REPORT TO THE JOINT HEALTH OVERVIEW AND SCRUTINY COMMITTEE

DATE OF MEETING: 27TH FEBRUARY 2018

SUBJECT OF REPORT: PROPOSED AMENDMENT TO THE JOINT COMMITTEE'S TERMS OF REFERENCE

TOWN OR PARISH: N/A

OFFICER/MEMBER PRESENTING: COUNCILLOR ROZ WILLIS

KEY DECISION: NO

RECOMMENDATIONS

(1) That Members review the resolution agreed at the last Joint Committee meeting on 23rd October 2017 regarding the proposed change to the Joint Health Overview and Scrutiny Committee (JHOSC) Terms of reference (ToR); and

(2) in doing so, clarify the intent and scope of the proposed change to the ToR.

1. SUMMARY OF REPORT

Following the last JHOSC meeting, it has become evident that there is some uncertainty amongst JHOSC Members around the intention and scope of the proposed amendment to the ToR. Any change to the ToR must be endorsed by all three constituent Councils and it was therefore felt that further clarity was needed before the proposal could be presented to each Council for approval.

In order to address this uncertainty and assist Members in clarifying their intent in respect of the proposed amendment, this report seeks to:-

- review the JHOSC's current remit and scope as set out in the existing ToR (a copy of the existing ToR is attached at appendix 1), and in that context;
- review the proposed ToR amendment in the light of the issues and concerns raised by Members whilst debating the resolution and since the meeting;

The proposed change to the ToR relates to the forthcoming merger between the three Bristol, North Somerset and South Gloucestershire (BNSSG) Clinical Commissioning Groups (CCGs) and, as this will not take effect until 1st April, this will allow sufficient time for the JHOSC to review the proposal and for Councils to subsequently consider the proposed change to the ToR prior to the merger taking effect.

2. POLICY

N/A

3. DETAILS

3.1 At the JHOSC meeting held on 23rd October, Members voted in favour of the following resolution:

"that the terms of reference add the power to scrutinise the new CCG and other NHS bodies acting together across North Somerset, Bristol and South Gloucestershire" and that "the proposed amendment be referred to individual authorities to progress through their governance processes".

3.2 This resolution followed discussion about implications of the proposed merger of the three BNSSG CCGs in which a number of issues were raised including:-

- concern was expressed that a newly merged BNSSG CCG may not fall within the current remit of the JHOSC;
- Members sought clarification on whether some activities of a newly merged CCG would fall outside of the scope of the existing STP
- The Committee was asked to note that individual authorities were engaged in ongoing dialogue with the CCGs to discuss individual local concerns.

Additional concerns have been raised since the meeting that the effect of the amendment to the ToR would be to widen the remit of the JHOSC beyond its current focus on the STP process and that a potential implication would be that this would require further delegation of Council/HOSCS scrutiny powers.

3.2 In order to assist Members reconsider the proposed ToR amendment, it would be useful to review and address the issues and concerns raised by Members with reference to the relevant sections of the existing ToR.

3.3 Would a newly merged BNSSG CCG fall within the JHOSC's current remit?

The ToR defines the JHOSC remit as:-

"….to collectively review and scrutinise the Bristol, North Somerset and South Gloucestershire (BNSSG) Sustainability and Transformation Plan pursuant to Regulation 30 of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013." (Paragraph 1 of the JHOSC ToR)

Other than referring broadly to "relevant NHS bodies", the ToR does not specify any particular organisation as falling within its remit. The STP process itself provides the scope of the JHOSC's remit and any "NHS body" involved in the delivery of the STP process falls within that scope. A newly merged BNSSG CCG would therefore, by definition, fall within the existing JHOSC remit.

3.4 *Clarification on whether some activities of a newly merged CCG would fall outside the scope of the existing STP*

It was confirmed at the October JHOSC meeting that some CCG commissioning activities would indeed fall outside the scope of the STP process. The example given at the time was that recent CCG commissioning proposals relating to proposed savings from restriction of treatments were separate from the STP process (and not therefore within the JHOSC remit) since these where about meeting the CCG's own operational and cost efficiency targets – rather than about finding efficiencies and improvements through the STP partnership.

