

## Part []

### Council Bodies

#### Appendix: Health Scrutiny Committee

##### 1 Preamble

- 1.1 Part [] (Council Bodies) sets out the rules and procedures that apply to all of the Council's Bodies and Sub-Bodies.
- 1.2 If there is any conflict between the wording of Part [] and this Appendix, this Appendix will prevail.

##### 2 Scope of Role

- 2.1 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.
- 2.2 Scrutiny of Social Care services within West Berkshire shall remain with the Council's Scrutiny Commission and the Health Scrutiny Committee will report to the Commission.

##### 3 Membership

- 3.1 There will be five Members of the Committee, which will be politically balanced and its membership will be as set out in the Committees List and Meetings Rules Table.
- 3.2 No Executive Member may be a Member or Substitute Member of the Committee or any of its Sub Bodies.
- 3.3 Up to two non-voting co-optees can be appointed to the Committee to provide particular health expertise to assist with a particular review.
- 3.4 No Committee Member may be involved in scrutinising a decision in which they have been directly involved. Any query about the meaning of "directly involved" will be decided by the Monitoring Officer.

##### 4 Terms of Reference

- 4.1 The Committee has the power 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.
- 4.2 Although the Committee may make recommendations for changes or improvements in the way that the Council or other bodies enact their business it does not have any direct decision-making powers, except in the way that it discharges its own responsibilities.
- 4.3 The Committee shall:
  - 4.3.1 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;

- 4.3.2 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;
- 4.3.3 develop and maintain a joint protocol about how the 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”;
- 4.3.4 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;
- 4.3.5 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;
- 4.3.6 set up task and finish groups to undertake in-depth scrutiny reviews in relation to the above services on behalf of the Committee;
- 4.3.7 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:
- an explanation of the matter reviewed or scrutinised;
  - summary of the evidence considered;
  - a list of participants involved in the review or scrutiny; and
  - an explanation of any recommendations on the matter reviewed or scrutinised.
- 4.3.8 report on a quarterly basis to the Commission on progress against the work programme and any recommendations it makes.
- 4.4 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:
- the proposed substantial variation or development would not be in the interests of the citizens of West Berkshire; or
  - 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
  - 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.
- 4.5 In undertaking the above, the Committee should seek opportunities to engage with and represent local people, and engage them in the health scrutiny process.

## 5 Proceedings

- 5.1 The Committee is responsible for setting its own work programme.

- 5.2 The Committee is not obliged to pursue a matter referred by a Member, Committee or Task Group but it must give reasons for its decision.
- 5.3 If it decides to pursue the matter, the Committee shall:
- 5.3.1 consider representations from the Member who referred it; and
- 5.3.2 report its findings and any recommendations back to the relevant person.
- 5.4 Where a matter is referred to the Committee by local Healthwatch organisations or contractors the Committee must:
- 5.4.1 acknowledge receipt of referrals within 20 working days.
- 5.4.2 keep the local Healthwatch organisations (or contractors as the case may be) informed of any action it takes in relation to the matter referred.

## 6 Evidence - Documents

- 6.1 All relevant NHS bodies and health service providers (including GP practices and other primary care providers and any private, independent or third sector providers delivering services under arrangements made by Integrated Care Boards, NHS England or the Council) have a duty to provide such information about the planning, provision and operation of health services in the area of the authority as the Council may reasonably require to discharge its health scrutiny functions.
- 6.2 The type of information requested and provided will depend on the subject under scrutiny. It may include:
- financial information about the operation of an NHS trust, ICB or other body;
  - management information such as commissioning plans for a particular type of service;
  - operational information such as information about performance against targets or quality standards, waiting times;
  - patient information such as patient flows, patient satisfaction surveys, numbers and types of complaints and action taken to address them.
  - any other information relating to the topic of a health scrutiny review which can reasonably be requested.
- 6.3 As commissioners or providers of public health services and as providers of health services to the NHS, services commissioned or provided by local authorities are themselves within the scope of the health scrutiny legislation. To that end the Council may be a body that is scrutinised, as well as a body that carries out health scrutiny. The duties which apply to scrutinised bodies such as the duty to provide information, to attend before health scrutiny and to consult on substantial reconfiguration proposals will apply to the Council insofar as it may be a “relevant health service provider”.
- 6.4 In relation to services provided or commissioned by the Council, Committee and Task Group Members have the right to documents as set out in the Access to Information Rules in Part [].
- 6.5 To facilitate effective scrutiny, more detailed liaison between the Executive and the Committee or a Task Group may take place depending on the particular matter under consideration.
- 6.6 The Committee will be entitled to copies of any document which is in the possession or control of the Executive that relates to a matter under review and which contains material relating to:
- 6.6.1 any business transacted at a meeting of the Executive or its Committees; or
- 6.6.2 any decision taken by an individual Member of the Executive; or

