

CHESHIRE EAST HEALTH OVERVIEW AND SCRUTINY PROTOCOL

1 Introduction

- 1.1 The Health and Social Care Act 2012 and associated regulations give local authorities the power to review and scrutinise health services. This complements their existing power to promote the social, economic and environmental well-being of local areas. The role of local authorities is to contribute to improvements in health and the reduction of variations in health 'health inequalities' in their local area. Health services are to be viewed in their widest sense in accordance with the Health and Adult Social Care Act 2012 and will include Public Health, and other services which have a major impact on health and wellbeing provided by the local authority and in partnership with the NHS or other bodies. Local authorities are a channel for the views of local people.
- 1.2 Health scrutiny is the democratic element of the new system for patient and public involvement. This includes Healthwatch, Independent Complaints and Advocacy Services (ICAS) and Patient Advice and Liaison Services (PALS). In addition, the NHS and other bodies which commission (buy) or provide health services are required to make arrangements to consult with and involve the public in the planning of service provision, the development of changes and in decisions about changes to the operation of services.
- 1.3 The two main elements of health overview and scrutiny are:
- Formal consultation on substantial developments or variations to services.
 - A planned programme of reviews with capacity to respond to issues referred by Healthwatch Cheshire East and other referrers.
- 1.4 The functional responsibility for the overview and scrutiny of the buying (commissioning) and provision of health services in Cheshire East lies with the Health and Wellbeing Scrutiny Committee of the Council ("the Committee").
- 1.5 The main points of contact for scrutiny of those health organisations who either commission (buy) or provide health services are outlined in Appendix A. Throughout this document they will be referred to jointly as the "responsible health body(ies)" The responsibility to respond to scrutiny is not limited to those mentioned in Appendix A.

2 Policy Statement

Members of the Committee, the responsible health bodies and organisations for patient and public involvement, will work together to ensure that health scrutiny improves the provision of health services and the health of local people.

3 Aims of Health Scrutiny

- To improve the health of local people by scrutinising the range of health services available to local people.
- To secure continuous improvement in the provision of health services and services that impact on health.
- To contribute to the reduction of variations in health 'health inequalities' in the local area.
- To ensure the views of health service users (patients, carers and the public) are taken into account within a strategic approach to the design, commissioning and provision of health services.

4 Principles

- 4.1 Overview and scrutiny of health services is based on a partnership approach.
- 4.2 Overview and scrutiny is independent of the NHS and the Cheshire East Health and Wellbeing Board.
- 4.3 The views and priorities of local people are central to overview and scrutiny, and service users and their organisations will be actively involved in the overview and scrutiny process.
- 4.4 The overview and scrutiny approach is open, constructive, collaborative and non confrontational. It is based on asking challenging questions and considering evidence. Recommendations are based on evidence.
- 4.5 Overview and scrutiny will consider the wider determinants of health when/whilst working towards achieving its aims and use wider local authority powers to make recommendations to other local agencies as well as those within the NHS and local authority.
- 4.6 Overview and scrutiny recognises that there will be tensions between people's priorities and what is affordable or clinically effective, and that local health commissioning and provision takes place within a national framework of policies and standards.
- 4.7 The impact and effectiveness of health and wellbeing overview and scrutiny will be evaluated by means of an annual report to Council. Development of the annual report will include consultation with partners and Healthwatch Cheshire East.

5 The Role of the Committee

- 5.1 In the course of a review or scrutiny the Committee will raise local concerns, consider a range of evidence, challenge the rationale for decisions and propose alternative solutions as appropriate. It will need to balance different perspectives, such as differences between clinical experts and the public. All views should be considered before finalising recommendations.
- 5.2 The Committee will not duplicate the role of advocates for individual service users, the role of performance management of the NHS or the role of inspecting the NHS or Local Authority.

5.3 The Committee has no power to make decisions or to require that others act on their proposals. The responsible health body must respond within 28 days to recommendations of the Committee and give reasons if they decide not to follow these.

6 Organisations to which Health Scrutiny Applies

6.1 Health bodies subject to overview and scrutiny include the organisations that either commission (buys and performance manages) and/or provide health services. The Committee's main focus will be on services commissioned and delivered by those agencies as outlined in Appendix A

6.2 The Local Government and Public Involvement in Health Act 2007 introduced "the Councillor Call for Action (CCfA)" which provides elected Ward Members with a formal means to escalate matters of local concern to an Overview and Scrutiny Committee. Although this is seen as a measure of "last resort" it can lead to recommendations being made to the Council concerned and/or other agencies. The CCfA is one of a number of measures designed to provide Overview and Scrutiny Committees with greater powers to work more closely with Partners and across organisational boundaries. It is likely that any CCfA which is concerned with NHS services will be referred to the Committee in the first instance.

