

# **The Oxfordshire Joint Health Overview & Scrutiny Committee**

## **Constitution, Operating Procedures and Protocols**

### **1. The Committee**

Oxfordshire County Council has<sup>1</sup> responsibility to “review and scrutinise any matter relating to the planning, provision and operation of the health services in its area.” It discharges that responsibility via the Oxfordshire Joint Health Overview and Scrutiny Committee (‘the Committee’).

Oxfordshire County Council, Cherwell District Council, Oxford City Council, South Oxfordshire District Council, The Vale of White Horse District Council and West Oxfordshire District Council (“the Constituent Councils”) have under powers in Section 8(2)(a) of the Health and Social Care Act 2001 and associated Regulations<sup>2</sup>, formed a joint committee between the Councils to discharge the functions of Oxfordshire County Council given to it under that Act- -The Committee will operate within the administrative County of Oxfordshire and will be geographically co-terminus with the boundary of the Oxfordshire Clinical Commissioning Group - in so far as it serves the County of Oxfordshire:-

The Committee will conduct all of its proceedings in accordance with the relevant Regulations and government guidance and shall operate in accordance with this Constitution and the procedures set out herein. In any case of doubt where any matter is not covered by this Constitution then the Constitution of Oxfordshire County Council shall apply, modified as appropriate.

### **2. Membership**

The voting membership of the Committee shall comprise 12 non-executive members of the Constituent Councils. These members will be made up of 7 county councillors and 5 district/city councillors (1 member from each district/city Council). Members should normally serve for a period of 4 years unless they resign or are replaced by the Appointing Council.

Councillors will not be eligible to serve on the Committee if:-

- (1) they become a member of an Executive of one of the Appointing Councils; or
- (2) they cease to be a member of the authority which appointed them

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<sup>1</sup> Under the Health and Social Care Act 2012, Regulation 28(1) of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 and other associated Department of Health guidance,

<sup>2</sup> As amended by section 28 of the Health and Social Care Act 2012 and associated Regulations

In the event of either of these occurring, that Councillor's membership of the Committee will be terminated accordingly and a new councillor will be appointed by the Appointing Council .

### **3. Co-opted Members**

In addition to Councillors the Joint Health Overview & Scrutiny Committee shall, in order to assist it in its work, include in its membership up to three non-voting co-opted members. Such members might be appointed because of the personal contribution they would make to the work of the Committee or to represent health related interests as determined by the Committee from time to time.

Co-opted Members shall normally serve for a period of 2 years. Co-opted members may serve for one further consecutive period of 2 years. In the event of a co-opted member resigning before the expiry of her/his period of office a new Co-opted member shall be appointed who shall serve for the remaining period of office. If the member no longer represents the interest(s) for which they were appointed, it shall be open to the Committee to terminate that person's membership.

### **4. Terms of Reference**

The Committee will discharge the functions conferred by the National Health Service Act 2006 governing the local authority health scrutiny function. The relevant regulations are the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 which came into force on 1 April 2013. The Committee may not discharge any functions other than those conferred by that legislation.

The function of the joint committee is to review or scrutinise within the following framework, health services commissioned or delivered in Oxfordshire, or jointly with any other local authority where such services are commissioned outside Oxfordshire but are delivered to the inhabitants of the County:

1. Review or scrutinise any matter relating to the planning, provision and operation of health services in Oxfordshire. This may include the scrutiny of financial information about the operation of a trust or CCG.
2. Review or scrutinise services commissioned and provided by all relevant NHS bodies and health service providers (including GP practices and other primary care providers such as pharmacists, opticians and dentists and any private, independent or third sector providers delivering services under arrangements made by clinical commissioning groups, NHS England or the local authority) All are known as 'responsible persons' in the Act).
3. Appoint, when needed, a discretionary joint health scrutiny committee to carry out specified health scrutiny functions, for example, health scrutiny in relation to health issues that cross the boundaries of the authority.

