

Council		
Title	Constitutional Matters: Joint Health Overview and Scrutiny Committee	
Contributor	Head of Law	Item 8
Class	Part 1 (open)	17 July 2017

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.
- 1.2 Its purpose will be to scrutinise proposals from the South London and Maudsley NHS Foundation Trust (SLaM) to change to the service model for acute inpatient care for older adults within the SLaM area by designating separate inpatient wards for patients with functional (psychotic, mood and anxiety disorders) and organic (dementia) mental health needs.
- 1.3 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 acute inpatient care for older adults 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 Lambeth, Southwark, Croydon and Lewisham Councils.

4. Background to the proposals

- 4.1 Currently, patients over the age of 65 from the boroughs of Lambeth, Southwark, Lewisham and Croydon who are acutely unwell and require an inpatient admission to a mental health bed regardless of their diagnosis are admitted to the first available bed on either, Aubrey Lewis 1, Maudsley Hospital, Southwark, Hayworth on the Ladywell Unit, Lewisham, or Chelsham House, Bethlem Royal Hospital, Bromley.
- 4.2 The South London and Maudsley NHS Foundation Trust (SLaM) says every effort is made currently to accommodate patient and carer choice and there is no ward currently designated for a particular borough. However, the Trust say that it should be noted that should there not be a bed available on the patient's preferred ward, the first available bed will be offered to the patient. This is irrespective of their diagnosis, presentation and care needs.

- 4.3 This has led to is a mix of patients with different disorders and presentations on each of three wards, which SLAM says can be distressing for patients (e.g. a patient with severe anxiety/depression may be distressed by being on a ward with people with severe dementia and agitation). Because admissions tend to be more than a week, and there is relatively slow turnover, compared with, say, an acute medical ward, this means that at any one time there are very few beds available, and patients needing an admission have to be admitted to the first available bed. So a Lambeth patient is equally likely at the moment to be admitted to any one of three wards.
- 4.4 In order to improve patient outcomes and ensure most effective use of resources the Trust is proposing that acute admission inpatient units will be configured to manage different patient groups - one focusing on dementia care and the other two on the care of people with psychotic, mood and anxiety disorders (the so-called "functional" disorders). SLAM says that this will enable ward environments to be tailored towards the specific needs of the patients and staff will be able to specialise and become highly skilled in either dementia or functional illness care. The Trust also say that the needs of people with dementia will rightly become an equal priority to that of functional illness.
- 4.5 To meet the needs of local people, the Trust says that it will need one acute dementia unit, which it is proposed to be Chelsham House (Bethlem Royal Hospital site) and two units for people with functional disorders on AL1 (Maudsley Hospital) and Hayworth (University Hospital Lewisham). There are currently 54 beds in all across the three sites and the number will remain the same following the proposed changes.

5. Background to joint health overview and scrutiny arrangements

- 5.1 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.
- 5.2 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.
- 5.3 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.
- 5.4 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 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.

6. Legal implications

- 6.1 The legal implications are reflected in the body of the report. In addition, executive members are prohibited from membership of the JHOSC.
- 6.2 The Equality Act 2010 (the Act) introduced a public sector equality duty (the equality duty or the duty). It covers the following protected characteristics: age, disability, gender

reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

6.3 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.

6.4 It is not an absolute requirement to eliminate unlawful discrimination, harassment, victimisation or other prohibited conduct, or to promote equality of opportunity or foster good relations between persons who share a protected characteristic and those who do not. It is a duty to have due regard to the need to achieve the goals listed at 12.2 above.

6.5 The weight to be attached to the duty will be dependent on the nature of the decision and the circumstances in which it is made. This is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. The Mayor must understand the impact or likely impact of the decision on those with protected characteristics who are potentially affected by the decision. The extent of the duty will necessarily vary from case to case and due regard is such regard as is appropriate in all the circumstances.

6.6 The Equality and Human Rights Commission has 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:

<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-codes-practice>

<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-technical-guidance>

6.7 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: A guide for public authorities](#)
- [Objectives and the equality duty. A guide for public authorities](#)
- [Equality Information and the Equality Duty: A Guide for Public Authorities](#)

6.8 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:

<https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance#h1>

7. Financial implications

- 7.1 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.
- 7.2 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 further information on this report call Kath Nicholson, Head of Law, on 0208 314 7648.

Appendix 1

Joint Health Overview and Scrutiny Committee: SLaM Mental Health of Older Adults

Terms of Reference

The Joint Health Overview and Scrutiny Committee (JHOSC) is constituted in accordance with the Local Authority (Public Health, Health and 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 Trust to change to the service model for acute inpatient care for older adults in Lambeth, Southwark, Croydon and Lewisham by designating separate inpatient wards for patients with functional (psychotic, mood and anxiety disorders) and organic (dementia) mental health needs.

The relevant commissioners for the proposal are Lambeth, Southwark, Croydon and Lewisham CCGs (Clinical Commissioning Groups) and the social care commissioners from all four boroughs.

Context

Currently, patients over the age of 65 who are acutely unwell and require inpatient admission are admitted to the first available bed at one of three wards: Aubrey Lewis 1 at the Maudsley Hospital (Southwark); Hayworth at the Ladywell Unit (Lewisham); or Chelsham House at Bethlem Royal Hospital (Bromley).

SLaM proposes to change the current service model by allocating one ward for patients experiencing moderate to severe dementia (at Bethlem Royal Hospital) and two wards for the care of patients with functional mental health conditions (at Maudsley Hospital and the Ladywell Unit). All wards would, however, have multidisciplinary teams able to provide care and treatment for people whatever their diagnosis. Patient and carer preferences would also continue to be accommodated should someone prefer to be cared for on a particular ward.

The proposed service delivery model would be in line with national guidance and recommendations.

The JHOSC's terms of reference are:

1. To undertake all the functions of a statutory JHOSC in accordance with the Regulations and Department of Health Guidance, with the exception of the power to make a report to the Secretary of State in relation to any proposals. By way of illustration, the JHOSC's functions include, but are not limited to, the following:
 - a) To consider and respond to substantial reconfiguration proposals, from any health provider, which affect Lambeth, Southwark, Croydon and Lewisham.
 - b) To scrutinise the commissioners of the proposal, seek assurance that the proposal is supported, and ensure that partnership arrangements between health and social care, and across the boroughs, are suitable.
 - c) To scrutinise any consultation process related to the proposal.

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 Southwark
- London Borough of Croydon
- London Borough of Lewisham

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 Mental Health of Older Adults 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 Mental Health of Older Adults proposal and the Joint Committee's work.

Communication

12. The Joint Committee will establish clear lines of communication between itself, SLaM, CCGs, 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 Mental Health of Older Adults proposal.
 - b) SLaM, and their commissioners, will permit the Joint Health Scrutiny Committee access to the outcome of any public consultation.