Individual HOSCs/Authorities are not of course prevented from considering any such matters which may fall outside the JHOSC remit, either independently or by entering alternative bespoke joint arrangements with other authorities.

3.5 *Individual HOSCs/Authorities will continue to scrutinise local concerns and can consider "discretionary" aspects of the STP process.*

In further defining the JHOSC's remit, the current ToR sets out that, pursuant to Regulation 30 (see above), the Committee's statutory function is "to collectively review and scrutinise any proposals within the STP that are deemed to be a substantial development of the health service or the substantial variation of such service where more than one local authority is consulted by the relevant NHS." (Paragraph 2, JHOSC ToR). The attached information at Appendix 2 below provides further clarification on the rather complex question of what would constitute a "substantial variation or development".

This statutory scrutiny function or power was delegated by each constituent Council when they endorsed the JHOSC ToR and, in doing so, forfeited their right to independently scrutinise these prescribed matters.

Paragraph 3 recognises that there would be proposals within the STP that may predominately impact just one of the three constituent authority districts, thereby falling outside the JHOSC remit, and which would be referred back to the relevant authority's HOSC for scrutiny.

Paragraph 4 makes a distinction between the statutory and the "discretionary" or non-statutory elements of the JHOSC remit, referring to the continuing right of individual HOSCs to independently consider "discretionary matters" should they wish. The statutory element of JHOSC's remit relates directly to the statutory scrutiny powers formally delegated by each contributing Council/HOSC to the JHOSC. What ultimately determines whether an STP proposal is within the JHOSC statutory remit (ie whether it is a "statutory" or "discretionary matter") is whether or not the relevant NHS body (or bodies) is required to formally consult more than one BNSSG Council/HOSC on its impacts.

3.6 *Would individual authorities/HOSCs need to devolve further scrutiny "powers" should the proposed change to the JHOSC ToR be agreed?*

This would depend on the precise intention behind the proposed amendment to JHOSC remit to specifically include scrutiny of a newly merged BNSSG CCG. When clarifying this intention, issues that should be borne in mind would include:

- is this amendment needed? If the original intention was merely to ensure that a newly merged BNSSG CCG falls within the remit of the JHOSC, then there would be no need for the amendment since <u>any</u> NHS body involved in the STP process falls within the scope of the current ToR, regardless of whether it merges with another NHS organisation or otherwise reorganises itself;

- if the intention was that the JHOSC should take on the statutory elements of scrutinising the BNSSG CCG – outside the boundaries of the STP process - this would be a significant widening of the scope of the originally agreed ToR and would indeed require that constituent Council/HOSC agree a further delegation of statutory scrutiny powers to this JHOSC to enable this to take place.

- It is worth noting that, if Members are not proposing that the JHOSC take on the statutory functions associated with scrutinising a newly merged CCG, a "discretionary" joint scrutiny committee can be established at any time by constituent HOSCS without requiring formal agreement from constituent Councils. Furthermore, any significant BNSSG CCG proposal arising outside the STP process would in any case, pursuant to Section 30 of the guidance, require the formation of an ad hoc joint committee – should the proposal relate to a potential substantial service variation or development requiring that more than one HOSC be formally consulted.

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BACKGROUND PAPERS

Local Authority Health Scrutiny – Guidance to support Local Authorities and their partners to deliver effective health scrutiny
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/324965/Local_authority_health_scrutiny.pdf

The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 http://www.legislation.gov.uk/uksi/2013/218/contents/made

(Appendices follow below…)

Appendix 1

Sustainability and Transformation Plan Joint Health Scrutiny Committee: Terms of Reference

1) Bristol City Council, North Somerset Council and South Gloucestershire Council to collectively review and scrutinise the Bristol, North Somerset and South Gloucestershire (BNSSG) Sustainability and Transformation Plan (STP) pursuant to Regulation 30 of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013.(Regulation 30)

2) To collectively review and scrutinise any proposals within the STP that are a substantial development of the health service or the substantial variation of such service where more than one local authority is consulted by the relevant NHS body pursuant to Regulation 30

3) To collectively consider whether a specific proposal within the STP that's is not a substantial development or variation is only relevant for one authority and therefore should be referred to that authority's Health Scrutiny Committee for scrutiny.

