

# **SCRUTINY BOARD PROCEDURE RULES GUIDANCE NOTES**

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the document:

Scrutiny Officer

## **GUIDANCE NOTES**

**Relating to**

## **SCRUTINY BOARD PROCEDURE RULES**

### **CONTENTS**

- 1 MEMORANDUM OF UNDERSTANDING BETWEEN EXECUTIVE BOARD AND OVERVIEW AND SCRUTINY
- 2 PROTOCOL BETWEEN SCRUTINY AND THE COMMUNITY SAFETY PARTNERSHIP IN LEEDS
- 3 PROTOCOL FOR THE YORKSHIRE AND HUMBER COUNCILS JOINT HEALTH SCRUTINY COMMITTEE

## **GUIDANCE NOTE 1**

### **MEMORANDUM OF UNDERSTANDING BETWEEN EXECUTIVE BOARD AND OVERVIEW AND SCRUTINY**

#### **1.0 BACKGROUND**

- 1.1 The statutory relationship between the Executive Board and the Scrutiny function is clearly defined within the Local Government Act 2000.
- The power to review or scrutinise decisions made, or other actions taken, in connection with the discharge of Executive functions;
  - The power to make reports or recommendations to the Executive with respect to the discharge of any Executive functions;
  - The power to make reports or recommendations to the Executive on matters which affect the authority's area or the inhabitants of the area;
  - The power to assist the Council and the Executive in the development of the policy framework and budget and
  - The power to require Members of the Executive to attend before it to answer questions
- 1.2 However, this does not address the subtleties and nuances required to establish successful and robust scrutiny in a dynamic political environment. Since the introduction of the overview and scrutiny function under the Local Government Act 2000, there has been a continued national debate around the relationship between the two bodies.
- 1.3 Much of this discussion has alluded to the need to establish a culture of parity between Scrutiny Boards and the Executive Board in a way that allows robust challenge of decision making and also nurtures the ability of the Executive Board to sponsor elements of the work programme for the common good of the Council's policy making process.
- 1.4 It is recognised that this is a two-way relationship. Commentators suggest that the scrutiny function must be strategic in its work programming, non-political in its discussions and produce evidence-based recommendations. At the same time, the Scrutiny Boards look to the Executive Board to engage in debate, to include scrutiny where appropriate in policy making discussions and welcome challenge of its decisions.
- 1.5 Now that the scrutiny and executive functions have matured and been embedded into the democratic process, this memorandum of understanding aims to set out a broad agreement which will underpin the relationship between the two functions ensuring the promotion of mutual respect to foster a climate of openness leading to constructive debate, with a view to ensuring service improvements.

## **2.0 SCRUTINY RESPONSIBILITIES**

### **Setting strategic items of work**

- 2.1 The terms of reference for five of the Scrutiny Boards now determine areas of review to be undertaken by those Scrutiny Boards in the municipal year. Such reviews are focused around the City Priorities and therefore provide a strategic approach. However, all Scrutiny Boards are autonomous in determining the scope of their reviews and may also undertake further pieces of scrutiny work as considered appropriate. Scrutiny Boards are learning to use this autonomy and their responsibility to help develop policy as well as challenge decision making in order to influence at a strategic level. The Scrutiny Boards are responsible for ensuring that items of scrutiny work come from a strategic approach as well as a need to challenge service performance and respond to issues of high public interest. In doing so, members are able to request any relevant information to support a piece of scrutiny work.

### **Dialogue with Executive Board Member**

- 2.2 It is recognised that in order to enable Scrutiny to focus on strategic areas of priority, each Scrutiny Board needs to establish an early dialogue with the Executive Board Member holding the relevant portfolio.
- 2.3 On an annual basis, or as and when any significant matters arise, Scrutiny Boards should provide an opportunity for the Executive Member to outline his/her achievements and vision for the future, including the overall service aims and key development issues for those areas falling within his/her remit. This will help Scrutiny Boards to scope their areas of review accordingly.

### **Scrutiny Board Chair and Executive Member Relationship**

- 2.4 Whilst the scrutiny process is essentially a public one, it is recognised that the development of an informal dialogue between the Scrutiny Board Chair and the relevant Executive Board Member will enhance the interaction between the two functions. Regular informal meetings will therefore be encouraged.