4. Appoint, when needed, a mandatory joint health scrutiny committee to carry out specified health scrutiny functions where a relevant NHS body or health service provider consults more than one local authority's health scrutiny function about substantial reconfiguration proposals.
5. The public health arrangements in the area, for example, arrangements for the surveillance of, and response to, outbreaks of communicable disease, or the provision of specialist health promotion services;
6. The arrangements made by relevant NHS bodies for consulting and involving patients and the public under the duty placed on them by Sections 242 and 244 of the NHS Act 2006;
7. Social care services and other health related services jointly commissioned under the Oxfordshire Health and Wellbeing Board's Strategy.

To receive and take account of any relevant information available to it and in particular relevant information provided by Healthwatch Oxfordshire or contractor when it makes a referral to the Committee.

To review and scrutinise any other issues related to health and the population of Oxfordshire.

## **5. Delegation of Functions**

Subject to the requirements of the relevant Regulations and government guidance, the Committee may join with any other local authority or Health Overview and Scrutiny Committee of such authority to form a joint committee. Such body will be able to discharge such functions of that authority or overview and scrutiny committee as may be determined to further the interests of those authorities or committees or is in the interests of the inhabitants of their areas.

The Committee may delegate such of its functions as it wishes to another local authority, subject to such delegation relating to specific issues and the requirements of the relevant Regulations and government guidance.

## **6. Establishment of Working Groups**

The Committee may appoint such Working Groups of their members as they may determine to undertake and report back to the Committee on specified investigations or reviews as set out in the work programme. Appointments to such Working Groups will be made by the Committee, ensuring political balance as far as possible. Such groups will exist for a fixed period, on the expiry of which they shall cease to exist.

## **7. Meetings of the Scrutiny Committees**

The Committee shall meet at least five times each year. In addition, other meetings may be called as and when required. A Scrutiny Committee meeting may be called by the Chairman of the Committee following consultation with the Deputy Chairman; by one third of the members of the

Committee; or by the Proper Officer if s/he considers it necessary or appropriate.

The dates for and notices of all meetings of the Committees shall be published as required by Part VA of the Local Government Act 1972. If there is insufficient business a scheduled meeting may be cancelled by the authorised officer following consultation with the Chairman and Deputy Chairman of the Committee.

Where a Councillor appointed to the Joint Committee is unable for any reason to attend a meeting s/he shall be able to be substituted at that meeting by another non-executive Councillor from the Appointing Council where that Council has rules which permit such substitution. Where there are rules, such substitution shall be in accordance with those rules. However, in the interests of maintaining continuity and the development of experience and knowledge in the functions of the Committee such substitution should be discouraged. Where substitution does take place it shall be the duty of the member of the Committee to ensure that his/her substitute is adequately briefed on the matters to be considered at the meeting. Substitution will not apply to any Working Groups appointed by the Committee.

## **8. Chairman and Deputy Chairman**

The Chairman of the Joint Committee shall be drawn from the County Council members of it and will normally be elected on an annual basis following the annual meeting of Oxfordshire County Council.

The Deputy Chairman of the Joint Committee shall be drawn from the District/City Councillors members of on the Committee and elected on an annual basis immediately following the election of the Chairman.

If the Chairman and Deputy are both absent from a meeting of the Committee then the Councillor members of that body will elect some other councillor to preside at that meeting from amongst their number who is entitled to vote.

Working Groups will appoint one of their members as Chairman for the life of the Group.

## **9. Quorum**

The quorum of a meeting of the Committee will be one quarter of the whole number of voting members, or three voting members, whichever is the greater. During any meeting, if the Chairman counts the number of members present and declares there is not a quorum present, then the meeting will adjourn immediately. Remaining business will be considered at a time and date fixed by the Chairman. If he/she does not fix a date, the remaining business will be considered at the next ordinary meeting.

