



City of Westminster

Committee Report

Meeting or Decision Maker:	General Purposes Committee
Date:	11 October 2023
Classification:	General Release
Title:	Formation of a Joint Health Overview and Scrutiny Committee (JHOSC) between Westminster City Council (WCC) and the Royal Borough of Kensington and Chelsea (RBKC) to scrutinise the proposed substantial variation in development and services in relation to the Gordon Hospital, St Charles Mental Health Unit and Mental Health Services.
Wards Affected:	All in both Authorities.
Fairer Westminster/Policy Context:	The scrutiny of proposed changes to services will allow both Council's as local authorities to jointly scrutinise the proposals to ensure that residents interests are represented and will allow the Council's to advance equality of opportunity in discharging their public sector equality duty in creating positive impacts for protected groups.
Financial Summary:	Potential costs are anticipated to be relatively minimal. The administration of the JHOSC will be shared equally between both Councils, will be time limited to the life of the particular scrutiny being conducted and will be drawn from existing staff. Any additional costs or expenditure can be managed from within existing budgets.
Report of:	Parveen Akhtar (Director of Law and Governance)

1. Executive Summary

- 1.1. Health Services are required to consult a local authority's Health Overview and Scrutiny Committee about any proposals they have for a substantial development or variation in the provision of health services in their area. When these substantial developments or variations affect a geographical area that covers more than one local authority, they are required to consult a Joint Health Overview and Scrutiny Committee (JHOSC) formed with membership of those local authority areas affected.
- 1.2. Central and Northwest London NHS Foundation Trust (CNWL) have proposed a substantial development and variation to the services provided at the Gordon Hospital in Westminster (The Gordon Hospital) and St Charles Hospital Mental Health Unit in Kensington and Chelsea (St Charles) (the Proposal). This follows the temporary closure of two inpatient wards at the Gordon Hospital in March 2020. The Northwest London Integrated Care Board (ICB) are managing the formal public consultation process.
- 1.3. Following a period of discussion with CNWL, the ICB and other local authorities in the geographical area surrounding the area of the Proposal it has been proposed that the authorities that should form a dedicated, time limited JHOSC for the purposes of scrutinising the Proposal are Westminster City Council (WCC) and the Royal Borough of Kensington and Chelsea (RBKC). These are the two local authorities situated in the geographical area which will be most significantly affected.
- 1.4. This report seeks WCC approval to set up a JHOSC between WCC and RBKC to specifically scrutinise the Proposal, approve the terms of reference for the JHOSC and take a decision on delegation of power as a local authority to make referral to the Secretary of State in the circumstances described further in this report.

2. Recommendations:

It is recommended that the General Purposes Committee:

- 2.1. Approve the establishment of a JHOSC between WCC and RBKC specifically for the purpose of scrutiny of the Proposal.
- 2.2. Approve the terms of reference for the JHOSC set out at Appendix A of this report.
- 2.3. Approve that three Councillors who are not members of the Council's executive may be appointed to the JHOSC from WCC and that such appointments be made in line with the principles of political proportionality. Individual Members will be appointed to the JHOSC by the Chief Executive on the advice of Group Whips in line with existing procedures for Committee appointments.

- 2.4. Agree that WCC delegates its power of referral to the Secretary of State under s23(9) of the Local Authority (Public Health, Health, and Wellbeing Boards and Health Scrutiny) Regulations 2013 to the newly formed JHOSC subject to all members of that JHOSC being in agreement on any referral and if they are not the power will then revert to each individual Council.
- 2.5. Agree to delegate authority to the Monitoring Officer to make any amendments needed to the Constitution or Terms of Reference as may be required.

3. Reasons for Decision

- 3.1. To comply with the legislative requirements for WCC jointly with RBKC to scrutinise a proposal for a substantial variation to development and health services provision in relation to the Proposal mentioned above.

4. Background, including Policy Context

- 4.1. On the 5th May 2023 CNWL notified WCC, RBKC and other Local Authorities in the geographical area that it was considering a proposal to substantially vary the development and provision of services at the Gordon Hospital and St Charles Mental Health Unit.
- 4.2. During the months of May 2023 to September 2023 CNWL held a number of workshop discussions with WCC, RBKC and those local authorities and other partners whom they considered to be affected. In addition, they consulted with the Northwest London Joint Health Overview and Scrutiny Committee for their views.
- 4.3. Following these workshops and consultation, the ICB indicated that the two local authorities best placed to form a JHOSC for the purposes of scrutinising the Proposal were WCC and RBKC.
- 4.4. The final formal notification of the Proposal, full details of it and details of the public consultation are expected the week of the 9th of October 2023.
- 4.5. We are informed that the ICB hope to launch the public consultation the same week, 9th October 2023 and that the consultation will run until the end of January 2024. It is therefore, important that the JHOSC is set up as soon as possible in order to allow scrutiny of the Proposal at the earliest opportunity.
- 4.6. Regulation 30 of the Local Authority (Public Health, Health, and Wellbeing Boards and Health Scrutiny) Regulations 2013 (The 2013 Regulations) requires local authorities to appoint “mandatory” joint committees where a relevant NHS body or health service provider consults more than one local authority’s health scrutiny function about “substantial reconfiguration” proposals.