### **Making recommendations ‘SMART’**

- 2.5 Following an in-depth inquiry Members need to record their views and comments on an issue. For departments and the Executive Board to consider and act on these comments, recommendations are required to be evidence-based and deliverable. To achieve this, Scrutiny Boards will produce recommendations that are specific, measurable, attainable, relevant and time-constrained. This will also ensure that the monitoring and tracking of progress against recommendations is possible. The relevant Executive Board Member will be asked to comment on recommendations.

### **3.0 EXECUTIVE BOARD RESPONSIBILITIES**

#### **Responding to requests to attend**

- 3.1 It is useful to the Scrutiny Boards to feel able to invite the Executive Board Member to ad hoc meetings, as well as pre-arranged meetings at the beginning of the year. Often Scrutiny Boards wish to talk widely with the Executive Board Member. Such regular opportunities for asking and responding to questions will assist in minimising 'for information' reports, where clear and detailed verbal discussions would be satisfactory.

#### **Scrutiny Board Chair and Executive Member Relationship**

- 3.2 The quality of the working relationship between the Executive Board Member and the Chair of the Scrutiny Board will impact on how issues are raised and dealt with in Scrutiny. As already discussed, a regular informal meeting will allow the Executive Board Member to understand the Scrutiny Board Members' viewpoints and will afford the opportunity to have further input into the strategic elements of the Board's work.

#### **Receiving and responding to recommendations**

- 3.3 Having discussed the quality of the recommendations to be produced by Scrutiny Boards, the Executive Board is in a position to carefully consider the proposals submitted and, whilst not being under any obligation to carry out recommendations, give a thoughtful response to the Boards' work. It is expected that explanation be given for not agreeing Scrutiny Board recommendations.

#### **Identify strategic items for further Scrutiny**

- 3.4 Executive Board members are well placed to identify those areas that are strategic and where Scrutiny is able to bring added value to the discussions. In addition to the areas of review already determined within the terms of reference for five of the Scrutiny Boards, it is anticipated that any further suggestions for work to be undertaken by Scrutiny will be offered at the beginning of the year in the first instance, and then as and when issues arise. This does not equate to a veto process and it is recognised that Scrutiny Boards have complete autonomy in scoping reviews and determining items of Scrutiny work.

Agreed June 2011

**Guidance Note 2**  
**Protocol between Scrutiny and the**  
**Community Safety Partnership in Leeds**

**1.0 BACKGROUND**

- 1.1 The Local Government Act 2000 brought in new arrangements that clearly defined a scrutiny role for elected members in holding executives of councils to account, and in scrutinising the work of other agencies providing local services. The overview and scrutiny function of a local authority has the power to summon members of the executive and officers of the authority to answer questions, and can invite other persons to attend meetings to give their views or submit evidence.
- 1.2 There are four fundamental roles that define good scrutiny and underpin scrutiny activity:
1. provides ‘critical friend’ challenge to executive policy-makers and decision-makers;
  2. enables the voice and concerns of the public and its communities to be heard;
  3. is carried out by ‘independent minded governors’ who lead and own the scrutiny process; and
  4. drives improvement in public services
- 1.3 In recent years, the role and responsibilities of overview and scrutiny have expanded significantly, with the function now responsible for investigating the delivery of services provided by a wide range of public, private and third-sector partners.
- 1.4 Provisions in the Police and Justice Act 2006, namely Section 19, 20 and 21, extend the remit of local authorities to scrutinise crime and disorder functions. As a result, the Council has been required to designate a Scrutiny Board to act as the Council’s ‘Crime and Disorder Committee’.
- 1.5 The purpose of this protocol is to provide guidance and a common understanding on how scrutiny of crime and disorder will operate in Leeds. The publication of Regulations<sup>1</sup> and good working practice has shaped this protocol, which may be revised by agreement between all the interested parties in order to continually improve the scrutiny process. The aim is for all parties to help ensure that Scrutiny remains a positive and challenging process.

**2.0 SCRUTINY BOARDS (GENERAL)**

- 2.1 The overall role and function of scrutiny is to hold decision-makers to account and secure improvements in local practice for local people via a contribution to

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<sup>1</sup> The Crime and Disorder (Overview and Scrutiny) Regulations 2009 (S.I.2009/942) and the Crime and Disorder (Overview and Scrutiny) (Amendment) Regulations 2010 (S.I. 2010/616).

policy development and review. As such, Scrutiny Boards do not have decision-making powers.

