CHESHIRE AND WIRRAL COUNCILS JOINT SCRUTINY COMMITTEE

PROTOCOL

1 Introduction

1.1 The Health and Social Care Act 2001 and associated regulations give local authorities the power to review and scrutinise health services through their overview and scrutiny committees. 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 Local Involvement Networks (LINks), 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 raised by LINks and other bodies.

1.4 The responsibility for the overview and scrutiny function of the Cheshire and Wirral Partnership NHS Foundation Trust (CWP) lies with the Joint Scrutiny Committee of Cheshire East, Cheshire West and Chester and Wirral Councils.

2 Policy Statement

Members of the Joint Committee, CWP 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.

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 works seamlessly with other elements of the patient and public involvement system and with the Local Strategic Partnerships.

4.6 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.

4.7 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.

4.8 The impact of health overview and scrutiny will be evaluated.

5 The Role of the Joint Committee

5.1 In the course of a review or scrutiny the Joint 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 Joint 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 Joint Committee has no power to make decisions or to require that others act on their proposals. The NHS must respond 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 any Strategic Health Authority, Primary Care Trust (PCT), and NHS Trust that provides, arranges or performance manages the provision of services. The Joint Committee's focus will be services provided by CWP and where appropriate the complementary activities of local authorities and other agencies.

6.2 The Local Government and Public Involvement in Health Act 2007 introduced a new procedure "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 changes 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 appropriate Overview and Scrutiny Committee of the Council concerned in the first instance. However it is possible that the Joint Committee could be invited to consider and report on a CCfA matter relating to CWP's services.

6.3 Similar statutory provisions under the Local Democracy, Economic Development and Construction Act 2009 have also been made to require valid Petitions to be considered at a Local Authority meeting. Each Local Authority is required to make a "Petition Scheme" to determine how such petitions will be handled. Should either a CCfA or a formal Petition be received which relate to CWP's business, the Secretary of the Joint Committee will liaise in the first instance with CWP and the constituent Council(s) concerned, to assist the Chair and Spokespersons 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 NHS Act 1977 and cover health promotion, prevention of ill health and treatment.

7.2 Issues that can be scrutinised include the following:

- Arrangements made by local NHS bodies to secure hospital and community health services and the services that are provided
- Arrangements made by local NHS bodies for the 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 LINk.
- Any appropriate matter raised by a Councillor Call for Action or a Petition.

8 Substantial Developments or Variations in Services

8.1 CWP will consult the Joint 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.

8.2 This is additional to discussions between CWP 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 Joint 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 PCTs

8.4 The PCT leading the commissioning process will usually be responsible for undertaking formal consultations for services it commissions. Where services span more that one PCT, they will agree a process of joint consultation. The board of each PCT will formally delegate the responsibility to a joint PCT Committee. This should act as a single entity and will be responsible for the final decision on behalf of the PCTs for which it is acting.

8.5 Where the proposal impacts across the Strategic Health Authority (SHA) or several SHAs the relevant PCTs with lead commissioning responsibility may wish to invite the SHA to coordinate the consultation. Responsibility for decisions on any service revision remains with the PCTs.

Substantial developments or variations – 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 LINks are essential in such cases.

8.7 The first stage is for the Joint Committee (acting initially through its Chair and Spokespersons) 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 Joint Committee would not become involved directly, but would assume that the LINk 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 LINks, but will not involve

- Reduction in service
- Change to local access to service
- Large numbers of patients being affected

The Joint 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 Chair and Spokespersons, and the Local Ward Councillors concerned will be informed of the proposal by the Secretary. The Committee will wish to ensure that the LINks and other appropriate Organisations have been notified by CWP.

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 Joint 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. CWP will make it clear when the consultation period is to end. The Committee would consider the proposal formally at one of their meetings, in order to comment and to satisfy the requirement for CWP to consult the Overview and Scrutiny Committee in these circumstances.

8.8 CWP has produced a standard form of notification for Level Two and Level Three proposals, to ensure that the required information is available to the Committee particularly at the initial assessment stage. This will help in reaching agreement with CWP on whether the proposal is considered to be substantial.