- 4.7. Appointment of a JHOSC for this purpose and to approve its terms of reference is a matter which requires Local Authority approval.
- 4.8. Regulation 30 of the 2013 Regulations provides that where a mandatory JHOSC is set up for scrutiny of proposals of this nature:
- Only the joint committee (JHOSC) may respond to the consultation (i.e., rather than each individual local authority scrutiny committees responding separately);
 - Only the joint committee may exercise the power to require the provision of information by the relevant NHS body or health service provider about the proposal;
 - Only the joint committee may exercise the power to require members or employees of the relevant NHS body or health service.
 - Only the joint committee may make comments on the proposal consulted on pursuant to regulations.
- 4.9. In addition to the powers outlined in paragraph 4.8 above local authorities have the power to make a referral to the Secretary of State under section 23(9) of the 2013 Regulations in the following circumstances:
- If not satisfied with the adequacy of content of the consultation.
 - If not satisfied that sufficient time has been allowed for consultation.
 - If it considers that the proposal would not be in the interests of the health service in its area.
 - If it has not been consulted, and it is not satisfied that the reasons given for not carrying out consultation are adequate.
- 4.10. The power of referral to the Secretary of State under the 2013 Regulations is exercised in limited circumstances following a recommendation that the JHOSC may have made to the NHS body / health service and where it has not been possible to involve them to reach an agreement, it is considered that they have failed to take reasonably practical steps to reach an agreement or done so within a reasonable time frame.
- 4.11. The power to make referrals to the Secretary of State is invested in the local authority whom may choose to retain their own individual power of referral separately from any JHOSC or may choose to delegate it in the following ways:
- To their already constituted Health Overview and Scrutiny Committees
 - To the new JHOSC.
 - To the new JHOSC with reservation of certain aspects of the power for example:
 - if all members of the new JHOSC are not in full agreement the power will revert to each individual Council,

- to the new JHOSC reserving the final decision to each individual Council.
- 4.12. The delegation of power from each local authority is an individual choice and if both authorities decide differently then the power of referral can only be exercised by the Council if they have retained it, or a committee to which it has been delegated.
- 4.13. Following consideration of the differing options available for delegation of the power of referral to the Secretary of State, the fact that the proposal crosses over two local authority areas each of whom may have different considerations and potential concerns and for ease of procedure, officer recommendation is for WCC to agree to recommendation in paragraph 2.4 above.

5. Proposals

- 5.1. To set up a JHOSC consisting of members of WCC and RBKC with a time limited role specifically to scrutinise the proposal.
- 5.2. The detailed terms of reference for the Joint Committee are attached at appendix A.

6. Financial Implications

- 6.1. There are no direct financial implications arising from this report. However, there will be costs, anticipated as relatively minimal, associated with administration of the JHOSC. The administration will be managed by employed staff from both Authorities sharing duties and any associated costs will be met from within existing Budget.

7. Legal Implications

- 7.1. The legal requirements are set out in the body of this report.
- 7.2. In accordance with the Local Government Act 2000 members may not be members of authorities executive. Scrutiny committees must generally reflect the political make-up of the full Council. It is therefore recommended that each council make appointments which reflect the political proportionality of its council.
- 7.3A decision is needed as a matter of urgency in order that the JHOSC can be set up to scrutinise the Proposal at the earliest possible stage (week of 9th October 2023). The next available WCC Full Council meeting is not until the 15th November 2023. Therefore, the Monitoring Officer has advised that in accordance with WCC Constitution as the proposal is to create a time limited Joint Scrutiny Committee (not a standing Committee) the General Purposes Committee are authorised under their terms of reference to take this decision on behalf of Full Council. Should the recommendations in this report be agreed, the decision will be reported to the next meeting of Full Council.

8. Carbon Impact

8.1. There are no carbon implications arising out of this report.

9. Equalities

9.1. In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.

9.2. The effective scrutiny of the proposals will allow the local authority to fulfil its Public Sector Equality Duty.

If you have any queries about this Report or wish to inspect any of the Background Papers, please contact:

Richard Cressey, Head of Governance and Councillor Liaison
rcressey@westminster.gov.uk

APPENDICES

Appendix A – Proposed Terms of Reference for the JHOSC.

