
Health Scrutiny

Committee considering report:	Council
Date of Committee:	4 May 2021
Portfolio Member:	Councillor Howard Woollaston
Date Portfolio Member agreed report:	22 April 2021
Report Author:	Gordon Oliver
Forward Plan Ref:	C4008

1 Purpose of the Report

To consider a proposal to form a new Health Scrutiny Committee, reporting to the Overview and Scrutiny Management Commission, which would be responsible for scrutiny of Public Health and NHS services in West Berkshire.

2 Recommendations

For Council to:

- (a) SUPPORT the proposal for a Health Scrutiny Committee, reporting to the Overview and Scrutiny Management Commission (OSMC), to undertake scrutiny of the planning, development and operation of Public Health and NHS services for the citizens of West Berkshire;
- (b) DELEGATE scrutiny of Public Health and NHS services in West Berkshire to the Health Scrutiny Committee;
- (c) APPROVE the terms of reference for the Health Scrutiny Committee as set out in Appendix B of this report; and
- (d) DELEGATE authority to the Service Director: Strategy and Governance in consultation with the Group Leaders to agree membership and terms of reference for an Independent Remuneration Panel to consider the need for a Special Responsibility Allowance for the Chairman of the Health Scrutiny Committee.

3 Implications and Impact Assessment

Implication	Commentary
Financial:	<p>There would be an additional cost associated with elected members and officers attending meetings, and for additional officer support. A budget pressure has been identified.</p> <p>The work of the Health Scrutiny Committee will require support in terms of overall co-ordination, setting up and clerking of meetings, underpinning policy support and administrative arrangements.</p> <p>As this is a new Committee it is recommended that consideration be given to paying the Chairman of this Committee a Special Responsibility Allowance. It should be noted that Councils are required to convene an Independent Remuneration Panel (IRP) and seek its advice before they make any changes or amendments to their Members' Allowances Scheme. The Council must 'pay regard' to the Panel's recommendations before setting a new or amended Scheme. It is proposed that the membership and Terms of Reference of the IRP be agreed under delegated authority by the Service Director: Strategy and Governance in consultation with the Group Leaders and that they be asked to convene as soon as possible with a view to bring a proposal back to the July Council meeting.</p>
Human Resource:	<p>A 0.5 FTE Scrutiny Officer post would be required to coordinate meetings and provide policy support for the Health Scrutiny Committee and any associated task and finish groups. This has been identified as a budget pressure for 2021/22. There would also be a requirement for an officer to clerk the meetings and provide administrative support. It is envisaged that this would be delivered by the existing Democratic Services Team.</p>
Legal:	<p>The statutory requirements for the scrutiny of health services are set out in the National Health Service Act 2006 as amended by the Health and Social Care Act 2012. The relevant regulations are the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013.</p> <p>As a unitary authority, West Berkshire Council has the power to review and scrutinise matters relating to the planning, development and operation of the health service for the benefit</p>

	<p>of its citizens, and can make recommendations to and require a response from NHS bodies.</p> <p>It also has the power to consider and respond to any consultation by an NHS body on a proposal that constitutes a substantial development or substantial variation in the provision of health services affecting patients within West Berkshire.</p> <p>The legislation enables full Council to delegate health scrutiny functions to a scrutiny committee or a sub-committee thereof.</p> <p>The proposed terms of reference would be consistent with the legal framework and the Council's Constitution.</p>			
Risk Management:	There are no significant risks associated with this proposal.			
Property:	There are no property implications associated with this proposal.			
Policy:	Officers are not aware of any policies at national or local levels that relate specifically to health scrutiny. However, the proposal is in line with Government guidance on Health Scrutiny.			
	Positive	Neutral	Negative	Commentary
Equalities Impact:				
A Are there any aspects of the proposed decision, including how it is delivered or accessed, that could impact on inequality?	X			Scrutiny of Public Health and NHS services will help to identify and more effectively address current and future health inequalities within the district.

