replace existing legislation, instead it provides an up-to-date explanation and guide to implementation of the Regulations governing health scrutiny functions.

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<sup>2</sup> Local authority (Public Health, Health and Wellbeing Board and Health Scrutiny) Regulations 2013

<sup>3</sup> Regulation 21 of the Regulations 2013

<sup>4</sup> Local Authority Health Scrutiny, Guidance to support local authorities and their partners to deliver effective health scrutiny, Department of Health, June 2014.

9. A report was presented to the Health and Social Care Scrutiny Sub Committee in June 2012<sup>5</sup> advising Members that there was a need to maintain a Scrutiny Sub Committee under s10 of the Health and Social Care Act 2001 and not to abolish this sub committee at that time. The report advised, however, that more generally, the City's health scrutiny function ought to be the subject of a review no later than April 2014.

## Proposals

10. A review of the work programme of the Health and Social Care Scrutiny Sub Committee shows, however, that whilst it has effectively scrutinised and taken account of the views of relevant NHS bodies and health providers, its legitimate role in proactively seeking information about the performance of the services and providers it commissions itself is not exercised to the same extent.
11. There are no concerns that the City's arrangements are fundamentally flawed. However, in view of the factors and instances presented in this report, this report proposes that the Health and Social Care Scrutiny Sub Committee should examine if there are any areas where its health overview and scrutiny functions could be enhanced.
12. It is proposed that this examination, should involve a two phased approach:  
*Phase 1: At the next meeting of the Health and Social Care Sub Committee meeting*  
Members and Officers reviewing the following key questions to help the Sub Committee to carry out an initial stocktake of its position:
- i) Could a City resident be confident that the City and those with whom it works will be aware when significant problems rear their head and can the public be confident that this information will be acted on?  
*Do performance indicators measure the right things? Do performance systems have within them a sense of humanity? Can members be assured that such systems address existing problems?*
  - ii) Does the City's Health Overview and Scrutiny function itself have access to information which will allow a member of the public to confidently challenge, on the basis of evidence, the council's assertions about the quality of a service?  
*Relying exclusively on official data is inadequate. Effective scrutiny needs to know that systems are in place to delve deeper into a service to explore the frontline reality that sits behind senior officers at the committee table.*  
*In both Stafford and Rotherham, scrutiny placed too much store on the assurances of people in authority that everything was fine. Even if they had wanted to ask challenging questions, they did not have access to the information to do so.*

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<sup>5</sup> The City of London, Community and Children's Services Committee, 2 March 2012.

- iii) Do council officers and officers from other agencies agree and accept the role that scrutiny has to play?

*One of scrutiny's principal strengths is in policy and service development. But in order to develop and improve evidence is also needed on how things are done now. When scrutiny involves sitting in a room talking to senior officers, it risks becoming part of the same group think.*

*Does the City need to how and when scrutiny engages with frontline officers who might have different stories to tell about how frontline services are delivered?*

#### *Phase 2: Following the next meeting*

With Officer support the Chairman and Deputy Chairman (and/or other nominated Members) of the Sub Committee analyse:

- The outcomes from the above discussion
- A review of what has been and can be learnt locally from both the Francis report and Alexis Jay report into the Rotherham investigation.
- Research of best practice from elsewhere

And recommend what changes are needed to the health overview and scrutiny functions in the City as a result.

### **Corporate & Strategic Implications**

The proposals outlined within this report fit with Community and Children's Services Departmental Business Plan priority to Safeguard children and adults from abuse and neglect wherever possible and deal with it appropriately and effectively where it does occur<sup>6</sup>.

### **Implications**

The Regulations (2013) have implications for relevant health service providers, including local authorities carrying out the local authority health scrutiny function, health and wellbeing boards and those involved in patient and public activities. The duties in the regulations are aimed at supporting local authorities to discharge their scrutiny functions effectively. Failure to comply with those duties will place the City in breach of its statutory duty and render it at risk of legal challenge.

### **Conclusion**

Since the publication of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013, health scrutiny has faced a challenging time. Key incidents such as the mid Staffordshire hospital crisis and the abuse in Rotherham have put health scrutiny into sharp focus. This is also against the new context that local authorities are now working in – as commissioners and providers of public health they themselves can now be scrutinised.

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<sup>6</sup> Community and Children's Services Departmental Business Plan 2014-17 Strategic Aim 1: Safety and protection for all.

A review of the Health and Social Care Scrutiny sub committees work programme shows that whilst the sub committee has been very effective in bringing to account NHS and other health bodies, hearing from its own commissioned services has not been so evident.

In the light of these factors, this report proposes that the Health scrutiny sub committee should examine how or if its scrutiny could be enhanced. The report proposes a two phase approach on how this could take place.

**Background Papers:**

Department of Health, Local Authority Health Scrutiny, Guidance to support Local Authorities and their partners deliver effective health scrutiny, June 2014.

Statutory Instrument No. 2013 /218 The Local authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013.

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