- 2.2 Scrutiny Boards are composed of Elected Members selected to represent the political balance of Leeds City Council. These Members will be the only members of the Board with voting rights and will be selected to serve for a period of 12 months. The membership of the Board will seek to avoid conflicts of interest and where potential for this exists interests of those Members will be declared and subject to the Council's procedures on these matters<sup>2</sup>.
- 2.3 Scrutiny Boards may also seek nominations from other representative groups to act as co-opted members of the Board. These nominations may be for the duration of a municipal year and/or on an inquiry by inquiry basis, as set out in the Scrutiny Board Procedure Rules, Leeds City Council Constitution. However, the Crime and Disorder (Overview and Scrutiny) Regulations 2009 and the 2010 amendment make specific provision for the co-option of additional members to serve on a 'Crime and Disorder Committee'.

### **3.0 SCRUTINY OF CRIME AND DISORDER IN LEEDS**

#### **3.1 Scope**

- 3.1.1 In its capacity as a 'Crime and Disorder Committee', the designated Scrutiny Board has powers to review or scrutinise decisions made (or action taken), in connection with the discharge by the 'responsible authorities' of their crime and disorder functions. These are the authorities responsible for crime and disorder strategies, as detailed in the Crime and Disorder Act 1998, Section 5<sup>3</sup>. The Act also introduced Crime and Disorder Reduction Partnerships (CDRPs) to develop and implement such strategies. However, since 1<sup>st</sup> March 2010 the Home Office use the term Community Safety Partnerships in replace of CDRPs. In Leeds, *Safer Leeds* is the city's Community Safety Partnership.
- 3.1.2 Responsible authorities also have a duty to work in conjunction with the 'co-operating' bodies, which involve parish councils, NHS Trusts, NHS Foundation Trusts, proprietors of independent schools and governing bodies of an institution within the further education sector.
- 3.1.3 The Safer Leeds Partnership has an Executive and a Board. The Board meets quarterly and the Executive meets monthly. Membership comprises a number of responsible authorities\* and organisations as follows:
- 3.1.4 The Safer Leeds Executive comprises of Leeds City Council\*, West Yorkshire Police\*, West Yorkshire Police Authority\*, West Yorkshire Fire and Rescue

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<sup>2</sup> Leeds City Council Constitution - Scrutiny Board Procedure Rules Section 2

<sup>3</sup> This was amended by the Policing and Crime Act 2009. Section 108 of the Act provides for every provider of probation services in a particular area, whose arrangements under section 3 of the Offender Management Act 2007 provide for it to be a responsible authority, to be added to the list of "responsible authorities" which comprise the Community Safety Partnership. It also extends the remit of CSPs to explicitly include the reduction of re-offending.

Service\*, Local Strategic Partnership, NHS Leeds\*, West Yorkshire Probation Trust\* and Government Office for Yorkshire and the Humber.

- 3.1.5 The Safer Leeds Board comprises of Leeds City Council, West Yorkshire Police, West Yorkshire Police Authority, West Yorkshire Fire and Rescue Service, West Yorkshire Probation Trust, Prison Service, Government Office for Yorkshire and the Humber, CASAC, Leeds University, re'new, National Treatment Agency and Leeds Voice.
- 3.1.6 The Scrutiny Board will scrutinise the work of the Community Safety Partnership and the partners who comprise it, only insofar as their activities relate to the partnership itself. For the avoidance of doubt, the Scrutiny Board will not extend to the separate statutory functions of the partner bodies, nor will it entail scrutiny of individual cases.
- 3.1.7 The Police and Justice Act 2006 also makes provision for elected members to refer local crime and disorder matters to the Council's designated Crime and Disorder Committee. Local crime and disorder matters should be considered to encompass crime and disorder matters that affect all or part of the ward for which the member is elected or any person who lives or works in that area including:
- Antisocial behaviour;
  - Other behaviour adversely affecting the local environment;
  - The misuse of drugs, alcohol or other substances
- 3.1.8 While the Police and Justice Act 2006 makes separate provision for the referral of local crime and disorder matters, in practice the principles and processes involved are essentially the same as for any Councillor Call for Action (CCfA) referral. A separate Guidance Note on how to progress a CCfA is set out within the Council's Constitution.