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B Will the proposed decision have an impact upon the lives of people with protected characteristics, including employees and service users?	X			The proposal will ultimately have a beneficial impact on the planning, development, operation and integration of health and care services, which will deliver benefits for all service users, including those with protected characteristics.
Environmental Impact:		X		The proposal will not result in any significant environmental impact.
Health Impact:	X			Scrutiny will help to improve the planning, development, operation and integration of health and care services, and in turn will improve health outcomes for local residents.
ICT Impact:		X		There are no ICT implications of delivering this new function.
Digital Services Impact:		X		Meetings of the Health Scrutiny Committee may be held remotely until such time as Coronavirus restrictions are relaxed and public meetings are permitted. This is in line with other council meetings.
Council Strategy Priorities:		X		This proposal is considered to be 'business as usual' with no particular implications for Council Strategy Priorities.
Core Business:		X		This proposal is considered to be 'business as usual' with no particular implications for core business.
Data Impact:		X		This proposal is considered to be 'business as usual' with no particular implications for data.

Consultation and Engagement:	<p>Councillor Lynne Doherty – Leader of the Council</p> <p>Councillor Graham Bridgman – Executive Portfolio Holder for Health and Wellbeing</p> <p>Councillor Alan Law – Chairman of OSMC</p> <p>Nick Carter – Chief Executive</p> <p>Joseph Holmes – Executive Director (Resources)</p> <p>Sarah Clarke – Service Director Strategy and Governance / Monitoring Officer</p> <p>Moira Fraser – Democratic and Electoral Services Manager</p> <p>Catalin Bogos – Performance, Research and Consultation Manager</p>
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4 Executive Summary

- 4.1 Responsibility for scrutiny of health services provided for the citizens of West Berkshire is currently allocated to OSMC. Given the major changes proposed to the structure of the NHS, major investments planned for local hospitals, and the increased importance of health matters following the Covid epidemic, additional capacity and expertise will be needed to respond to the predicted increase in health consultations and to enable more effective scrutiny of Public Health and NHS services.
- 4.2 This report sets out a proposal for a new Health Scrutiny Committee, reporting to OSMC, which would be responsible for undertaking scrutiny of the planning, development and operation of Public Health and NHS services for citizens of West Berkshire. The proposal does not affect scrutiny of the Council’s Social Care functions, which would remain with OSMC.
- 4.3 It is estimated that the Health Scrutiny Committee will require an additional 0.5 FTE Scrutiny Officer role to coordinate meetings and provide policy support, including for any associated task and finish groups. This has been identified as a budget pressure for the 2021/22 financial year. Administrative support would be provided from the existing Democratic Services Team.
- 4.4 As a matter of law, it is for Council to confer scrutiny powers on a committee, thus the delegation of scrutiny powers must be carried out at a meeting of full Council (and not, for example, by OSMC).

5 Supporting Information

Introduction

- 5.1 The primary aim of health scrutiny is to strengthen the voice of local people, ensuring that their needs and experiences are considered as an integral part of the planning,

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development and operation of health services and that those services are safe and effective in meeting local needs.

- 5.2 An important element of health scrutiny is responding to formal consultations on health matters. Health bodies are required to consult a local authority's Health Scrutiny Committee (or equivalently named committee in an upper-tier or unitary authority holding health scrutiny powers) about any proposals they have for a substantial development or variation in the provision of health services in their area. In assessing whether a change is 'substantial' the following must be taken into account:
- changes in the accessibility of services;
 - the impacts on the wider community and other services, including economic impact, transport and regeneration;
 - the number of patients affected;
 - the methods of service delivery.
- 5.3 Health scrutiny also has a strategic role in taking an overview of how well integration of health, public health and social care is working and in making recommendations about how it could be improved.
- 5.4 Additionally, health scrutiny has a legitimate role in: proactively seeking information about the performance of local health services and institutions; in challenging the information provided to it by commissioners and health service providers; and in testing this information by drawing on different sources of intelligence.
- 5.5 Health scrutiny is part of the accountability of the whole system and needs the involvement of all parts of the system. Engagement of the Public Health service, relevant NHS bodies and health service providers with health scrutiny must be a continuous process.
- 5.6 It should be noted that local authorities can choose whether or not to exercise their statutory powers in relation to scrutiny of NHS services. However, where local authorities choose not to respond to formal consultations on proposals for substantial variations to NHS services through their appointed health scrutiny committee, they may forfeit the right to engage with the health body on the proposal. They would also forfeit the right of referral to the Secretary of State in the event that they considered:
- The consultation had been inadequate in relation to the content or the amount of time allowed.
 - The NHS body had given inadequate reasons where it has not consulted for reasons of urgency relating to the safety or welfare of patients or staff.
 - A proposal would not be in the interests of the health service in its area.
- 5.7 The remainder of this report sets out a proposal for improving the health scrutiny process within West Berkshire.