6.3 The Council also has a local Petition Scheme which sets out how petitions will be handled. Should either a CCfA or a formal Petition be received which relates to health services, the Secretary of the Committee will liaise in the first instance with the relevant commissioner or service provider, to assist the Chairman and Vice Chairman of the Committee to determine how to proceed.

7 Matters that can be Reviewed and Scrutinised According to Regulations

7.1 Overview and scrutiny powers cover any matter relating to the planning, provision and operation of health services. Health services are as defined in more detail in the Health and Social Care Act 2012 and cover areas such as health promotion, prevention of ill health and treatment.

7.2 Issues that can be scrutinised include but are not limited to the following:

- Arrangements made by the responsible health bodies to secure hospital and community health services and the services that are provided
- the provision of family health services, personal medical services, personal dental services, pharmacy and NHS ophthalmic services;
- Arrangements made by the responsible health bodies for public health, health promotion and health improvement including addressing health inequalities.
- Planning of health services for Cheshire East residents by health bodies, including plans made in co-operation with local authorities setting out a strategy for improving both the health of the local population and the provision of health services to that population.

- the plans, strategies and decisions of the Cheshire East Health and Wellbeing Board
- The arrangements made by responsible health bodies for consulting and involving service users in Cheshire East.
- Any matter referred to the committee by a local Healthwatch or Healthwatch England under the Health and Social Care Act 2012
- Any appropriate matter raised by a Councillor Call for Action or a Petition.

7.3 More detail about what the commissioners of health services are responsible for can be found in NHS England summary fact sheets on commissioning responsibilities, identified within Appendix A.

8 Substantial Developments or Variations in Services

8.1 The responsible health body will consult the Committee on any proposals it may have under consideration for any substantial development of a health service or any proposal to make any substantial variation in the provision of such services. The responsible health body will give the Committee sufficient notice to make arrangements to consider the proposals and make a formal response.

8.2 This is additional to discussions between the responsible health body and the appropriate local authority(s) on service developments. It is also additional to the duty to consult patients and the public. Guidance indicates that solely focusing on consultation with the Committee would not constitute good practice.

8.3 The Committee has the responsibility to comment on

- Whether as a statutory body the Committee has been properly consulted within the public consultation process
- The adequacy of the consultation undertaken with service users
- Whether the proposal is in the interests of services users in being able to access health services in the area

Arrangements relating to responsible Health bodies – identifying who is the consulting body

8.4 Across Cheshire East, there may be occasions when a proposed service change affects residents across two or more CCG area boundaries or across the local authority boundary. Where the proposed service change affects residents across such boundaries, it will be important for the Committee to understand which health body will be the ***'lead consultor'*** – the body responsible for leading and considering the consultation responses and taking the final decision.

8.5 In a case where the responsible health body is a service provider and the proposed service change relates to services which a CCG(s) and/or NHS

England is responsible for arranging the provision of then the CCG or NHS England is responsible for consulting the Committee.

8.6 Where services are commissioned by more than one health body, those bodies may agree a process of joint consultation or delegate one or more of those bodies to act as 'lead consultor' on behalf of all those bodies.

Substantial developments or variations (“SDV’s”) – explanation

8.7 Substantial developments or variations are not defined. The impact of the change on service users (patients, carers and the public) is the key concern. The following factors should be taken into account:

- Changes in accessibility of services such as reductions, increases, relocations or withdrawals of service
- Impact on the wider community and other services such as transport and regeneration and economic impact
- Impact on service users – the extent to which groups of service users are affected by a proposed change. Changes may affect the whole population (such as changes to accident and emergency services) or a small group (patients accessing a specialised service). If change affects a small group it may still be regarded as substantial, particularly if patients need to continue to access that service for many years (for example, renal services). There should be an informed discussion about whether this is the case and which level of impact is considered substantial.
- Methods of service delivery – altering the way a service is delivered. The views of service users and Healthwatch are essential in such cases.

8.8 The first stage is for the Committee (acting initially through its Chairman and Vice Chairman) to decide whether or not the proposal is substantial. This initial assessment is conducted at three levels:

8.8.1 Level One

When the proposed change is minor in nature, eg. a change in clinic times, the skill mix of particular teams, or small changes in operational policies.

