

<b>Council</b>		
<b>Title</b>	Constitutional Matters: Joint Health Overview and Scrutiny Committee	
<b>Key decision</b>	N/A	
<b>Contributor</b>	Head of Law	
<b>Class</b>	Part 1 (open)	30 March 2016

### **Reason for lateness and urgency**

The report has not been available for five clear working days before the meeting and the Chair is asked to accept it as an urgent item. The report was not available for dispatch on Thursday 17 March 2016 because of the time taken to reach agreement on the terms of reference. The report cannot wait until the next meeting because the decision on changes to services (as set out in the report) is due before the next meeting of Council.

#### **1. Summary**

- 1.1 This report proposes the creation of a Joint Health Overview and Scrutiny Committee (JHOSC) with Lambeth, Southwark, Croydon and Lewisham as the participant authorities. Its purpose will be to scrutinise proposals from the South London and Maudsley NHS Foundation Trust (SLaM) on changes to the current service model of Place of Safety provision within the SLaM area, from four separate Places of Safety, for the boroughs of Southwark, Lambeth, Lewisham and Croydon, to one centralised Place of Safety, provided in Southwark.
- 1.2 The report sets out the proposed terms of reference (appendix 1) for the JHOSC and asks Council to appoint two members to it.

#### **2. Purpose**

- 2.1 The creation of a JHOSC will enable the views of the affected local authorities on SLaM's changes to the provision of Places of Safety 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 creation of a JHOSC with the participant authorities being Lambeth, Southwark, Croydon and Lewisham, with the terms of reference set out in Appendix 1.
- 3.2 Subject to agreement of the recommendation in 3.1 above:

- (a) to appoint two councillors to sit on that joint committee
- (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) That the terms of reference do not include the power to make a report to the Secretary of State (under regulation 23(9) of the Regulations in relation to the proposal from SLaM for Croydon, Lambeth, Lewisham and Southwark Councils.

#### **4. Background**

- 4.1 Places of Safety are provided by SLaM for a people who are brought to hospital under powers granted by Section 136 of the Mental Health Act. This power can be used by police officers if someone is in a public place and the police have concerns about them. Across the SLaM there are currently four places of safety, or '136 Suites', where people can be brought, assessed and cared for. The four suites are located at each of SLaM's four hospital sites. Following an assessment in one of these suites by a doctor and an interview with an Approved Mental Health Professional the person can either be discharged with or without referral for further mental health support, or admitted for further treatment.
- 4.2 SLaM believes that the current provision of places of safety is inadequate and it has had difficulty in maintaining availability of staff, resulting in the suites being closed regularly. During the period January 2015 through to August 2015, the Trust reports that it was unable to provide any place of safety to the Police on 40 occasions.
- 4.3 The Trust's proposal is for the development of a central place of safety. The aim of the proposed model is to ensure that an assessment facility is always available.
- 4.4 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) is the requirement that relevant NHS bodies or relevant health service providers consult an affected local authority when a substantial variation or substantial development of health services in the area is under consideration.
- 4.5 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.
- 4.6 The four Councils are legally compelled to establish the joint committee for the purposes of consultation on the current proposals by SLaM 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 relevant NHS body or health service provider to answer questions in connection with the consultation.

4.7 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 relevant NHS body or health service provider 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.

## **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**

- 6.1 There are no direct financial implications arising from the implementation of the recommendations in this report. 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.
- 6.2 There will be a cost for the scrutiny functions in each borough to support the work of this additional committee.

### **Appendix 1: proposed terms of reference**

#### **Background Information**

For any further information on this report call Kath Nicholson, Head of Law on 0208 3147648

## Appendix 1

### Joint Health Overview and Scrutiny Committee SLaM Place of Safety

#### Terms of reference

The Joint Health Overview and Scrutiny Committee (JHOSC) is constituted in accordance with the Local Authority Public Health, Health & Wellbeing Boards and Health Scrutiny Regulations 2013 (the “Regulations”) and Department of Health Guidance to respond to a substantial reconfiguration proposal covering more than one Council. The JHOSC will scrutinise the proposal from South London and Maudsley NHS Foundation Trust (SLaM), and their commissioners, to change the current service model of Place of Safety provision within SLaM from four separate Places of Safety, for the boroughs of Southwark, Lambeth, Lewisham and Croydon, to one centralised Place of Safety, provided in Southwark for all four boroughs. The relevant commissioners for this proposal from SLaM are Croydon, Lambeth, Lewisham and Southwark Clinical Commissioning Groups (CCGs) and the Local Authorities social care commissioners from all four boroughs.