## **10. Voting**

The Committee should strive wherever possible to reach a consensus on any issue before them without the necessity for a vote. Where however the Chairman of the meeting considers that a vote is necessary in order to determine a majority view, it shall be taken by a show or count of hands of the Councillor members present. Co-opted members do not have a vote. In the event of an equality of votes, the Chairman of the Committee shall have a second or casting vote.

## **11. Work Planning and Programming**

The development, implementation and management of the work programme of the Joint Overview & Scrutiny Committee is the key to ensuring that health scrutiny is effective, focussed and adds value and that clear objectives are set and regularly evaluated. In undertaking activities within the work programme the Joint Committee may hold enquiries and investigations and appoint advisers and assessors to assist them in this process. They may conduct public surveys, hold public meetings, commission research and do all other things within the law that they reasonably consider necessary to inform their deliberations. They may ask witnesses to attend to address them on any matter under consideration and may pay to any advisers, assessors and witnesses a reasonable fee and expenses for doing so. The costs of these activities will be met in accordance with paragraph 21.

The Committee and its Review Panels may go on site visits. However, in the case of premises where Health Services are provided, no powers are contained in the legislation which would require a NHS body to comply with a request for such a visit. Members shall not therefore, in the conduct of their Scrutiny functions, make arrangements to visit such premises unless they are specifically invited to do so by appropriate NHS officers with the authority to do so. Any request for visits would need to be agreed in advance by the Committee.

## **12. Agendas**

Any member of the Committee shall be entitled to give notice to the authorised Officer of the relevant Constituent Council that s/he wishes an item relevant to the functions of the Committee to be included on the agenda for that Committee. The Chairman in discussion with the Proper Officer shall determine how such requests are considered by the Committee.

The rights of other members of the Constituent Councils to place items on the agenda will be in accordance with their respective Constitutions relating to scrutiny procedure rules.

The Committee shall also respond, as soon as their work programme permits, to requests from Healthwatch Oxfordshire to review or investigate any particular issues relating to the functions of the Committee. Where they do so, the Scrutiny Committee shall in addition to any other reporting, send their

findings and any recommendations made to Healthwatch Oxfordshire as soon as is practicable.

Public access to meetings of the Committee will be in accordance with the County Council overview and scrutiny procedure rules (rule 16). In addition the County Council's Protocol on Public Participation shall apply and sets out the right of members of the public to seek to raise issues for review.

### **13. Reports of the Scrutiny Committee**

Once the Committee has completed its deliberations on any matter, a formal report will be prepared on its behalf and, when agreed, the authorised officer will refer it and any recommendations to the relevant body or National Health Service body or health service provider as appropriate and to any other body specified by the Committee. At the same time, the report and its findings shall also be made public.

Where any investigation or review is conducted by a working group, that group will refer its findings to the Committee for consideration. If the Committee considers it appropriate it shall prepare a report for submission to the appropriate health body, health service provider and/or local authority and shall make the report and findings public.

In accordance with Regulation 22(6) of The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013, a report or recommendation produced by the Committee must include:-

- an explanation of the matter reviewed or scrutinised
- a summary of the evidence considered
- a list of the participants involved in a review or scrutiny activity
- an explanation of any recommendations on the matter reviewed or scrutinised.

The Committee may request a response from the NHS body(ies) or health service providers to which the report is sent. This shall be given in writing by that body within 28 days, in accordance with section 22(7) of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013.

### **14. Attendance by National Health Service Officers/Health Service Providers at Meetings of the Committee and Working Groups**

The Committee and working groups may require an officer of a local NHS body or health service provider to attend before the Committee to answer questions to enable it to discharge its functions. To this end, at least 15 working days' notice in writing of the date of attendance should normally be given. The notice will state the nature of the item on which s/he is required to attend and whether any papers are required to be produced for the

Committee. The officer concerned will be given sufficient notice to allow for preparation of that documentation. .

Where, in exceptional circumstances, the officer is unable to attend on the required date, the authorised Officer shall arrange an alternative date for attendance, or if an alternative date is not possible an authorised employee to answer questions on their behalf.