At level one, the Committee would not become involved directly, but would be notified that the local Healthwatch is being consulted.

8.8.2 Level Two

Where the proposed change has moderate impact or consultation has already taken place on a national basis. Examples could include a draft Local Delivery Plan, proposals to rationalise or reconfigure Community Health Teams, or policies that will have a direct impact on service users and carers, such as the “smoke free” policy. Such proposals will involve consultation with service staff and Healthwatch Cheshire East, but will not involve:

- Reduction in service

- Change to local access to service
- Large numbers of service users being affected

The Committee will wish to be notified of these proposals at an early stage, but would be unlikely to require them to be dealt with formally as an SDV. A briefing may be required for the full Committee or through the Chairman and Vice Chairman, and the Local Ward Councillors concerned will be informed of the proposal by the Secretary. The Committee will wish to ensure that the local Healthwatch and other appropriate Organisations have been notified by the responsible health body lead consultor concerned.

8.8.3 Level Three

Where the proposal has significant impact and is likely to lead to:

- Reduction or cessation of service
- Relocation of service
- Changes in accessibility criteria
- Local debate and concern

Examples would include a major Review of service delivery, reconfiguration of GP Practices, or the closure of a particular unit.

The Committee will normally regard Level Three proposals as an SDV, and would expect to be notified at as early a stage as possible. In these cases the Committee will advise on the process of consultation, which in accordance with the Government Guidelines would run for a minimum 12 weeks period. The health organisation leading the consultation will make it clear when the consultation period is to end. The Local Ward Councillors concerned will be informed of the proposal by the Secretary. The Committee would consider the proposal formally at one of their meetings, in order to comment and to satisfy the requirement for the Overview and Scrutiny Committee to be consulted in these circumstances.

8.9 Officers of the responsible health body(s) leading the consultation will work closely with the Committee during the formal consultation period to help all parties reach agreement.

8.10 The Committee will respond within the time-scale specified by the responsible commissioners. If the Committee does not support the proposals or has concerns about the adequacy of consultation it should provide reasons and evidence.

Responding to the consultation

8.11 The Committee will respond to the consultation by the health body leading the consultation ('lead consultor') by the given deadline with its comments and views in writing and will explain the process it has followed, the evidence it has considered and identify any witnesses that have contributed. The response will summarise any areas of disagreement between the Committee

and the lead consultor and include recommendations and suggestions for reaching a consensus.

8.12 The Secretary of State outlined in 2010 four tests that would shape consultation on substantial variations to health services. When considering its response to a consultation on a proposal for substantial variation, the Committee will ask the following questions:

- Has the development of the proposal been informed by appropriate engagement and involvement of local people and those using the service?
- To what extent have GP commissioners informed and supported the change?
- How strong is the clinical evidence underpinning the proposal and does it have the support of senior clinicians whose services will be affected by the change?
- How does the proposed service change affect patient choice, particularly with regard to quality and service improvement?

8.13 The Committee may request a report on the outcome of all the consultation undertaken by the lead consultor on the proposed service change(s) in order to take a view on how the consulting body has responded to the views it has received and ensure the final decision is in the interests of local people.

Disagreements

8.14 Where there is disagreement about whether a proposal constitutes 'substantial variation,' the lead consultor health body will provide the Committee with information and the reasons why it considers the issue is not substantial. The Committee may seek views from others, such as NHS England when the disagreement involves Clinical Commissioning Groups.

8.15 If the disagreement is still not resolved, the responsible health body and Committee may ask the Independent Reconfiguration Panel (IRP) for informal advice on whether the issue should be regarded as substantial. Finally, if agreement is still not reached and the Committee believes the proposal to be 'substantial variation,' it may refer the matter to the Secretary of State on the basis of inadequate consultation. It would then be for the Secretary of State, and then potentially the courts, to determine whether it is substantial

Exemptions

8.16 The Committee will only be consulted on proposals to establish or dissolve a NHS Trust or Clinical Commissioning Group if this represents a substantial development or variation to the provision of health services.

8.17 The Committee does not need to be consulted on proposals for pilot schemes within the meaning of section 4 of the NHS (Primary Care) Act 1997 as these are the subject of separate legislation.

8.18 A responsible health body will not have to consult the Committee if it believes that a decision has to be taken immediately because of a risk to the safety or welfare of service users or staff. These circumstances should be exceptional.

The Committee will be notified immediately of the decision taken and the reason why no consultation has taken place. The notification will include information about how service users and staff have been informed about the change and what alternative arrangements have been put in place to meet the needs of service users and staff.

