

Report to: Health Overview and Scrutiny Committee (HOSC)

Date of meeting: 7 March 2024

By: Assistant Chief Executive

Title: HOSC Terms of Reference

Purpose: To consider proposed amendments to the HOSC Terms of Reference to reflect changes brought about by updated national regulations and statutory guidance.

RECOMMENDATION:

The Committee is recommended to consider and comment on the proposed revised HOSC Terms of Reference.

1 Background Information

1.1 The powers of health scrutiny were established in the Health and Social Care Act 2001 and came into effect in 2003. East Sussex HOSC was established under this legislation in 2003.

1.2 Between 2003 and 2022 there were several updates to health scrutiny regulations and guidance, particularly to reflect changes in NHS structures and processes during this time. However, the statutory health scrutiny role and powers have remained largely unchanged. These included a specific role and powers for HOSCs in relation to any proposals for 'a substantial development or variation' to NHS services affecting the residents of the HOSC's area, specifically:

- the requirement for local NHS organisations to formally consult with the relevant HOSC(s) on such proposals, and for the HOSC to respond in its role as the statutory consultee; and
- the power for the HOSC to refer such proposals to the Secretary of State for Health for review on the grounds of either inadequate consultation with the HOSC, or because the HOSC considered the proposals were not in the best interests of health services for the area.

1.3 The Health and Social Care Act 2022 included provision for the Secretary of State to intervene directly in local NHS service changes, without requiring a referral from a HOSC. This has implications for the health scrutiny role and powers, specifically HOSCs' role in response to 'substantial' NHS service changes as set out above. On 9 January 2024 the Department for Health and Social Care (DHSC) issued a suite of new regulations and guidance setting out how the new service reconfiguration process will operate. The new process came into effect on 31 January 2024.

1.4 The majority of health scrutiny powers remain unchanged. This report therefore focuses on the impact of the new service reconfiguration process on HOSC's role and the consequential amendments proposed to HOSC's Terms of Reference.

2 Supporting information

2.1 The arrangements for the new service reconfiguration process are set out through a set of linked regulations and guidance issued by DHSC in January:

- The National Health Service (Notifiable Reconfigurations and Transitional Provision) Regulations 2024: <https://www.legislation.gov.uk/uksi/2024/15/contents/made>
- The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) (Amendment and Saving Provision) Regulations 2024: <https://www.legislation.gov.uk/uksi/2024/16/note/made>
- “Local Authority Health Scrutiny: Guidance to support local authorities and their partners to deliver effective health scrutiny” (DHSC, 2024). This replaces/supersedes guidance of the same name published in June 2014: <https://www.gov.uk/government/publications/advice-to-local-authorities-on-scrutinising-health-services/local-authority-health-scrutiny>
- New statutory guidance: “Reconfiguring NHS services – ministerial intervention powers” (DHSC, 2024). <https://www.gov.uk/government/publications/reconfiguring-nhs-services-ministerial-intervention-powers/reconfiguring-nhs-services-ministerial-intervention>

2.2 Key implications for HOSC are as follows:

- HOSCs’ status as statutory consultees on substantial service reconfigurations remains in place, with NHS organisations required to engage as they do currently;
- HOSCs will no longer be able to formally refer matters to the Secretary of State where they relate to these reconfigurations;
- Instead, the Secretary of State will have a broad power to intervene in local services – HOSCs will have the right to be formally consulted on how the Secretary of State uses their powers to ‘call in’ proposals to make reconfigurations to local health services.
- Other aspects of health scrutiny remain unchanged – the power to require representatives of NHS bodies to attend formal meetings, the power to get information from NHS bodies and the power to require NHS bodies to have regard to scrutiny’s recommendations;

2.3 The practical elements of the new service reconfiguration process are set out below:

- NHS commissioners will have a statutory obligation to notify the Secretary of State of planned reconfigurations that are substantial (also referred to as ‘notifiable’ changes in the regulations). The notification given to DHSC should consider the relevant HOSC’s views on a proposal when deciding when to notify and should make clear to the Secretary of State the HOSC’s view on whether this reconfiguration is ‘notifiable’.
- Consultation on a ‘notifiable’/substantial change will take place locally as it does now, including HOSC’s ongoing role as statutory consultee.
- ‘Notifiable’ reconfigurations are not the only proposals that may be ‘called in’ by the Secretary of State;

- Anyone locally (including a HOSC) may make a request to the Secretary of State that a proposal be 'called in' – whether that proposal is substantial or not. However, the guidance envisages that a proposal will be 'called in' only under exceptional circumstances. There will be certain criteria used to determine this, which include whether the HOSC has been engaged in trying to resolve concerns locally;
- The Secretary of State's decision to 'call in' a service change is discretionary, and they can decide whether or not to call in a service change proposal. When a call in request is received, a process of evidence gathering to support the Secretary of State's decision-making will be co-ordinated between DHSC and the Independent Reconfiguration Panel (IRP). A range of people may be contacted to provide further information as part of this (which is likely to include the relevant HOSC).
- Should the Secretary of State decide to 'call in' a proposal he or she will issue a Direction Letter to the NHS commissioning body, at which point the call-in becomes 'live'. The Direction Letter will set out the steps that the NHS commissioner is permitted to take next (which may or may not include continuing with a consultation). The requester will also be informed and the NHS commissioner and/or DHSC will inform the HOSC;
- A 'live call-in' will involve a review of the proposals which is likely to entail the Secretary of State seeking advice from the IRP. Interested parties will be given the opportunity to make formal representations at this stage – this is likely to include the HOSC;
- The Secretary of State will make a decision within six months. An NHS commissioning body must give effect to any decision made by the Secretary of State on a 'call-in'.

2.4 As set out above, the new process involves a number of roles/potential roles for HOSC at various stages. These roles will involve liaison with NHS organisations, other HOSCs (on proposals covering a wider area than East Sussex), Healthwatch and local people (or their representatives) with an interest in service change proposals. There are many similarities to the existing service change process, but also new elements to consider. It is proposed that a one-off informal session be arranged for HOSC Members, potentially with the involvement of other Sussex HOSCs and NHS commissioners, to explore in more detail how the new arrangements can operate most effectively locally.

2.5 The updated national legislation means that amendments need to be made to HOSC's Terms of Reference to reflect the changes to HOSC's role and powers in relation to substantial service change. The proposed changes are set out at appendix 1 for consideration. In summary these are:

- Replacing references to outdated legislation and referring more generally to relevant health scrutiny legislation and guidance, to more easily accommodate any future updates and the broader range of national guidance which now refers to health scrutiny;
- Removing references to the previous arrangements in relation to referring matters to the Secretary of State;
- Adding references to the new 'call-in' process and HOSC's roles within this;
- Adding specific reference to working with local Healthwatch, as well as with local people more generally, to recognise that the relationship between HOSCs and

Healthwatch has been made more explicit in recent DHSC guidance and regulations; and

- Updates to the element relating to joint health scrutiny arrangements with other authorities to fully clarify HOSC's role in establishing joint committees;

2.6 As HOSC is a committee of the County Council, changes to the Terms of Reference must be agreed by the full Council at its next meeting in May, following consideration by the Governance Committee in April.

3. Conclusion and reasons for recommendations

3.1 Updated national regulations and guidance have resulted in some changes to HOSC's role and powers, specifically in relation to substantial NHS service reconfigurations. These changes have been reflected in proposed updated Terms of Reference. The committee is invited to consider and comment on the proposed amendments prior to agreement by the County Council.

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Background Documents: None