## **15. Attendance by Executive Members and Officers of Constituent Councils**

The Committee and working groups may require an Executive member or an officer of any of the Constituent Councils to attend before the Committee to answer questions to enable it to discharge its functions. At least 15 days' notice in writing of the date of attendance should normally be given. It shall be the duty of those persons to attend if so required.

Where, in exceptional circumstances, the member or officer is unable to attend on the required date, the authorised Officer shall arrange an alternative date for attendance.

## **16. Attendance By Others**

The Scrutiny Committee and working groups may invite people other than those referred to in paragraphs 14 and 15 above to address it, discuss issues of local concern and/or answer questions. The Chairman of the Committee or working groups shall decide the appropriate form of participation as relevant to the issues under consideration and the individual circumstances prevailing.

Under Regulation 21(2) the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013, the Committee must invite interested parties to comment on matters and must take notice of relevant information, in particular that provided by Healthwatch Oxfordshire or contractor. Such relevant information leading to close working and complementary actions will help to identify and address issues or inform forward plans effectively. When any information relating to the activities of the Committee are received, the receipt of this information must be acknowledged within 20 working days. In addition, any action taken in relation to the referral should be communicated to the requestor.

## **17. Provision of Information by NHS Bodies, Health Service Providers and Constituent Councils**

Relevant NHS bodies and health service providers have a duty under Regulation 26(1) of The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 to provide the Committee and working groups with such information about the planning, provision and operation of health services as they may reasonably require to enable them to discharge their functions. Under Regulation 26(3)a The Local authority

(Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013, this does not include:

- confidential information which relates to and identifies a living individual (unless that individual consents)
- information the body or service provider would be entitled to refuse to provide for the purpose of any court proceedings
- disclosure of information prohibited under any legislation

In such cases, the Committee and working groups can require the information to be put in an anonymised form.

The Constituent Councils should equally supply such information as is requested by the Committee and working groups to enable them to effectively discharge their functions.

## **18. Duty of NHS Bodies or Health Service Providers to Consult on Substantial Developments or Variations in Provision of Service**

Under Regulation 23(1) of The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 an NHS body or health service provider must consult the Committee, where it has under consideration any proposal for a substantial development of the Health Service or a substantial variation in the provision of such service. This will not apply where:

- it is a proposal to establish or dissolve or vary the constitution of a CCG or establish or dissolve an NHS Trust unless the proposal involves a substantial development or variation.
- proposals are part of a trust's special administrator's report or draft report (ie. when a trust has financial difficulties and is being run by an administration put in place by the Secretary of State). These are required to be the subject of a separate 30-day community – wide consultation.
- the relevant NHS body or health service commissioner believes that a decision has to be taken without allowing time for consultation because of a risk to safety or welfare of patients or staff. In such cases the NHS body or health service provider must notify the local authority that consultation will not take place and the reason for this.

The NHS body or health service provider must inform the Committee when a consultation is happening, the timeframe of a decision and, following a decision, whether to proceed with the proposal. The Committee may comment on the proposals by a date set by the NHS body or health service provider.

The Committee may report to the Secretary of State in writing where it is not satisfied that:



- consultation on any proposal for a substantial change or development has been adequate in relation to content or time allowed (nb. The referral power in these contexts only relates to the consultation with the local authority, and not consultation with other stakeholders)
- that the proposal would be in the interests of the health service in Oxfordshire
- a decision has been taken without consultation and it is not satisfied that the reasons given for not carrying out consultation are adequate

The Secretary of State may require the NHS body to carry out consultation or further consultation with the Committee as s/he considers appropriate. The NHS body must then have regard to the outcome of that and reconsider any decision it has taken.

