# 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 health improvement and reducing health inequalities in their local area. Health services are to be viewed in their widest sense and will include Adult Social Care and other services provided by the local authority and in partnership with the NHS. Local authorities will be channels 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 is 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 Cheshire East Healthwatch and other referrers.

1.4 The functional responsibility for the overview and scrutiny of health provision and services in Cheshire East lies with the Health and Wellbeing Scrutiny Committee of the Council ("the Committee"). The main points of contact for NHS scrutiny are the South Cheshire Clinical Commissioning Group, the Eastern Cheshire Clinical Commissioning Group ("the CCGs"), Cheshire East Council (the Local Authority) through its Public Health responsibilities and NHS England as commissioners of services and in a system leadership role which reflects the NHS responsibilities for commissioning and leading health services in the area. The responsibility to respond to scrutiny is not limited to those mention above and through this document they will be referred to jointly as "responsible commissioners".

## 2 Policy Statement

Members of the Committee, the Local Authority, the CCGs, NHS England, other responsible commissioners 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.
- To secure continuous improvement in the provision of local health services and services that impact on health.
- To contribute to the reduction of health inequalities in the local area.
- To ensure the views of patients and users are taken into account within a strategic approach to health care provision.

## 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 Health and Wellbeing Board.

4.3 The views and priorities of local people are central to overview and scrutiny, and patients and their organisations will be actively involved.

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 wider determinants of health and use wider local authority powers to make recommendations to other local agencies as well as the NHS.

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 provision takes place within a national framework of policies and standards.

4.7 The impact and effectiveness of health 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.

## 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 patients, the role of performance management of the NHS or the role of inspecting the NHS.

5.3 The Committee has no power to make decisions or to require that others act on their proposals. The responsible commissioners 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 NHS bodies subject to overview and scrutiny include commissioners and any organisation that provides, arranges or performance manages the provision of publicly funded services. The Committee's main focus will be on services commissioned by CCGs, the Local Authority, NHS England and partner agencies.

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 the Health and Social Care Act 2012 and cover health promotion, prevention of ill health and treatment.

7.2 Issues that can be scrutinised include but are not limited to the following (more detail about what commissioners are responsible for can be found in NHS England summary fact sheets on commissioning responsibilities):

- Arrangements made by local NHS bodies to secure hospital and community health services and the services that are provided
- Arrangements made by the Local Authority for public health, health promotion and health improvement including addressing health inequalities.
- Planning of health services by local NHS 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 care to that population.
- The arrangements made by local NHS bodies for consulting and involving patients and the public.
- Any matter referred to the committee by a Healthwatch.

- Any appropriate matter raised by a Councillor Call for Action or a Petition.

## 8 Substantial Developments or Variations in Services

8.1 The responsible commissioner will consult the Committee on any proposals it may have under consideration for any substantial development of the health service or any proposal to make any substantial variation in the provision of such services. The responsible commissioner 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 commissioner and the appropriate local authorities on service developments. It is also additional to the NHS 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 patients and the public
- Whether the proposal is in the interests of health services in the area

**Arrangements relating to responsible commissioners**

8.4 As the responsible commissioners lead the commissioning process they will usually be responsible for undertaking formal consultations for services which they commission. Where services are commissioned by more than one body, those bodies may agree a process of joint consultation or delegate one or more of those bodies to act on behalf of all those bodies.

8.5 Where the proposal impacts across the NHS Commissioning Board, local areas teams, and/or Public Health England the relevant CCGs with lead commissioning responsibilities may wish to invite these bodies to coordinate the consultation.

***Substantial developments or variations ("SDV's") – explanation***

8.6 Substantial developments or variations are not defined. The impact of the change on 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 patients – the extent to which groups of patients are affected by a proposed change
- Methods of service delivery – altering the way a service is delivered. The views of patients and Healthwatch are essential in such cases.

8.7 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:

**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 Healthwatch is being consulted.*

**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 patients, carers, staff and the Healthwatch, but will not involve

- Reduction in service
- Change to local access to service
- Large numbers of patients 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 Healthwatch and other appropriate Organisations have been notified by the responsible commissioner or service provider concerned.*

**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 Trust 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.*

8.8 Officers of the responsible commissioners and service providers will work closely with the Committee during the formal consultation period to help all parties reach agreement.

8.9 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.

***Exemptions***

8.10 The Committee will only be consulted on proposals to establish or dissolve a NHS trust or CCG if this represents a substantial development or variation to the provision of health services.

8.11 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.

8.12 A responsible commissioner 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 patients 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 patients and carers have been informed about the change and what alternative arrangements have been put in place to meet the needs of patients and carers

***Report to Secretary of State for Health***

8.13 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 NHS Body.*

8.14 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 the health service in its area.

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

8.15 In response to a referral the SoS may:

- Require the local responsible commissioner to carry out further consultation with the Committee.
- Make a final decision on the proposal and require the responsible commissioner 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 the Healthwatch.

9.2 The plan will consider the range of health services including those provided by the local authority and 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.

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;
  - 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 well being 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 commissioner 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 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 commissioners will provide regular briefings for Committee Members on key issues.

10.6 In the case of a refusal to provide information that is not prohibited by regulation, the Committee may contact the relevant NHS 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 responsible commissioners 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 care provided by the independent sector on behalf of the NHS, it will consider the issue through

the lead commissioning body. The NHS will 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 commissioners 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 commissioners. 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 commissioners/providers concerned.

12.2 The Committee will send draft reports to the responsible commissioners 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, 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 commissioners/providers this will be provided within 28 days. If a comprehensive response cannot be provided in this time, the 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 an NHS body, or
- A non-executive director of an NHS body, or
- An executive member of another local authority
- An employee or board member of an organisation commissioned by an NHS 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

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

- Healthwatch 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 of actions taken and the rationale for these actions.
- The outline and process of a scrutiny review will be discussed with members of Healthwatch.

## 15 Conclusion

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