Background

- 5.8 Health scrutiny powers and duties are set out in the National Health Service Act 2006 as amended by the Health and Social Care Act 2012. The relevant regulations are the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013.
- 5.9 Under this legislation, upper tier and unitary authorities have the power to scrutinise and review any matter relating to the planning, provision and operation of the health service within their area.
- 5.10 Health scrutiny functions are conferred on the local authority, rather than any particular Scrutiny committee within the local authority. This gives local authorities flexibility and freedom over the way they discharge their health scrutiny functions.
- 5.11 The legislation enables full Council to delegate health scrutiny functions to:
- A Scrutiny Committee;
 - A Sub-Committee of a Scrutiny Committee;
 - Another local authority;
 - A Joint Scrutiny Committee appointed by two or more local authorities, or a Sub-Committee of such a Joint Committee.
- 5.12 Executive members may not be members of a Scrutiny Committee, Joint Scrutiny Committee, or any of their Sub-Committees. Also, local authorities may not delegate health scrutiny functions to an officer.
- 5.13 Within West Berkshire, OSMC currently has delegated responsibility for all of the Council's scrutiny functions. The Council Constitution does not mention health scrutiny specifically, but section 6.1.2 indicates that it has responsibility for the development and co-ordination of the Scrutiny of partnerships and external bodies. This includes scrutiny of local health services and their providers / commissioners.
- 5.14 OSMC meets four times per year with additional meetings arranged as and when necessary. It may also appoint task and finish groups to undertake detailed reviews on key topics between meetings. However, with such a wide remit, OSMC does not have the capacity to be able to undertake the full range of health scrutiny matters. Also, it is difficult for OSMC members to undertake in-depth scrutiny of health matters, since this requires specialist knowledge and expertise.

Recent Changes in the Health Landscape

- 5.15 The Health and Social Care White Paper¹ sets out proposals for changes to the structure of the NHS, putting Integrated Care Systems on a statutory footing and integrating Clinical Commissioning Groups at the system footprint.

¹ <https://www.gov.uk/government/publications/working-together-to-improve-health-and-social-care-for-all/integration-and-innovation-working-together-to-improve-health-and-social-care-for-all-html-version>

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- 5.16 In addition, Royal Berkshire NHS Foundation Trust and Hampshire Hospitals NHS Foundation Trust are both preparing proposals and supporting business cases for redevelopment of their existing hospitals, or even construction of brand new hospitals and will be going out to consultation in the coming months.
- 5.17 Furthermore, the importance of health matters has increased considerably as a result of the Covid pandemic and will remain a key focus as we enter the recovery phase. Therefore, additional capacity and expertise will be needed to respond to major NHS consultations and to enable more effective scrutiny of Public Health and NHS services.