8.9 Officers of CWP will work closely with the Joint Committee during the formal consultation period to help all parties reach agreement.

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

Exemptions

8.11 The Joint Committee will only be consulted on proposals to establish or dissolve a NHS trust or PCT if this represents a substantial development or variation.

8.12 The Joint 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.

8.13 CWP will not have to consult the Joint 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. CWP will notify the Joint Committee immediately of the decision taken and the reason why no consultation has taken place. CWP will provide 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/Monitor

8.14 The Joint 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 should not be made until the NHS body has had the opportunity to respond to the committee's comments and local resolution has been attempted.*

8.15 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

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

or

- Where the committee considers that the proposal is not in the interests of the health service in its area.

8.16 In response to a referral the SoS or Monitor may:

- Require the local NHS body to carry out further consultation with the committee.
- Make a final decision on the proposal and require the NHS body to carry out the decision.
- Ask the Independent Review Panel to advise on the matter.

9 Developing a Programme of Reviews

9.1 The Joint Committee will produce an annual overview and scrutiny plan in consultation with CWP and the LINks. The Plan will be kept under review and rolled forward to accommodate new matters as they arise.

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 the LINks.

9.5 The plan will be realistic, based on the capacity of the Joint Committee and CWP to undertake meaningful reviews.

9.6 The following factors would 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 Joint Committee or Reviews conducted by smaller "Task and Finish" Review Panels appointed by the Committee with specific terms of reference.

Sections 10 to 16 apply to both consultation on substantial developments or variations and reviews or scrutiny.

10 Provision of Information

10.1 CWP will provide the Joint 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 to CWP.

10.2 CWP will not provide confidential information that relates to and identifies an individual, or information that is prohibited by any enactment.

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 Joint Committee must be able to explain why this information is necessary.

10.5 CWP will provide regular briefings for Joint Committee Members on key issues.

10.6 In the case of a refusal to provide information that is not prohibited by regulation, the Joint Committee may contact the relevant NHS performance management organisation, which should attempt to negotiate a speedy resolution.

11 Attendance at Meetings

11.1 The Joint Committee may require any officer of CWP to attend meetings to answer questions on the review or scrutiny.

11.2 Requests for attendance will be made through the Chief Executive of CWP.

11.3 The Joint Committee will give reasonable notice of its request and the date of attendance. The Joint 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, generally a PCT. 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 Chair or non-executive Directors of CWP cannot be required to attend before the Joint 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 Joint Committee but cannot be required to do so. Local independent practitioners may be willing to attend at the request of a PCT. An alternative source of information may be the Local Medical Committee or appropriate professional organisations.

12 Reporting

12.1 In their reports the Joint 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 CWP.

12.2 The Joint Committee will send draft reports to CWP 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 Joint Committee not the local authorities and there is no requirement for the Executives or the full Councils to endorse it. However the report will be sent to the Cabinet and full Council (either of the local authority primarily concerned or, if more than one, all Councils concerned) and, if required, a briefing will be arranged to identify the main implications.

12.4 If the Joint Committee request a response from CWP this will be provided within 28 days. If CWP is unable to provide a comprehensive response in this time it will negotiate with the Joint 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 Joint 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 local authority Codes of Conduct regarding participation and as necessary seek advice from the Monitoring Officer of their own Council where there is a risk of conflict of interest.

13.3 Executive Members from all of the constituent Councils are excluded from serving on the Joint Committee in any capacity.

14 Liaison between the Committee and Local Involvement Networks (LINks)

14.1 The Joint Committee will develop an appropriate working relationship with the LINks in the area.

- LINks may refer issues to the Joint Committee, which must take these into account. If issues are not urgent they may be considered when planning future work programmes.
- The Joint Committee will where appropriate advise the LINks of actions taken and the rationale for these actions.
- The outline and process of a scrutiny review will be discussed with members of relevant LINks.
- One or more LINk representatives shall be eligible for appointment as non – voting Co – Opted Members of the Joint Committee, either fully or for the duration of a particular Scrutiny or Review. The Committee will decide how these arrangements will operate.

15 Conclusion

15.1 This Protocol was considered and adopted by the Joint Scrutiny Committee on 26 January 2010 and is endorsed by CWP.