## **3.2 Work items**

- 3.2.1 In its capacity as a 'Crime and Disorder Committee', the designated Scrutiny Board is responsible for considering any Member referred crime and disorder matter. At the beginning of each municipal year, the Community Safety Partnership will be invited to make any referrals to the Scrutiny Board which will be considered as part of its overall work schedule. Such referrals are to be formally agreed and presented by a representative of the Safer Leeds Executive.
- 3.2.2 Where the production of a specific report is requested and/or necessary for a particular Scrutiny Board meeting, then sufficient notice will be given for the preparation of that documentation. There will be a minimum of 7 working days notice.



### **3.3 Information to be supplied to the Board**

- 3.3.1 Where the Scrutiny Board makes a request in writing for information, this request will be directed to the Chair of the Safer Leeds Executive for action. This information must be provided no later than the date indicated in the request, or as soon as reasonably possible, but not beyond 2 weeks of the date indicated without the agreement of the Scrutiny Board Chair.
- 3.3.2 Where information has been requested by the Scrutiny Board in connection with their inquiries, this shall be depersonalised information, unless the identification of an individual is necessary or appropriate in order to enable the Scrutiny Board to properly exercise its powers.
- 3.3.3 However, requests made by the Scrutiny Board shall not include information that the disclosure of which would not be in the public interest or would be reasonably likely to prejudice legal proceedings or current or future operations of the responsible authorities, whether acting together or individually, or of the co-operating bodies.
- 3.3.4 The Scrutiny Board will not publish confidential information in its reports or information which is exempt under Schedule 12A of the Local Government Act 1972, as amended by the Local Government (Access to Information) (Variation) Order 2006. Where exempt information has been used in the preparation of a report by the Scrutiny Board the report, if published, will list the exempt information referred to in the preparation of the report but not reproduce it in the report. However, Schedule 12A of the Local Government Act 1972 should not be used as a method to bypass the requirement to depersonalise information by placing reports which are not depersonalised onto a Scrutiny Board agenda as an item to be heard without the press or public present.

### **3.4 Attending Scrutiny Board Meetings**

- 3.4.1 As the 'Crime and Disorder Committee' the designated Scrutiny Board is required to meet no less than once in every twelve month period to carry out this particular function.
- 3.4.2 The Scrutiny Board may require the attendance of an officer of a responsible authority or of a co-operating body to answer questions. Where reasonable notice of the intended date is given, the responsible authority or co-operating body will be obliged to attend<sup>4</sup>.
- 3.4.3 The Scrutiny Support Unit will also try to give approximate times for items to be discussed. However, as items sometimes overrun, there may be a short waiting time.

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<sup>4</sup> The responsible authority or co-operating body should ensure that officers attending Scrutiny Board meetings are in a position to answer the Scrutiny Board's questions and are given appropriate support by their line managers.

- 3.4.4 Prior to a Scrutiny Board meeting, the Chair receives a briefing on items to appear on the forthcoming agenda from officers in the Scrutiny Support Unit. On occasion, officers from the responsible authorities or co-operating bodies may be requested to attend this briefing, or a separate session, to enable the Chair of the Scrutiny Board to be briefed ahead of the scrutiny meeting.

### 3.5 Conduct of Scrutiny Board Inquiries

#### The role of Terms of Reference

- 3.5.1 The majority of Scrutiny Inquiries have agreed terms of reference. These are used to inform departments of the Council and partners of the emphasis of a particular inquiry.
- 3.5.2 Officers in the Scrutiny Support Unit will liaise with relevant officers of the Council and the responsible authorities and co-operating bodies during the preparation of Terms of Reference to ensure that the focus of the inquiry is relevant and the timing of it appropriate.

#### Co-opted Members

- 3.5.3 The Crime and Disorder (Overview and Scrutiny) Regulations 2009 and the 2010 amendment make specific provision for the co-option of additional members to serve on a 'Crime and Disorder Committee'. The Scrutiny Board has agreed to consider the co-option of any additional members on an inquiry by inquiry basis.
- 3.5.4 The Home Office guidance for the Scrutiny of Crime and Disorder Matters makes specific reference to the role of police authorities and emphasises the importance of ensuring that community safety scrutiny complements this role. It states that *'all local authorities should presume that the police authority should play an active part at committee when community safety matters are being discussed – and particularly when the police are to be present'*. One option suggested in the guidance is *'to consider co-opting a police authority member onto the committee when policing matters are being considered, and it would be for the police authority to decide the most appropriate member to appoint – this can be an independent or councillor member. This would provide a more direct link between the police authority and overview and scrutiny committee and would be particularly relevant if the committee is considering matters directly relevant to policing'*

#### Gathering evidence

- 3.5.5 The evidence to be gathered will be detailed in the inquiry's terms of reference. This material may be considered at a scrutiny meeting which is open to the public or by a small working group of Board members deputed to undertake a specific evidence gathering task. In the latter case, working group members will report back to a full meeting of the Scrutiny Board on their findings.