Proposals

- 5.18 It is proposed that full Council delegates powers on the scrutiny of matters relating to the planning, development and operation of Public Health and NHS health services provided for the benefit of citizens in West Berkshire to a newly created Health Scrutiny Committee (HSC) reporting to OSMC.
- 5.19 The HSC would consult OSMC when setting its work programme and would report back on a quarterly basis to ensure that OSMC has effective oversight of its activities and to ensure that work streams are coordinated. The HSC would be able to set up task and finish groups to undertake in-depth scrutiny reviews.
- 5.20 Membership of the HSC would reflect the political balance of the Council and may include elected Members who are not OSMC members. It is proposed that five members be appointed to the HSC as this will ensure an element of resilience, helping to avoid the need to cancel meetings at short notice in the event that a Member is unable to attend or send a substitute.
- 5.21 West Berkshire Council's representation on any future Joint Health Overview and Scrutiny Committees, where required to provide scrutiny of health services that are provided across local authority boundaries, would be drawn from the HSC.
- 5.22 It is also proposed that provision be made for up to two non-voting co-optees to be appointed to the HSC to provide particular health expertise to assist with a particular review.
- 5.23 The Committee shall meet in accordance with the timetable of meetings agreed annually by Full Council. Initially, it is proposed that the HSC should meet four times per year. However, extraordinary meetings may be convened at any time if it is considered necessary and appropriate to do so.
- 5.24 Members would be provided with training to ensure that they are familiar with local health structures and the particular requirements of health scrutiny.
- 5.25 The HSC Chairman would be responsible for regular liaison with representatives of the following in order to keep up to date with work streams, planned consultations and issues arising:
- Healthwatch West Berkshire;
 - Berkshire West Clinical Commissioning Group

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- Local NHS Foundation Trusts;
- The Chairman of West Berkshire Health and Wellbeing Board;
- The Director of Public Health for Berkshire West;
- Executive Director (People);
- Service Director for Communities and Wellbeing;
- Other organisations responsible for aspects of health and wellbeing of citizens of West Berkshire.

5.26 It is estimated that the HSC will require an additional 0.5 FTE Scrutiny Officer role to coordinate meetings and provide policy support. Funding for this post has been approved as part of the budget. Administrative support would be provided from the existing Democratic Services Team.

5.27 It should be noted that the work of the HSC may generate additional work for officers, particularly those in the Public Health Team, who have been made aware of the proposal.

5.28 A proposed Terms of Reference for the HSC is provided in Appendix B.

6 Other options considered

6.1 The following options for delivering the Council's health scrutiny functions were considered and rejected:

- (a) **OSMC to retain all health scrutiny functions ('do nothing' scenario)** – This option would not be as effective in discharging the Council's statutory responsibilities with respect to scrutiny of NHS services due to issues around capacity and expertise as discussed above.
- (b) **Health Scrutiny Committee to only scrutinise matters relating to the planning, development and operation of NHS services** – This would be less effective, due to the high levels of coordination and joint working that exist between Public Health and NHS services. .
- (c) **Full Council to take back health scrutiny functions** – This would be a cumbersome and resource-intensive method of health scrutiny, and the majority of Members do not have the requisite knowledge or expertise in health matters for this to be effective.

6.2 If Council decides to delegate to a health scrutiny committee, it could retain some functions itself.

7 Conclusion

7.1 Creation of the HSC would be a positive step. It would ensure that the Council is better placed to discharge its responsibilities with respect to scrutiny of public health services, and to exercise its powers with respect to scrutiny of NHS services. It would provide additional capacity and would allow Members to develop and apply the necessary knowledge and expertise in this specialist area, and to fully engage with health partners.

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7.2 It would also help to ensure that the needs of local citizens were properly considered in the planning, development and operation of local health services, and to ensure that health, public health and social care services are better coordinated.

8 Appendices

8.1 Appendix A – Equalities Impact Assessment

8.2 Appendix B – Draft Terms of Reference

Background Papers:

[National Health Services Act \(2006\)](#)

[Health and Social Care Act \(2012\)](#)

[The Local Authority \(Public Health, Health and Wellbeing Boards and Health Scrutiny\) Regulations 2013](#)

[Advice to local authorities on scrutinising health services, 27 June 2014, Department of Health and Social Care](#)

[Policy Paper - Integration and innovation: working together to improve health and social care for all](#)

Subject to Call-In:

Yes: No:

The item is due to be referred to Council for final approval	<input checked="" type="checkbox"/>
Delays in implementation could have serious financial implications for the Council	<input type="checkbox"/>
Delays in implementation could compromise the Council's position	<input type="checkbox"/>
Considered or reviewed by the Overview and Management Commission or associated Task Groups within preceding six months	<input type="checkbox"/>
Item is Urgent Key Decision	<input type="checkbox"/>
Report is to note only	<input type="checkbox"/>