8.19 Any proposals contained in a trust special administrator's report or the final recommendations of a trust special administrator

8.20 Government guidance on consultations indicates a full consultation should last for a minimum of 12 weeks. It is recognised that this may need to be shorter in some circumstances. Any request to reduce the length of formal consultation should be discussed with the Committee and underpinned by robust evidence that the responsible health body leading the consultation has engaged, or intends to engage local service users, in accordance with statutory requirements.

Report to Secretary of State for Health

8.21 The Committee may report to the Secretary of State (SoS) for Health or, as appropriate, to Monitor for their consideration when it is not satisfied with the consultation or the proposals.

Referral to the Secretary of State may only be made in circumstances where the responsible commissioner and the Committee have attempted, but failed to resolve any disagreements or where the responsible commissioner has failed to attempt to resolve disagreements within a reasonable period of time. Likewise, referrals should not be made if the Committee has failed to respond to consultations by the date provided by the lead consulter health body.

8.22 Specific areas of challenge include:

- The content of the consultation or that insufficient time has been allowed;
- The reasons given for not carrying out consultation are inadequate; or
- Where the Committee considers that the proposal is not in the interests of service users of health services in its area.

NB 'inadequate consultation' in the context of referral to the SoS means only consultation with the Committee, not consultation with service users and the public.

8.23 In response to a referral the SoS may:

- Require the local responsible health body to carry out further consultation with the Committee.
- Make a final decision on the proposal and require the responsible health body to carry out the decision.
- Ask the Independent Review Panel to advise him/her on the matter.

9 Developing a Programme of Reviews

- 9.1 The Committee will produce an annual overview and scrutiny plan in consultation with the Commissioners and Healthwatch Cheshire East.
- 9.2 The plan will consider the range of health services, including those commissioned and provided by the local authority, and in partnership arrangements with the NHS.
- 9.3 The plan will be based on the views and priorities of local people.
- 9.4 The plan will have the capacity to take into account issues that may be raised through the work of Healthwatch Cheshire East.
- 9.5 The plan will be realistic, based on the capacity of the Committee and the Committee's partners to undertake meaningful reviews.
- 9.6 The following factors should be taken into account when planning a programme:
- It is a local priority that can make a difference.
 - The topic is timely, relevant and not under review elsewhere.
 - If the topic has been subject to a national review it should be clear how further local scrutiny can make a difference.
 - There is likely to be a balance between;
 - Public Health improvement and health services,
 - NHS and joint services,
 - Acute services and primary/ community services.
 - It may be thematic, e.g. public health, homelessness or services for older people that might impact on the health of local people, or a service oriented priority.
 - It should contribute to policy development on matters affecting the health and wellbeing of communities.
- 9.7 There are a number of methods for scrutiny, including formal reports to the Committee or Reviews conducted by smaller "Task and Finish" Review Panels appointed by the Committee with specific terms of reference.

Sections 10 to 14 apply to both consultation on substantial developments or variations and reviews or scrutiny.

10 Provision of Information

- 10.1 The responsible health body will provide the Committee with such information about the planning, provision and operation of health services as it may reasonably require in order to discharge its health and wellbeing scrutiny functions. Reasonable notice of requests for information or reports will be given.

- 10.2 Confidential information that relates to and identifies an individual or information that is prohibited by any enactment will not be provided.
- 10.3 Information relating to an individual can be disclosed, provided the individual or their advocate instigates and agrees to the disclosure.
- 10.4 The local authority may require the person holding information to anonymise it in order for it to be disclosed. The Committee must be able to explain why this information is necessary.
- 10.5 The responsible health body will provide regular briefings for Committee Members on key issues.
- 10.6 In the case of a refusal by a health body to provide information that is not prohibited by regulation, the Committee may contact the relevant performance management organisation, which should attempt to negotiate a speedy resolution.

11 Attendance at Meetings

- 11.1 The Committee may require any officer of the relevant health body to attend meetings to answer questions on the review or scrutiny.
- 11.2 Requests for attendance will be made through the Chief Executive body concerned.
- 11.3 The Committee will give reasonable notice of its request and the date of attendance. The Committee will provide the officer with a briefing on the areas about which they require information no later than one week prior to the attendance.
- 11.4 If the scrutiny process needs to consider health services provided by the independent sector on behalf of the NHS or local authority, it will consider the issue through the lead commissioning body. The lead commissioners of these services will need to be cognisant of the requirement to build into its contracts with independent sector providers a requirement to attend a review or scrutiny or provide information at no cost to the Committee.
- 11.5 The Chairman or Directors of the responsible health body cannot be required to attend before the Committee. They may, however, wish to do so if requested.
- 11.6 Local independent practitioners such as GPs, dentists, pharmacists and opticians may be willing to attend the Committee but cannot be required to do so. Local independent practitioners may be willing to attend at the request of the responsible health body. An alternative source of information may be the Local Medical Committee or appropriate professional organisations.