- 3.5.6 The Scrutiny Support Unit will try to give guidance on what will be asked and sometimes possible question areas will be passed on to the responsible authorities or co-operating bodies to allow some time for preparation before the meeting. However, members may follow a related line of discussion and ask other questions on the day.

Preparation and publication of reports

- 3.5.7 At the conclusion of an inquiry, where considered appropriate, the Scrutiny Board will produce a preliminary report. This will be drafted by the Scrutiny Support Unit in conjunction with the Scrutiny Board Chair and agreed by the Board. This report will provide a summary of the evidence submitted, along with the Scrutiny Board's conclusions and recommendations. The Scrutiny Board will consult the Community Safety Partnership Executive and other relevant responsible authorities or co-operating bodies prior to finalising its report. Final reports will be published on the Council's website and be widely available to all relevant stakeholders and members of the public. Copies will be sent to each of the responsible authorities and each of the co-operating persons and bodies.

Response to reports

- 3.5.8 Where the Scrutiny Board makes a report or recommendations to the Council or the Executive about the exercise of crime and disorder functions by responsible authorities, a copy will be provided to each of the responsible authorities and each of the co-operating persons and bodies.
- 3.5.9 Where a relevant authority or co-operating persons or body has been notified, it must:
- consider the report and recommendations;
  - respond in writing to the Scrutiny Board within 28 days of the date of the report or recommendations, indicating what (if any) action it proposes to take; and
  - have regard to the report or recommendations in exercising its functions.
- 3.5.10 The implementation of any agreed scrutiny recommendations will be monitored by the Scrutiny Support Unit and progress recorded at regular intervals.

**3.6 Scrutiny Support Unit**

- 3.6.1 In summary, the work of the Scrutiny Support Unit entails:
- Providing a research and intelligence function to Scrutiny Boards (each of which has been allocated a different area of specialism)
  - Managing programmes of inquiries for each of the Scrutiny Boards
  - Providing support and guidance to witnesses
  - Managing the presentation of witnesses, research and reports to Scrutiny Boards and/or carrying out research and reports "in house" as appropriate
  - Assisting Scrutiny Boards to prepare reports of their inquiries and steering recommendations through the Council's decision making arrangements

## *Scrutiny Board Procedure Rules – Guidance Notes*

- Monitoring and tracking the implementation of scrutiny recommendations
- Leading the continuing development of the Overview and Scrutiny function

3.6.2 Contact the Scrutiny Support Unit at [scrutiny.unit@leeds.gov.uk](mailto:scrutiny.unit@leeds.gov.uk)

### **GUIDANCE NOTE 3**

#### **PROTOCOL FOR THE YORKSHIRE AND THE HUMBER COUNCILS JOINT HEALTH SCRUTINY COMMITTEE**

##### **1.0 INTRODUCTION**

- 1.1 This Protocol has been developed as a framework for carrying out scrutiny of regional and specialist health services that impact upon residents across Yorkshire and the Humber under powers for Local Authorities to scrutinise the NHS contained in the Health and Social Care Act 2001.
- 1.2 The Health and Social Care Act 2001 strengthens arrangements for public and patient involvement in the NHS. Sections 7 to 10 of the Act provide for local authority Overview and Scrutiny Committees to scrutinise the NHS and represent local views on the development of local health services, whilst section 242 of the National Health Service Act 2006 (formally section 11 of the Health and Social Care Act 2001), places a duty on NHS organisations to make arrangements to involve and consult patients and the public in service planning and operation, and in the development of proposals for changes. Section 242 has subsequently been amended by the Local Government and Public Involvement in Health Act 2007. NHS organisations are now required to make arrangements so that users of services are involved in the planning and development of these services.
- 1.3 The Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002 provide for local NHS bodies to consult the Overview and Scrutiny Committee where the NHS body has under consideration any proposal for a substantial development of the health service or for a substantial variation in the provision of such a service in the local authority's area.
- 1.4 The Directions also state that when a local NHS body consults with more than one Overview and Scrutiny Committee on any such proposal, the local authorities of those Overview and Scrutiny Committees shall appoint a Joint Overview and Scrutiny Committee for the purposes of the consultation and only that Joint Overview and Scrutiny Committee may:-
- (a) Make comments on the proposal consulted on to the local NHS body;
  - (b) Require the local NHS body to provide information about the proposal;
  - (c) Require an officer of the local NHS body to attend before it to answer such questions as appear to it to be necessary for the discharge of its functions in connection with the consultation.