Wards affected: All

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Document Control

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Author:			
Owning Service			

Change History

Version	Date	Description	Change ID
1			
2			

Appendix A

Equality Impact Assessment (EqIA) - Stage One

What is the proposed decision that you are asking Council to make:	To delegate powers of scrutiny of matters relating to the planning, development and operation of Public Health and NHS services for patients in West Berkshire to the Health Scrutiny Committee reporting to OSMC.
Summary of relevant legislation:	The statutory requirements for the scrutiny of health services are set out in the National Health Service Act 2006 as amended by the Health and Social Care Act 2012. The relevant regulations are the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013.
Does the proposed decision conflict with any of the Council's priorities for improvement? <ul style="list-style-type: none"> • Ensure our vulnerable children and adults achieve better outcomes • Support everyone to reach their full potential • Support businesses to start develop and thrive in West Berkshire • Develop local infrastructure including housing to support and grow the local economy Maintain a green district • Ensure sustainable services through innovation and partnerships 	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Name of Budget Holder:	Sarah Clarke
Name of Service/Directorate:	Strategy & Governance / Resources
Name of assessor:	Gordon Oliver
Date of assessment:	21 December 2020
Version and release date (if applicable):	

Is this a ?		Is this policy, strategy, function or service ... ?	
Policy	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	New or proposed	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Strategy	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Already exists and is being reviewed	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Function	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Is changing	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Service	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		

(1) What are the main aims, objectives and intended outcomes of the proposed decision and who is likely to benefit from it?	
Aims:	To ensure that the Council delivers its statutory responsibilities with respect to scrutiny of local health services.
Objectives:	To set up a Health Scrutiny Committee, reporting to OSMC which would be responsible for scrutiny of the planning, development and operation of Public Health and NHS services for patients in West Berkshire.
Outcomes:	Improvement of the planning, development and operation of local health services, ensuring they are tailored to the particular needs of the local population.
Benefits:	More efficient, effective and coordinated health services that improve the physical and mental health and wellbeing of citizens and reduce health inequalities.

(2) Which groups might be affected and how? Is it positively or negatively and what sources of information have been used to determine this?		
Group Affected	What might be the effect?	Information to support this
Age	Positive	The Committee may undertake scrutiny of specialist health services provided to children and young people, or to older people
Disability	Positive	The Committee may undertake scrutiny of specialist health services provided to people with physical, sensory or learning difficulties.

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Gender Reassignment	Positive	The Committee may undertake scrutiny of specialist health services provided to people undergoing gender reassignment
Marriage and Civil Partnership	No impact	There are no specific health implications for this group
Pregnancy and Maternity	Positive	The Committee may undertake scrutiny of fertility, ante-natal, maternity services, and post-natal care
Race	Positive	The Committee may undertake scrutiny of how effectively the health system is addressing inequalities affecting people from particular ethnic minorities
Religion or Belief	No impact	There are no specific health implications for this group
Sex	Positive	The Committee may undertake scrutiny of specialist health services provided for men or women, and how effectively the health system is addressing inequalities between men and women
Sexual Orientation	No impact	There are no specific health implications for this group
Further Comments:		

(3) Result	
Are there any aspects of the proposed decision, including how it is delivered or accessed, that could contribute to inequality?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
The Health Overview & Scrutiny Committee will seek to reduce health inequalities.	
Will the proposed decision have an adverse impact upon the lives of people, including employees and service users?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
The Health Overview & Scrutiny Committee will seek to improve the experience for health service users.	

(4) Identify next steps as appropriate:	
EqIA Stage 2 required	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Owner of EqIA Stage Two:	
Timescale for EqIA Stage Two:	

Name: Gordon Oliver

Date: 21 December 2020

Draft Terms of Reference

Overview

The role of this Committee is to undertake scrutiny of the planning, development and operation of Public Health and NHS services for citizens of West Berkshire, in accordance with the National Health Service Act 2006 (as amended by the Health and Social Care Act 2012) and the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013.

