

COUNCIL		
Report Title	Joint Health Overview & Scrutiny Committee	
Key Decision	N/A	
Ward	All	
Contributors	Head of Law	
Class	Part 1	Date 25 November 2015

1. Summary

- 1.1 This report proposes the establishment of a Joint Health Overview and Scrutiny Committee (JHOSC) with Bexley, Bromley, Greenwich, Lambeth Lewisham and Southwark as the participant authorities. Its purpose will be to scrutinise proposals from the six clinical commissioning groups (CCGs) for those areas entitled “Our Healthier South East London” (OHSEL).
- 1.2 The report sets out the proposed terms of reference for the JHOSC and asks Council to appoint two members to it. Council is also asked to delegate to the JHOSC the power to make any referral to the Secretary of State in respect of OHSEL. Finally, Council is asked to agree that its Constitution be amended to provide that on all other matters, the power to make referrals to the Secretary of State in relation to health scrutiny matters is delegated to its Overview and Scrutiny Healthier Communities Select Committee.

2. Purpose

- 2.1 The establishment of a JHOSC will enable the views of the affected local authorities about the proposals from the CCGs to be heard. There is also a legal requirement for the establishment of a JHOSC where the proposals would affect more than one council area.

3. Recommendations

Council is asked to agree: –

- 3.1 To the establishment of a JHOSC with the participant authorities being Bexley, Bromley, Greenwich, Lambeth, Lewisham and Southwark, with the terms of reference set out in Appendix 1.
- 3.2 Subject to agreement of Recommendation 1 above:-
- (a) to appoint two councillors to sit on that JHOSC.

- (b) to agree that the councillors appointed to the JHOSC be able to nominate substitutes to attend meetings of the JHOSC in their place in the event that they are unable to attend.
- (c) to delegate to the JHOSC the power to make any referral to the Secretary of State in relation to the proposals from the CCGs for Bexley, Bromley, Greenwich, Lambeth, Lewisham and Southwark.
- (d) that, save where the Council agrees to the contrary in relation to a particular matter, all health scrutiny functions are delegated to the Council's Overview and Scrutiny Healthier Communities Select Committee and that its Constitution reflect that, by amending article 6.6 in accordance with Appendix 2 of this report.

4. Background

- 4.1 The six CCGs for Bexley, Bromley, Greenwich, Lambeth, Lewisham, and Southwark have developed proposals for a five year commissioning strategy for South East London. It is extremely likely that those proposals will amount to a significant service reconfiguration and so the CCGs will be bound to comply with provisions set out in legislation relating to consultation . Among these requirements are those set out in Section 244 NHS Act 2006 and Regulation 23 of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 (the Regulations). This requires a CCG to consult an affected authority when a substantial variation or substantial development of health services in the area is under consideration.
- 4.2 The Regulations also state that where proposals would affect more than one authority, those authorities must respond through one committee. This can be achieved by establishing a joint overview and scrutiny committee for the purposes of consultation.
- 4.3 The 6 Councils are legally compelled to establish the joint committee for the purposes of consultation on the current proposals by the CCGs and once established only it may:-
 - (a) Make comments on the proposals;
 - (b) Require the provision of information about the proposals; and/or
 - (c) Require the attendance of a member or officer of the CCGs to answer questions in connection with the consultation.
- 4.4 Authorities have the power to refer proposals for substantial variation of health services in the area to the Secretary of State if they consider:-
 - (a) The consultation has been inadequate
 - (b) Where there has been no consultation the CCG has not adequately explained the reason why it did not do so in terms of urgency relating to the safety or welfare of patients or staff .

- (c) A proposal would not be in the interests of the health service in the area.
- 4.5 It is possible in law for this power of referral to be retained by the constituent Councils. However given their inability to require information about the proposals, to do so may be unwise and officers do not recommend it.
- 4.6 The Council's Constitution currently provides for any decision to make a referral to the Secretary of State as set out in para 4.4 above is reserved to full Council. Under the Regulations, Councils now have the choice whether to allow the decision to be taken by its overview and scrutiny committee/joint committee or reserve it to Council. The requirement for a full Council decision has the potential for delay in making any referral to the Secretary of State and officers suggest that this requirement be removed as it is not a legal requirement as had previously anticipated. The proposed amendment is set out in Appendix 2 to this report.

5. Legal Implications

- 5.1 The legal implications are reflected in the body of the report. In addition executive members are prohibited from membership of the JHOSC.
- 5.2 The Equality Act 2010 (the Act) introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 5.3 In summary, the Council must, in the exercise of its functions, have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
 - advance equality of opportunity between people who share a protected characteristic and those who do not.
 - foster good relations between people who share a protected characteristic and those who do not.
- 5.4 The duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.
- 5.5 The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are

legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at:

<http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice-and-technical-guidance/>

5.6 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

- The essential guide to the public sector equality duty
- Meeting the equality duty in policy and decision-making
- Engagement and the equality duty
- Equality objectives and the equality duty
- Equality information and the equality duty

5.7 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at:

<http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/>

6. Financial Implications

There are no direct financial implications arising from this report in respect of the service areas concerned. As a scrutiny committee the newly created JHOSC will comment on the financial impact and implications of matters to be consulted on. Members will therefore have the support of officers in their respective boroughs to advise on these matters when they arise. In addition there will be a cost for the scrutiny functions in each borough to support the work of this new and additional committee.