- 1.5 Notwithstanding these arrangements, individual authorities may wish to comment on proposals by NHS bodies under the broader duties imposed on NHS Bodies by Section 242 of the National Health Service Act 2006.
- 1.6 This protocol has been developed and agreed by all the local authorities with responsibility for health scrutiny in the Yorkshire and the Humber region (Bradford, Calderdale, Kirklees, Leeds, Wakefield, York, North Lincolnshire, Barnsley, Doncaster, Rotherham, Sheffield, East Riding, North Yorkshire, North East Lincolnshire and Hull) as a framework for carrying out joint scrutiny of health in the region in response to a statutory consultation by an NHS body.

## **2.0 COVERAGE**

- 2.1 Whilst this protocol deals with arrangements within the boundary of Yorkshire and the Humber, it is recognised that there may be occasions when consultations may affect adjoining regions. Arrangements to deal with such circumstances would have to be determined and agreed separately, as and when appropriate.

## **3.0 PRINCIPLES FOR JOINT HEALTH SCRUTINY**

- 3.1 The basis of joint health scrutiny will be co-operation and partnership with a mutual understanding of the following aims:
- To improve the health of local people and to tackle health inequalities
  - Ensuring that people's views and wishes about health and health services are identified and integrated into plans, services and commissioning that achieve local health improvement.
  - Scrutinising whether all parts of the community are able to access health services and whether the outcomes of health services are equally good for all sections of the community.
- 3.2 The Local Authorities and NHS bodies will be willing to share knowledge, respond to requests for information and carry out their duties in an atmosphere of courtesy and respect in accordance with their Codes of Conduct. Personal and prejudicial interest will be declared in all cases, in accordance with the Code of Conduct.
- 3.3 The scrutiny process will be open and transparent in accordance with the Local Government Act 1972 and the Freedom of Information Act 2000 and meetings will be held in public. Only information that is expressly defined in regulations to be confidential or exempt from publication will be considered in private.

- 3.4 Different approaches to scrutiny reviews may be taken in each case. The Joint Health Scrutiny Committee will seek to act as inclusively as possible and will take evidence from a wide range of opinion including patients, carers, the voluntary sector, NHS regulatory bodies and staff associations. Attempts will be made to ascertain the views of hard to reach groups, young people and the general public.

#### **4.0 SUBSTANTIAL VARIATION AND SUBSTANTIAL DEVELOPMENT**

- 4.1 When a NHS body is considering proposals to vary or develop health services, those authorities whose residents are affected must be given the chance to decide whether they consider the proposals to be substantial to their communities. Those that do consider the proposals to be substantial must be formally consulted and must form a Joint Health Overview and Scrutiny Committee to respond to the consultation. The decision about whether proposals are substantial (and therefore whether to participate in a Joint Health Overview and Scrutiny Committee) must be taken by the Health Overview and Scrutiny Committees within the relevant authorities.

- 4.2 The primary focus for identifying whether a change should be considered as substantial is the impact upon patients, carers and the public who use or have the potential to use a service. This would include:-

- **Changes in accessibility of services:** any proposal which involves the withdrawal or change of patient or diagnostic facilities for one or more speciality from the same location (other than to any part of same operational site).
- **Impact of proposal on the wider community and other services:** including economic impact, transport, regeneration (e.g. where reprovision of a hospital could involve a new road or substantial house building).
- **Patients affected:** changes may affect the whole population (such as changes to A&E), or a small group (patients accessing a specialised service). If changes affect a small group it may still be regarded as substantial, particularly if patients need to continue accessing that service for many years (for example renal services).
- **Methods of service delivery:** altering the way a service is delivered may be a substantial change, for example moving a particular service into community settings rather than being entirely hospital based.
- **Issues likely to be considered as controversial to local people:** (e.g. where historically services have been provided in a particular way or at a particular location.)
- **Changes to governance:** which affect NHS bodies' relationships with the public or local authority Overview and Scrutiny Committees (OSC's).