#### Context

Places of Safety are provided by SLaM for a number of people who are brought to hospital under Section 136 of the Mental Health Act (MHA). This is a power that police officers can use if someone is in a public place and the police have concerns about them. Across the SLaM there are currently four Place of Safety, or 136 Suites, where people can be brought, assessed and cared for. The four suites are located at each of SLaM’s four hospital sites. Following an assessment in one of these suites, by a doctor and an interview with an Approved Mental Health Professional (AMHP), the person can either be discharged with or without referral for further mental health support, or admitted for further treatment.

The Joint Committee’s terms of reference are:

1. To undertake all the functions of a statutory Joint Health Overview and Scrutiny Committee in accordance with the Regulations and Department of Health Guidance. This includes, but is not limited to the following:
  - (a) To consider and respond to the proposals from SLaM for the provision of one centralised Place of Safety
  - (b) To scrutinise the commissioners of the SLaM proposal and to seek assurance that the proposal is supported and that partnership arrangements between health & social care and across the boroughs are adequate
  - (c) To scrutinise any consultation process
  - (d) This does not include the power to make a report to the Secretary of State (under regulation 23(9) of the Regulations) in relation to the proposal from SLaM for Croydon, Lambeth, Lewisham and Southwark Councils. However,

any individual authority may make a specific delegation to the JHOSC in relation to their own power to make such a report on their behalf. The JHOSC will undertake to go through all the necessary steps needed to enable either collective or individual councils to exercise their power to refer to the Secretary of State

## **Membership**

Membership of the Joint Committee will be two named Members from each of the following local authorities:

London Borough of Lambeth;  
London Borough of Lewisham;  
London Borough of Southwark;  
London Borough of Croydon.

Members must not be an Executive Member.

## **Procedures**

### **Chair and Vice-Chair**

1. The Joint Committee will appoint a Chair and Vice-Chair at its first meeting. The Chair and Vice-Chair should be members of different participating authorities.

### **Substitutions**

2. Substitutes may attend Joint Committee meetings in lieu of nominated members. Continuity of attendance throughout the review is strongly encouraged however.
3. It will be the responsibility of individual committee members and their local authorities to arrange substitutions and to ensure that the lead authority is informed of any changes prior to the meeting.
4. Where a substitute is attending the meeting, it will be the responsibility of the nominated member to brief them in advance of the meeting

### **Quorum**

5. The quorum of the meeting of the Joint Committee will be 3 members, each of whom should be from a different participating authority.

### **Voting**

6. It is hoped that the Joint Committee will be able to reach their decisions by consensus. However, in the event that a vote is required each member present will have one vote. In the event of there being an equality of votes, the Chair of the meeting will have the casting vote.

7. On completion of the scrutiny review by the Joint Committee, it shall produce a single final report, reflecting the views of all the local authorities involved.

### **Meetings**

8. Meetings of the Joint Committee will normally be held in public and will take place at venues within South London. The normal access to information provisions applying to meetings of the Overview and Scrutiny committees will apply. However, there may be occasions on which the Joint Committee may need to make visits outside of the formal Committee meeting setting.
9. Meetings shall last for up to two hours from the time the meeting is due to commence. The Joint Committee may resolve, by a simple majority, before the expiry of 2 hours from the start of the meeting to continue the meeting for a maximum further period of up to 30 minutes.

### **Local Overview and Scrutiny Committees**

10. The Joint Committee will encourage its Members to inform their local overview and scrutiny committees of the work of the Joint Committee on the SLaM Place of Safety proposal
11. The Joint Committee will invite its Members to represent to the Joint Committee the views of their local overview and scrutiny committees on the SLaM Place of Safety proposal and the Joint Committee's work.

### **Communication**

12. The Joint Committee will establish clear lines of communication between itself, SLaM, the CCG, and local authorities. All formal correspondence between the Joint Committee, local authorities and the NHS on this matter will be administered by *Julie Timbrell*, *Southwark Council* ) or (*other*) until such officer is appointed.

### **Representations**

13. The Joint Committee will identify and invite witnesses to address the committee, invite comments from interested parties and take into account information from all the local Healthwatch organisations. It may wish to undertake further consultation with a range of stakeholders.

### **Support**

14. Administrative and research support will be provided by the scrutiny teams of the 4 boroughs working together.

### **Assumptions**

15. The Joint Committee will be based on the following assumptions:

- (a) That the Joint Health Scrutiny Committee is constituted to respond to SLaM Place of Safety proposal.
- (b) SLaM, and their commissioners, will permit the Joint Health Scrutiny Committee access to the outcome of any public consultation.