12 Reporting

12.1 In their reports the Committee will include:

- an explanation of the issues addressed
- a summary of the information considered
- a list of participants involved in the review or scrutiny
- any recommendations on the matters considered
- evidence on which the recommendations are based.
- where appropriate, recognition of the achievements of the responsible health body concerned.

12.2 The Committee will send draft reports to the responsible health body(s) and other bodies that have been the subject of review to check for factual accuracy.

12.3 The report is made on behalf of the Committee and there is no requirement for the Cabinet or the full Council to endorse it. However the report will be sent to the Cabinet, Cheshire East Health and Wellbeing Board and full Council and, if required, a briefing will be arranged to identify the main implications.

12.4 If the Committee request a response from the responsible health body this will be provided within 28 days. If a comprehensive response cannot be provided in this time, the health body(s) concerned will negotiate with the Committee to provide an interim report, which will include details of when the final report will be produced.

12.5 The response will include:

- The views on the recommendations
- Proposed action in response to the recommendations
- Reasons for decisions not to implement recommendations

12.6 Copies of the final report and the response will be widely circulated and made publicly available.

13 Conflict of Interest

13.1 The Committee must take steps to avoid any potential conflicts of interest arising from Members' involvement in the bodies or decisions they are scrutinising.

13.2 Conflict of interest may arise if councillors or their close relatives are:

- an employee of the health body under scrutiny or
- a non-executive director/Lay member of the health body under scrutiny, or
- an executive member of another local authority
- an employee or board member of an organisation commissioned by the health commissioning body to provide goods or services.

13.2 These councillors are not excluded from membership of overview and scrutiny committees but must follow the Council's Code of Conduct for Members regarding participation and as necessary seek advice from the Monitoring Officer of the Council where there is a risk of conflict of interest.

13.3 Executive (Cabinet) Members and Cabinet Assistant Members of Cheshire East Council are excluded from serving on the Committee in any capacity.

14 Liaison between the Committee and Healthwatch Cheshire East

14.1 The Committee will develop an appropriate working relationship with Healthwatch Cheshire East

- Healthwatch Cheshire East may refer issues to the Committee, which must take these into account. If issues are not urgent they may be considered when planning future work programmes.
- The Committee will, where appropriate, advise Healthwatch Cheshire East of actions taken and the rationale for these actions.
- The outline and process of a scrutiny review will be discussed with members of Healthwatch Cheshire East.

15 Conclusion

15.1 This Protocol was considered and adopted by the Committee on (date) and is endorsed by the responsible health bodies.

Appendix A

List is not exhaustive

Commissioners of Health & Care Services in the Cheshire East area

- NHS England / Public Health England – Cheshire, Warrington and Wirral
- NHS Eastern Cheshire Clinical Commissioning Group
- NHS South Cheshire Clinical Commissioning Group
- Cheshire East Council

Providers of Health & Care Services in the Cheshire East area

- East Cheshire NHS Trust
- Mid Cheshire Hospitals NHS Foundation Trust
- Cheshire & Wirral Partnership NHS Foundation Trust
- Cheshire East Council
- North West Ambulance Service
- Vernova CIC

NHS England Summary fact sheets on commissioning responsibilities:

<http://www.england.nhs.uk/wp-content/uploads/2012/07/fs-ccg-respon.pdf>

Appendix B Signatory List

Organisation	Name and designation	Signature	Date
Cheshire East	Councillor Hilda Gaddum, Chairman of Committee		
Cheshire East	Brian Reed, Head of Democratic Services		
Cheshire East	Lorraine Butcher, Director of Strategic Commissioning		
Cheshire East	Dr Heather Grimbaldeston, Director of Public Health		
NHS Eastern Cheshire CCG	Jerry Hawker, Chief Officer		
NHS South Cheshire CCG	Simon Whitehouse, Chief Officer		
NHS England			
East Cheshire NHS Trust			
Mid Cheshire Hospitals NHS Foundation Trust			
Cheshire & Wirral Partnership NHS Foundation Trust			
North West Ambulance Service			