



INNER NORTH EAST LONDON (INEL) JOINT HEALTH and OVERVIEW SCRUTINY COMMITTEE (JHOSC)

Substantial Variation Protocol

Background

The Inner North East London (INEL) Joint Health and Overview Scrutiny Committee (the “JHOSC”) is responsible for undertaking the joint health scrutiny function across local authority boundaries, as set out in:

- [National Health Service Act 2006](#);
- [Health and Social Care Act 2012](#);
- [Local Authority \(Public Health, Health and Wellbeing Boards and Health Scrutiny\) Regulations 2013](#);
- [Local Authority Health Scrutiny: Guidance to support Local Authorities and their partners to deliver effective health scrutiny](#).

There is also statutory guidance for NHS commissioners that is relevant to health scrutiny and public consultation:

- [Patient and Public Participation in commissioning health and care: Statutory guidance for Clinical Commissioning Groups \(CCG\) and NHS England \(NHSE\)](#).

The INEL JHOSC is responsible for reviewing and scrutinising any matter relating to the planning, provision and operation of the health services in joint areas and across boroughs.

The 2013 Regulations require that where there are proposed substantial developments / variations to health services in an area, the responsible organisations must consult with INEL JHOSC.

The health scrutiny guidance is clear that the commissioner is responsible for undertaking the consultation (4.3.1):

“In the case of substantial developments or variation to services which are the commissioning responsibility of CCGs or NHS England, consultation is to be done by NHS commissioners rather than providers i.e. by the relevant CCG(s) or NHS England. When these providers have a development or variation “under consideration” they will need to inform commissioners at a very early stage so that commissioners can comply with the requirement to consult as soon as proposals are under consideration.”

INEL JHOSC must invite the views of interested parties and take into account any relevant information made available to it; including Healthwatch in particular.

INEL JHOSC has the power to make reports and recommendations, and there is a duty on the local health services and providers to consider and respond formally.

The INEL JHOSOC PROTOCOLS operates underneath any legislation or NHS regulations that governs the scrutinising of any matter relating to the planning, provision and operation of the health services in joint areas and across boroughs.

Regulations

Regulations state that where a recommendation is not agreed by the commissioner, it must:

- Notify the committee of the disagreement;
- Work with the committee to take reasonable steps.

The regulations do not define what qualifies a substantial development / variation, however, the guidance suggests that a locally agreed protocol is in place between the health scrutiny function and commissioners.

Principles

This protocol and the guidance on when to submit items to INEL JHOSC is provided to support the following:

- Give a clear understanding of roles and responsibilities for elected officials, commissioners, providers and health scrutiny members;
- Ensure effective delivery of health scrutiny's primary aim:
 - o to strengthen the voice of local people;
 - o ensure needs and experiences are considered as an integral part of the commissioning and delivery of health services; and
 - o that those services are effective and safe.”¹
- Strengthen and enhance the role of public involvement in respect to commissioning health services;
- Ensure compliance with statutory powers and duties related to substantial developments / variations, as well as modelling best practice in respect to the role of joint health scrutiny.

The guidance encourages early engagement with joint health scrutiny in order to establish how best to consult on any proposals.

It is important to note that any agreement with the joint health scrutiny committee does not alter the wider duty to consult service users placed on NHS organisations. In particular, any decision regarding whether a proposed change does not constitute a “substantial reconfiguration” will not impact on the wider duty to consult as set out under sections 14Z2 and 242 of the NHS Act 2006.

This is important as it will ensure there is a clear record of health scrutiny being involved in early planning discussions, and a clear audit trail in case a decision is challenged in the process. Compliance with the process reduces the risk of decisions being delayed, put on hold or subject to judicial review.



What are the other Boards?



Health Scrutiny Board

what is it?

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 commissioning and delivery of health services and that those services are effective and safe.

Health Scrutiny is part of the accountability of the whole system and needs the involvement of all parts of the system. Engagement of relevant NHS bodies and relevant health service providers with health scrutiny is a continuous process.

Health Scrutiny should be outcome focused, looking at cross-cutting issues, including general health improvement, wellbeing and how well health inequalities are being addressed, as well as specific treatment services.

Local Authority Health Scrutiny, June 2014



Health and Wellbeing Board

what is it?

The Health and Wellbeing Board is separate from Health Scrutiny and is responsible for producing a Joint Strategic Needs Assessment (JSNA) and a Joint Health and Wellbeing Strategy (JHWS) in each borough. It also has a role in promoting integration between Health and Social care.

Membership of the Health and Wellbeing Board is set out in the [Health and Social Care Act 2012](#) and comprises:

- Relevant Cabinet Members and Chief Officers from the Council;
- Senior Representatives from the local NHS Bodies including the CCG;
- Representatives of Healthwatch and local Voluntary Sector representative body;
- Representatives of other key stakeholders (RBLs, police etc)



What is the JHOSC?