4) In the event that a participating council considers that it may wish to consider a discretionary matter itself rather than have it dealt with by the joint committee it shall give notice to the other participating councils and the joint committee shall then not take any decision on the discretionary matter (other than a decision which would not affect the council giving notice) until after the next full Council meeting of the council giving notice in order that the council giving notice may have the opportunity to withdraw delegation of powers in respect of that discretionary matter.

5) To require the relevant local NHS body to provide information about the proposals under consideration and where appropriate to require the attendance of a representative of the NHS body to answer such questions as appear to it to be necessary for the discharge of its function

6) Make reports or recommendations to the relevant health bodies as appropriate and/or the constituent authorities' respective Overview and Scrutiny committees or equivalent

7) Each Council to retain the power of referral to the Secretary of State of any proposed "substantial variation" of service, so this power is not delegated to the JHOSC.

(Cont….)

What is a Substantial Variation or Development?

Though referred to in statute, there is no official definition of what constitutes a substantial variation or development.

Proposals for service change should be discussed with the relevant local authority at an early stage, in order to agree whether or not the proposal is considered substantial. In determining what is “substantial” health NHS bodies must provide sufficient information so that an informed decision can be made.

The key feature of a substantial variation or development is that there is a major change to services experienced by patients and future patients. Guidance suggests that in deciding whether a proposal is substantial, the following issues should be considered:

- Changes in accessibility of services;
- Impact of the service on the wider community and other services, including economic impact, transport and regeneration;
- Number of patients affected. Changes may still be ‘substantial’ even if change affects a small group of patients, especially if patients need to continue to access that service for many years;
- Methods of service delivery (for example, moving a particular service into a community setting from an acute hospital setting).

Guidance issued by the Centre for Public Scrutiny includes the South West Framework for Substantial Variations and Development (attached below), which lists the characteristics likely to diminish defining the proposal as substantial, and the characteristics likely to increase defining the proposal as substantial.

The decision should be informed by discussion with other key stakeholders including Healthwatch. If agreement cannot be reached as to whether a proposal is a substantial development or variation, it is for the NHS body or health service provider to decide how to proceed. A local authority can make a referral to the Secretary of State on the basis of inadequate consultation but not until all reasonably practicable steps to try to reach agreement have been taken. This will inevitably result in delays to a scheme and means that when determining its course of action, the NHS or health provider will need to consider on balance the risk of incurring delays, against the option to consult.

(Cont….)

South West Framework for Substantial Variations and Developments	
Characteristics likely to *diminish* defining proposals as substantial	**Characteristics likely to *increase* defining proposals as substantial**
Where questions are about quality	
• Evidence about clinical performance and sustainability supporting proposal • Area of proven practice with robust clinical governance and risk assessment arrangements	• Weak evidence base • Proposal not tried and tested • Conflict or disagreement including staff opposition to proposal • Ethical issues • Where issues of quality, or choice vs. access need to be balanced
Groups affected and nature of impact	
• Patients do not consider proposals significant • Proposals will have positive impact on patients and carers • Proposals to increase capacity/access/address any adverse travel implications	• Patients consider proposals significant • Proposals will have varying impact on different constituencies • Proposals increase inequalities in access to services Wider implications: • Adverse impact on patients groups • Lack of cohesion with other NHS or community strategies • Widening of inequalities • Cumulative effect • Effect on wider community
Climate of opinion	
• Clinical support for proposal • Support from community and patients through robust community and stakeholder engagement at all stages • Proposals specifically address concerns e.g. transport provision and home support for day surgery • Proposal based on need for change and agreement on way forward	• Lack of clinical consensus • Following patient and public involvement, no consensus reached • High level of opposition, especially from patients and public, concerns not addressed, inadequate community engagement • Rationale for proposal not clear