## **5.0 RESPONDING TO A STATUTORY CONSULTATION BY AN NHS BODY**

- 5.1 Where a response to a statutory consultation is required on proposals for substantial variation or substantial development affecting two or more local authorities within Yorkshire and the Humber, scrutiny may be undertaken either by:-
- **Delegated Scrutiny:** The affected local authorities agree to delegate their overview and scrutiny function to a single authority which may be better placed to consider a local priority<sup>1</sup>; or
  - **Joint Committee:** The affected local authorities establish a joint committee to determine a single response.
- 5.2 Accordingly, where any substantial variation or substantial development principally affects residents of a single local authority, scrutiny can be delegated to that authority. Whereas, there is a presumption of wider regional variations or developments are dealt with by a Joint Health Scrutiny Committee.

## **6.0 DELEGATED SCRUTINY**

- 6.1 Regulations enable a local authority to arrange for its overview and scrutiny functions to be undertaken by a committee from another local authority. Delegation may occur where a local authority believes that another may be better placed to consider a particular local priority and, importantly, the latter agrees to exercise that function. For instance, it might be more appropriate to delegate scrutiny where an NHS body provides a service across two local authority areas but the large majority of those using or affected by the service are in one of those authority areas.

### **Delegated Powers**

- 6.2 When and where such delegation takes place, the full powers of overview and scrutiny of health shall be given to the delegated committee, but only in relation to the specific delegated function (i.e. a particular inquiry or consultation).

### **Terms of Reference**

- 6.3 In such circumstances and in accordance with Department of Health guidance, clear terms of reference, clarity about the scope and methods of scrutiny to be used must be determined between the affected local authorities. Formal terms of reference should be drafted and formally agreed by the respective Overview and Scrutiny Committees of the affected local authorities and subsequently shared with the relevant NHS bodies.

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<sup>1</sup> Overview and Scrutiny of Health - Guidance. Department of Health, July 2003. P21, para 7.1  
Part 4(d)(4)  
Page 4 of 8  
Issue 1 – 2015/16  
9<sup>th</sup> June 2014



- 6.4 In the context of a proposal for a substantial development or variation to services, where the review of any consultation has been delegated, the power of referral to the Secretary of State where such a proposal is contested is also delegated. The delegating local authority is no longer able to influence the content or outcome of the review<sup>2</sup>.
- 6.5 The delegated authority (the authority undertaking the consultation exercise) will be responsible for conducting scrutiny in accordance with its own set procedures and will be expected to regularly communicate with the delegating authority(ies).

## **7.0 JOINT HEALTH SCRUTINY COMMITTEE**

- 7.1 Where a wider, joint approach is required to a consultation by an NHS body, a separate Joint Health Scrutiny Committee will be established for each consultation.

### **Membership of a Joint Health Scrutiny Committee**

- 7.2 Under the Local Government Act 2000 provisions, Overview and Scrutiny Committees must generally reflect the make up of full Council. Consequently, when establishing a Joint Health Scrutiny Committee, each participating local authority should ensure that those Councillors it nominates reflects its own political balance. However, the political balance requirements may be waived but only with the agreement of all the participating local authorities<sup>3</sup>.
- 7.3 In accordance with the above, a Joint Committee will be composed of Councillors drawn from Yorkshire and the Humber local authorities in the following terms:-
- where 9 or more Yorkshire and the Humber local authorities participate in a Joint Health Scrutiny Committee – the Chair (or Chair's representative) of each participating authority's Overview and Scrutiny Committee responsible for health will become a member of the Joint Health Scrutiny Committee;
  - where 4 to 8 local authorities participate - then each participating authority will nominate 2 Councillors; or
  - where 3 or less local authorities participate - then each participating authority will nominate 4 Councillors.
- 7.4 Each local authority should make a decision as to whether it should seek approval from its respective full Council or Executive to delegate authority to its relevant Overview and Scrutiny Committee (responsible

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<sup>2</sup> Overview and Scrutiny of Health - Guidance. Department of Health, July 2003. P21, para 7.4

<sup>3</sup> Overview and Scrutiny of Health - Guidance. Department of Health, July 2003. P22, para 8.6

for health) or another appropriate body to nominate Councillors on a proportional basis to a Joint Health Scrutiny Committee.

- 7.5 From time to time and where appropriate, the Joint Health Scrutiny Committee may appoint non-voting co-optees for the duration of a consultation. In these circumstances, one or more co-optees could be drawn from local patient, community and voluntary sector organisations affected by substantial change or variation.