- 6.6.3 any decision made by an Officer under the Executive arrangements
- 6.7 But the Committee will not be entitled to:
  - 6.7.1 any document that is in draft form;
  - 6.7.2 any part of a document that contains Exempt or Confidential Information, unless:
    - 6.7.2.1 that information is relevant to an action or decision they are reviewing or scrutinising or intend to scrutinise; and
    - 6.7.2.2 the Monitoring Officer decides that it is appropriate for such Exempt or Confidential Information to be provided (in which event Commission Members shall respect the confidentiality of the information); or
    - 6.7.2.3 the advice of a political adviser or Group Executive that would be exempt under a Freedom of Information Act request.

## 7 Evidence – Testimony

- 7.1 Members and employees of a relevant NHS body or relevant health service provider have a duty to attend before the Committee or a Task Group (provided reasonable notice has been given) to answer questions the Committee or a Task Group believes are necessary to carry out its health scrutiny functions.
- 7.2 In relation to services provided or commissioned by the Council, the Committee or a Task Group may require the attendance of the relevant Executive Member, or any Senior Officer, to attend a meeting in order to provide advice and evidence in pursuit of a review being undertaken.
- 7.3 The Committee or a Task Group may invite other persons relevant to an item of business or matter under review to address it and/or answer questions on a voluntary basis.
- 7.4 The Committee may consider evidence in open or confidential session as the Chairman thinks appropriate following advice from the Monitoring Officer.
- 7.5 Where the Committee or a Task Group conducts a scrutiny review, the Committee will ask people to attend to give evidence at meetings which will be conducted in accordance with the following principles:
  - 7.5.1 that the meeting is conducted fairly and all Members of the Committee are given an opportunity to ask questions of attendees and speak;
  - 7.5.2 that those assisting the Committee by giving evidence are treated with respect and courtesy; and
  - 7.5.3 that the meeting is conducted so as to maximise the efficiency of the review.
- 7.6 Where any Member or Officer is required to attend the Committee, or Task Groups under this provision, the Chairman of the Committee will inform the Monitoring Officer. Senior Officers can be asked to attend. Officers below second tier may attend but will usually be accompanied by a senior manager.
- 7.7 The Monitoring Officer shall inform the Member or Officer in writing giving at least five clear working days' notice of the meeting at which they are required to attend. The notice will state the nature of the item on which they are required to attend to give account and whether any papers are required to be produced for the Committee or Task Group. Where the account to be given to the Committee or Task Group will require the production of a report, then the Member or Officer concerned will be given sufficient notice to allow for the preparation of that documentation.

## 8 Reports

- 8.1 Following any review, the scrutinising body shall prepare a draft report, with recommendations as appropriate, for publication and submission to the Committee. The Committee will agree or amend the report and direct it to the Monitoring Officer. In cases where the Committee is the scrutinising body, the agreed report will be directed to the Monitoring Officer. The Monitoring Officer will then refer the report, via the Chief Executive and S151 Officer, to check for factual errors and consideration of any financial implications, to:
- 8.1.1 the Council (if the recommendations would require a departure from, or a change to, the agreed Budget or Policy Framework); or
  - 8.1.2 the Executive (if the proposals are consistent with the Budget and Policy Framework); or
  - 8.1.3 another Body as they deem appropriate for a formal response to the report's recommendations; or
  - 8.1.4 an outside body or bodies in respect of a report with implications for such.
- 8.2 Where the Committee or Task Group requests a response from the relevant NHS body or health service provider to which it has made a report or recommendation, there is a statutory requirement (Regulation 22) for the body or provider to provide a response in writing within 28 days of the request.
- 8.3 The response to a recommendation from a decision-maker should consist of:
- 8.3.1 a clear commitment to delivering the measure within the timescale set out
  - 8.3.2 a commitment to be held to account on that delivery in six months or a year's time
  - 8.3.3 where it is not proposed that a recommendation be accepted, the provision of detailed, substantive reasons why not.
- 8.4 It is the Committee's responsibility to monitor and evaluate recommendations once they are implemented.