Scrutiny of Social Care services within West Berkshire shall remain with the Overview and Scrutiny Management Commission (OSMC), and the Health Scrutiny Committee will report to OSMC.

Functions of the Committee

1. To review and scrutinise any matter relating to the planning, provision and operation of Public Health and NHS services for citizens of West Berkshire, and in doing so to ensure that services are safe and effective in improving health and wellbeing of local citizens and reducing health inequalities.
2. To proactively seek information about the quality of local Public Health and NHS services, and about the performance of the commissioners and providers of these services, and also to test information provided by commissioners and providers by drawing on different sources of intelligence.
3. To consider and respond to consultations by relevant NHS bodies or health service providers, on proposals that both parties agree constitute a substantial development or substantial variation in the provision of health services for citizens of West Berkshire, using the powers set out in the relevant legislation and referring to any guidance issued by the Secretary of State for Health.
4. To develop and maintain a joint protocol about how the Health Scrutiny Committee and responsible NHS bodies and health service providers will reach a view as to whether or not a proposal constitutes a “substantial development” or “substantial variation”.
5. To require the relevant NHS body or health service provider to provide information about the proposal under consideration and its impacts on patients in West Berkshire, and where appropriate to require the attendance of a representative of NHS body or health service provider before the Committee to answer such questions as appear to it to be necessary for the discharge of its function in connection with the consultation.
6. Where there is a disagreement between the Committee and the relevant NHS body or health service provider, which cannot be resolved after reasonable practicable steps and the Committee believes that:
 - (a) the proposed substantial variation or development would not be in the interests of the citizens of West Berkshire; or

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- (b) the arrangements put in place by the relevant NHS body or health service provider for consultation have not been adequate in relation to content or time allowed; or
- (c) the reasons given for not consulting by the relevant NHS body or health service provider are not adequate;

the Committee may determine whether to refer the matter to the Secretary of State for Health, in accordance with the relevant legislation and any government guidance, and taking account of any protocol agreed between the Committee and the NHS body or health service provider.

7. To liaise with Healthwatch West Berkshire (or its contractors) in relation to the health care element of their work programme, and to consider and respond to referrals from Healthwatch West Berkshire in relation to the planning, provision and operation of health services in the area.
8. To set up task and finish groups to undertake in-depth scrutiny reviews in relation to the above services on behalf of the Committee.
9. To consider and approve reports, including recommendations, prepared following in-depth reviews undertaken by task and finish groups, for submission to the relevant NHS organisation or other decision maker. Such reports and recommendations to include:
 - (a) an explanation of the matter reviewed or scrutinised;
 - (b) a summary of the evidence considered;
 - (c) a list of participants involved in the review or scrutiny; and
 - (d) an explanation of any recommendations on the matter reviewed or scrutinised.
10. To report on a quarterly basis to OSMC on progress against the work programme and any recommendations it makes.
11. In undertaking the above, the Health Scrutiny Committee should seek opportunities to engage with and represent local people, and engage them in the health scrutiny process.

Frequency of Meetings

Meetings of the Health Scrutiny Committee are to be held in public as a matter of course, unless discussing items that are considered to be sensitive, in which case these may be considered as Part II items.

The Committee shall meet in accordance with the timetable of meetings agreed annually by Full Council.

Extraordinary meetings may be convened with the agreement of the Chairman to deal with specific, urgent matters.

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Informal meetings, such as site visits, and meetings of task and finish groups may be organised as required.

Membership

There will be 5 Members of the Health Scrutiny Committee, which will reflect the political balance of the council. These cannot be Members of the Executive.

Up to two non-voting co-optees can be appointed to the Health Scrutiny Committee to provide particular health expertise to assist with a particular review.

Quorum

The quorum for the Health Overview & Scrutiny Committee shall be 4 voting members.

Joint Health Scrutiny Committees

Where a joint health scrutiny committee is set up to undertake scrutiny of health issues across local authority boundaries, West Berkshire Council's membership of that joint committee will be drawn from the Members of the Health Scrutiny Committee.