### **Choice of Lead Authority and Chair**

- 7.6 Where a Joint Health Scrutiny Committee (as defined by the Health and Social Care Act 2001) is required to consider a substantial development of the health service or a substantial variation, one of the affected local authorities would take the lead in terms of organising and Chairing the joint committee.
- 7.7 Selection of a lead authority, should where possible, be chosen by mutual agreement by the local authorities involved and take into account both capacity to service a Joint Health Scrutiny Committee and available resources. Additionally, the following criteria should guide determination of the Lead Authority:
- The local authority within whose area local communities will be most affected; or if that is evenly spread;
  - The local authority within whose area the service being changed is based; or if that is evenly spread;
  - The local authority within whose area the health agency leading the consultation is based.

### **Operating Procedures**

- 7.8 The Joint Health Scrutiny Committee will conduct its business in accordance with the Overview and Scrutiny Committee Procedure Rules of the Lead Authority.
- 7.9 The Lead Authority will service and administer the scrutiny exercise and liaise with the other affected local authorities.
- 7.10 The Lead Authority will draw up a draft terms of reference and timetable for the scrutiny exercise, for approval by the Joint Health Scrutiny Committee at its first meeting. The Lead Authority will also have responsibility for arranging meetings, co-ordinating papers in respect of its agenda and drafting the final report.

### **Meetings of the Joint Health Scrutiny Committee**

- 7.11 At the first meeting of any new inquiry, the Joint Health Scrutiny Committee will determine:

- Terms of reference of the inquiry;
- Number of sessions required;
- Timetable of meetings & venue.

### **Reports of the Joint Health Scrutiny Committee**

- 7.12 At the conclusion of an Inquiry the Joint Health Scrutiny Committee shall produce a written report and recommendations which shall include:
- an explanation of the matter reviewed or scrutinised
  - a summary of the evidence considered
  - a list of the participants involved in the review or scrutiny; and
  - any recommendations on the matter reviewed or scrutinised.
- 7.13 Reports shall be agreed by a majority of members of the Joint Health Scrutiny Committee.
- 7.14 Reports shall be sent to all relevant local authorities, to NHS Yorkshire and the Humber and the relevant health agencies, along with any other bodies determined by the Joint Health Scrutiny Committee and Lead Authority.
- 7.15 The Joint Health Scrutiny Committee shall request a response to its report and recommendations from the NHS body or bodies receiving the report within 28 working days.
- 7.16 The Joint Health Scrutiny Committee may, on receipt of the NHS body's response to its recommendations report to the Secretary of State on the grounds that it is not satisfied:
- with the content of the consultation; or
  - that the proposal is in the interests of the health service in the area.
- 7.17 In circumstances where an NHS Body has failed to consult over substantial variation or development, or where consultation arrangements are inadequate or insufficient time provided, then the affected local authority or authorities may decide to make appropriate representations to the NHS Body concerned.

### **Minority reports**

- 7.18 Where a member of a Joint Health Scrutiny Committee does not agree with the content of the Committee's report, they may produce a report setting out their findings and recommendations and such a report will form an Appendix to the Joint Health Scrutiny Committee's report.

## **8.0 DISCRETIONARY JOINT WORKING**

- 8.1 Guidance issued by the Department of Health<sup>4</sup> states *‘that the role of (scrutiny) committees is to take an overview of health services and planning within the locality and then to scrutinise priority areas to identify whether they meet local needs effectively.* This suggests a more proactive role for overview across Yorkshire and the Humber. It is also recognised that individual local authority scrutiny committees may wish to engage with and scrutinise regional NHS/health bodies or look at broader regional health issues.
- 8.2 In these circumstances, or where a health scrutiny review is initiated that affects more than one authority, then it may be appropriate and more effective for local authorities in Yorkshire and the Humber to agree on an ad-hoc basis, joint arrangements based on this protocol to undertake such work.
- 8.3 To enable Yorkshire and the Humber local authorities to explore potential opportunities for future joint working, all local authorities should:
- share work programmes of their respective scrutiny committees (health);
  - arrange for appropriate officers to meet and liaise on a regular basis; and,
  - where appropriate, facilitate member level meetings across Yorkshire and the Humber.

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<sup>4</sup> Overview and Scrutiny of Health - Guidance, July 2003