## 9 Minority Report

- 9.1 If the Committee or a Task Group cannot agree on one single report to the Executive or to Council or to a named external organisation as appropriate, then up to one minority report may be prepared and submitted for consideration with the majority report.

## 10 Response to Consultation

- 10.1 Where the Committee has been consulted by a relevant NHS body or health service provider on substantial developments or variations, the Committee has the power to make comments on the proposals by the date notified by the body or provider undertaking the consultation. Having considered the proposals and local evidence, the Committee should normally respond in writing to the body undertaking the consultation.
- 10.2 Where the Committee's comments include a recommendation and the consulting organisation disagrees with that recommendation, that organisation must notify the Committee of the disagreement. Both the consulting organisation and the Committee must take such steps as are reasonably practicable to try to reach agreement. Where NHS England or a clinical commissioning group is acting on behalf of a provider, in accordance with the Regulations, the Committee and NHS England or the ICB (as the case may be) must involve the provider in the steps they are taking to try to reach agreement.

- 10.3 Where the Committee has not commented on the proposal or has commented but without making a recommendation, it must notify the consulting organisation as to its decision as to whether to refer the matter to the Secretary of State and if so, the date by which it proposes to make the referral or the date by which it will make a decision on whether to refer the matter to the Secretary of State.

## 11 Referral to Secretary of State

- 11.1 The Committee may refer proposals for substantial developments or variations to the Secretary of State in writing if:
- 11.1.1 it is not satisfied with the adequacy of content of the consultation;
  - 11.1.2 it is not satisfied that sufficient time has been allowed for consultation;
  - 11.1.3 it considers that the proposal would not be in the interests of the health service in its area;
  - 11.1.4 it has not been consulted, and it is not satisfied that the reasons given for not carrying out consultation are adequate.
- 11.2 Where the Committee has made a recommendation and the relevant NHS body or health service provider has disagreed with the recommendation, the health scrutiny body may not refer a proposal unless:
- 11.2.1 it is satisfied that reasonably practicable steps have been taken to try to reach agreement (with steps taken to involve the provider where NHS England or a CCG is acting on the provider's behalf) but agreement has not been reached within a reasonable time; or
  - 11.2.2 it is satisfied that the relevant NHS body or health service provider has failed to take reasonably practicable steps to try to reach agreement within a reasonable period.
- 11.3 In a case where the Committee has not commented on the proposal or has commented without making a recommendation, it may not refer a proposal unless:
- 11.3.1 it has informed the relevant NHS body or health service provider of:
    - 11.3.1.1 its decision as to whether to exercise its power of referral and, if applicable, the date by which it proposed to exercise that power, or
    - 11.3.1.2 the date by which it proposes to make a decision as to whether to exercise its power of referral; and
  - 11.3.2 in a situation where it informed the relevant NHS body or health service provider of the date by which it proposed to decide whether to exercise the power of referral, it has made that decision by that date and informed the body or provider of the decision.
- 11.4 Before making a referral to the Secretary of State, the referral shall be checked by the Monitoring Officer to ensure that it satisfies the requirements as set out in the Regulations and contains the necessary information and evidence.

## 12 Report to Council – Key Decision

- 12.1 The Committee can require a report if it thinks that a Key Decision that affects the health and wellbeing of the local population has been taken which was not:
- 12.1.1 treated as being a Key Decision; or
  - 12.1.2 included in the Forward Plan; or
  - 12.1.3 the subject of the general exception procedure; or
  - 12.1.4 the subject of an agreement with the Committee Chairman, or the Chairman/Vice-Chairman of the Council.

- 12.2 The Committee may then require the Executive to submit a report to the Council within such reasonable time as the Committee specifies. The power to require a report rests with the Committee, but is also delegated to the Monitoring Officer, who shall require such a report on behalf of the Committee when so requested by the Chairman or any five Members. Alternatively the requirement may be raised by resolution passed at a meeting of the Committee.

### 13 Decisions of the Executive

- 13.1 All decisions of the Executive are subject to rules regarding publicity as set out in Part [] (Executive Rules).
- 13.2 Any decision of the Executive which affects the health and wellbeing of the local population may be subject to the Call in Procedure that is fully set out in Part [] (the Scrutiny Commission Appendix). Rules 11 to 17 of the Scrutiny Commission Appendix will apply to the Health Scrutiny Committee, save that any reference to Commission shall be taken for these purposes to refer to the Health Scrutiny Committee.