There are certain limits on the circumstances in which the Committee may refer a proposal to the Secretary of State. In particular, where it has made a recommendation and the relevant NHS body or health service provider has disagreed with the recommendation, it may not refer a proposal unless:

- it is satisfied that reasonable practicable steps have been taken to try to reach agreement (with steps taken to involve the provider where NHS England or a CCG is acting on the provider's behalf) but agreement has not been reached; or
- it is satisfied that the relevant NHS body or health service provider has failed to take reasonably practicable steps to try to reach agreement within a reasonable period.

If the Committee has not commented on the proposal or has commented without making a recommendation, it may not refer a proposal unless it has informed the relevant NHS body or health service provider of its decision as to whether to exercise its power of referral and, if applicable, the date by which it proposed to exercise that power; or the date by which it proposes to make a decision as to whether to exercise its power of referral.

In the case of both discretionary committees (ie. where councils have chosen to appoint the joint committee to carry out specified functions) and mandatory joint committees (ie. where councils have been required under Regulation 30 to appoint a joint committee because a local NHS body or health service provider is consulting more than one local authority's health scrutiny function about substantial reconfiguration proposals):

- Where the power to refer has been delegated to the joint committee, only the joint committee may make a referral.
- Where the power to refer has not been delegated to the joint committee, the individual authorities that have appointed the joint committee (or health overview and scrutiny committees or sub-committees to whom the power has been delegated) may make a referral.

In making a referral to the Secretary of State, the Committee should set out:

- An explanation of the proposal to which the report relates.
- An explanation of the reasons for making the referral.
- Evidence in support of these reasons.
- Where the proposal is referred because of inadequate consultation, the reasons why the Committee is not satisfied of its adequacy.
- Where the proposal is referred because there was no consultation for reasons relating to safety or welfare of patients or staff, reasons why the Committee is not satisfied that the reasons given for lack of consultation are adequate.
- Where the Committee believes that proposals are not in the interests of the health service in its area, a summary of the evidence considered, including any evidence of the effect or potential effect of the proposal on the sustainability or otherwise of the health service in the area.
- An explanation of any steps that the Committee has taken to try to reach agreement with the relevant NHS body or health service provider.
- Evidence that the health scrutiny body has complied with the requirements which apply where a recommendation has been made.
- Evidence that the health scrutiny body has complied with the requirements which apply where a recommendation has not been made, or where no comments have been provided on the proposal.

If the change/issue is being supported by the Health and Wellbeing Board, the Committee will need to be clear why they oppose this support.

## **19. Public Access to Meetings of the Committee**

Meetings of the Joint Health Overview and Scrutiny Committee are subject to the public access procedures and protocols contained in the County Council's Constitution.

## **20. Officers**

The County Council will provide staff, specialist advice and support to the Committee and any working groups it establishes. It will also service and support the Committee. The Constituent Councils will each nominate a senior officer to provide support to the Health Scrutiny function.

## **21. Finance**

The County Council will meet the operational and running costs of the Committee and any working groups it establishes. The Constituent District/City Councils will meet the operational and running costs of any health scrutiny review they wish to have considered by the Committee.

When the Committee has asked witnesses to attend to address them on any matter under consideration, they may pay any advisers, assessors and

witnesses a reasonable fee and expenses for doing so. The costs of these activities will be met in accordance with the above.

## **22. Conduct of Members**

The Codes of Conduct of their relevant Appointing Authorities shall apply to all Councillor Members of the Committee. The Oxfordshire County Council Code of Conduct shall apply to the Co-opted members of the Committee.

Each of the Appointing Authorities shall be responsible for indemnifying the Councillors appointed by them to the Committee against any claims against them as a result of lawfully discharging the functions of the Committee.

## **23. Annual Report**

The Committee shall produce in April each year a report for the Appointing Authorities on its activities during the preceding year. That report shall also be published to health bodies and the public.

## **24. Review of Activities**

The Committee shall periodically review their activities and evaluate the outcomes of their work plan and programme.

## **25. Termination of Arrangements**

The joint arrangements may be terminated by agreement between the Constituent Councils.