BACKGROUND PAPERS

1. **Scrutiny Guidance** [Local authority health scrutiny \(publishing.service.gov.uk\)](http://publishing.service.gov.uk)
2. **Relevant legislation and policy**

• Department of Health (2013), The NHS Constitution: the NHS belong to us all:
<http://www.nhs.uk/choiceintheNHS/Rightsandpledges/NHSConstitution/Documents/2013/the-nhs-constitution-for-england-2013.pdf>

• Department of Health (2012), The Mandate: A mandate from the Government to the NHS Commissioning Board: April 2013 to March 2015:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/213131/mandate.pdf

• Government guidance on consultation principles (2012):
<https://www.gov.uk/government/publications/consultation-principles-guidance> •
Health and Social Care Act 2001, sections 7 – 10:
<http://www.legislation.gov.uk/ukpga/2001/15/contents>

• Health and Social Care Act 2012, sections 190 – 192:
<http://www.legislation.gov.uk/ukpga/2012/7/contents>

• Local Government Act 2000: <http://www.legislation.gov.uk/ukpga/2000/22/contents>

- The Localism Act 2011:

<http://www.legislation.gov.uk/ukpga/2011/20/contents/enacted> • National Health Service Act 2006, sections 244 – 245:

<http://www.legislation.gov.uk/ukpga/2006/41/contents>

- Statutory Instrument No. 2013/218 The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013:

<http://www.legislation.gov.uk/uksi/2013/218/contents/made>

Inner West London Mental Health Services Reconfiguration Joint Health Overview and Scrutiny Committee

1 Name

- 1.1 Inner West London Mental Health Services Reconfiguration Joint Health Overview and Scrutiny Committee (RBKC and WCC).

2 Terms of Reference

Purpose

- 2.1 Health Services are required to consult a local authority's Health Overview and Scrutiny Committee about any proposals they have for a substantial development or variation in the provision of health services in their area. When these substantial developments or variations affect a geographical area that covers more than one local authority, the local authorities are required to appoint a Joint Health Overview and Scrutiny Committee (JHOSC) for the purposes of the consultation.
- 2.2 These terms of reference set out the arrangements for WCC and RBKC to operate a JHOSC to consider the Proposal made in relation to the services at the Gordon Hospital, the St. Charles Mental Health Centre and wider community mental health services in the two boroughs, in line with the provisions set out in legislation and guidance.
- 2.3 This Committee will cease to exist upon the conclusion of its work.

3. Remit

- 3.1 The JHOSC will operate formally as a statutory joint committee, i.e. where the councils have been required under Regulation 30 Local Authority (Public Health, Health and Well-being Boards and Health Scrutiny) Regulations 2013 to appoint a joint committee for the purposes of providing independent scrutiny.
- 3.2 Regulation 30 of the 2013 Regulations provides:
- Only the joint committee may respond to the consultation (i.e., rather than each individual local authority responding separately).
 - Only the joint committee may exercise the power to require the provision of information by the relevant NHS body or health service provider about the proposal.
 - Only the joint committee may exercise the power to require members or employees of the relevant NHS body or health service.
 - make comments on the proposal consulted on pursuant to regulation.

3.3 With the exception of those matters referred to in the paragraph above responsibility for all other health scrutiny functions and activities remain with the respective local authority Health Scrutiny Committees.

4. Governance and Membership

4.1 The JHOSC will be hosted by both authorities on rotation and meetings of the JHOSC will be conducted in accordance with the Standing Orders of the host local authority at the time.

4.2 Each of the two participating authorities will appoint three non-executive Members to the JHOSC and each will notify the other of their appointments.

4.3 Each member of the JHOSC must be a properly elected Councillor to a seat on their respective authority and will cease to be a member of the JHOSC with immediate effect should they no longer meet this requirement.

4.4 Appointments by each authority to the JHOSC will be politically proportionate to that authority.

4.6 The quorum for meetings will be a minimum of 4 members, 2 from each authority. However, any vote on a referral to the Secretary of State will require all members to vote and be in agreement.

4.7 The chairing arrangements for the JHOSC for the duration of the Committee shall be elected and or decided at its first formal meeting and drawn from those Members in attendance at that meeting. Should the Chair cease to be a member of the JHOSC, a new Chair shall be elected at the next formal meeting.

4.8 The Vice-Chair of the JHOSC for the duration of the Committee shall be elected at its first formal meeting and drawn from those Members in attendance at that meeting. In the absence of the Chair, the Vice_Chair shall assume all chairing responsibilities. Should the Vice- Chair cease to be a member of the JHOSC, a new Vice-Chair shall be elected at the next formal meeting.

4.9 In the absence of both the Chair and Vice-Chair at any Meeting of the JHOSC, Members in attendance shall appoint a Chair for that Meeting from amongst their number, who shall, while presiding at that Meeting, have any power or duty of the Chair in relation to the conduct of the Meeting.

5. Administration

5.1 The overall coordination, facilitation of meetings, policy support and other administrative arrangements will be shared by the scrutiny and governance teams of both authorities.

5.2 Legal advice and support to the JHOSC will be provided by Bi-Borough Legal Services as well as the Monitoring Officers of both authorities.

6. Reporting

- 6.1 Members of the JHOSC may provide updates to the full Council of their Local Authority on its proceedings in accordance with the requirements of their respective authority.
- 6.2 Any recommendations of the JHOSC shall be communicated to relevant parties in writing with a summary of the evidence and the matter under consideration.