Joint Health and Overview Scrutiny Committee (JHOSC)

what is it?

The [Inner North East London Joint Health Overview and Scrutiny Committee](#) (INEL JHOSC) is a joint committee made up of a delegated number of scrutiny Councillors from the London Boroughs of Hackney, Newham, Tower Hamlets and the City of London Corporation to consider health scrutiny issues across the subregion.

The Committee's remit is to consider London wide and local NHS service developments and changes that impact all the authorities mentioned above. The Committee meets as required and is established in accordance with section 245 of the NHS Act 2006 and Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002.



JHOSC

arrangements and items for scrutiny:

Local Authorities may appoint a discretionary joint health scrutiny committee (reg 30) to carry out all or specified health scrutiny functions, eg: scrutiny of issues that cross borough boundaries. Establishing a joint committee of this kind does not prevent the local authorities from separately scrutinising health issues, however there are likely to be occasions on which a joint committee is the best way of considering how the needs of a local population are being met with cross borough commissioning. (Local Authority Health Scrutiny, June 2014)

Broadly there are two main types of agenda item:

- Request from NHS for early input to emerging proposals, this could be part of wider engagement eg: a full public consultation or engagement with PPIs or Healthwatch;
- Request from NHS for formal engagement of a specific 'case for change' proposal ie: a service charge. In these cases the JHOSC can either 'endorse' or 'not endorse' the proposal. The JHOSC can also refer the matter to the Secretary of State.





Process for deciding what constitutes a substantial variation and items for consideration:



INEL JHOSC
items for consideration:

Regulation 30 also requires local authorities to appoint 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. In such circumstances, Reg 30 sets out the following requirements:

- ONLY the JHOSC may respond to the consultation and not the individual local authorities;
- ONLY the JHOSC may exercise the power to require the provision of information by the relevant NHS body or health service provider about the proposal;
- ONLY the JHOSC may exercise the power to require members or employees of the relevant NHS body or health service provider to attend before it to answer questions in connection with the consultation.



There should be an initial discussion and agreement between the NHS and local authority Scrutiny Officer about whether or not a proposed change constitutes a substantial development / variation. The commissioner will contact the committee scrutiny officer to discuss the details of the proposed change.



INEL JHOSC
items being submitted:

Does the proposal or formal substantial variation* cover two or more of the following local authorities: City of London, Hackney, Newham, Tower Hamlets, Waltham Forest?

If no, then it may need to go to the local Health Overview & Scrutiny Cttee or to a local Health and Wellbeing Board instead.

If yes, then it needs to come to INEL to endorse a specific proposal or to engage on options being considered.

Consulting Overview and Scrutiny is just one engagement process which you may be required to consider amongst others e.g. full public consultation. Is this paper presenting proposals which INEL now needs to endorse?

If no, then the paper is not ready for submission to JHOSC.

If yes, then please ensure the paper clearly states that INEL is being invited to 'Endorse' the proposal.

Has the paper already been through other consultation or engagement processes and is ready to be presented for endorsement by INEL?

If no, then the paper is not ready for submission to INEL for final endorsement and Councilors won't have had an opportunity to consider patient and public concerns.

If yes, then please ensure the paper clearly summarises the results of your other consultation activity and the recommendation(s) you are making as a result.

* a substantial variation is considered to be a major change to services that affect patients.



The item will then be referred to the JHOSC Chair and vice-Chairs, along with any recommendations.



The Chair will make a decision on the basis of the evidence; the following factors should form the basis of their consideration:

- Changes in accessibility of services;
- Impact of proposal on the wider community;
- Numbers of patients affected;
- Numbers of staff affected;
- Methods of service delivery;
- The impact on specific groups of patients, eg: older people, those with mental health conditions or those with a life-long condition.

The scrutiny officer will confirm with commissioners in writing the outcome of this discussion, and schedule an agenda item for a future meeting.

The guidance states that the JHOSC and the commissioner should try to reach a consensus about what qualifies as a substantial variation. Where disagreement arises, it is recommended that the commissioner seek the advice of the Independent Reconfiguration Panel.

The JHOSC reserves the right to make a referral to the Secretary of State if an agreement cannot be reached (sec 224 (2ZA) National Health Services Act 2006 as amended).

The JHOSC may also request items to be brought to a meeting if members feel strongly that certain areas or items need further scrutiny.



INEL JHOSC

items being requested:

On occasion, INEL JHOSC Members may request certain items, which they believe may be consistent with a substantial variation, and which cover two or more of the following Boroughs: City of London Corporation, Hackney, Newham, Tower Hamlets, Waltham Forest.

If NHS Partners believe the item does not meet the criteria for JHOSC, they are able to discuss this further with the JHOSC Chair and Scrutiny Officer. If a joint decision is made that it does NOT meet the criteria, then it will be referred to their respective HOSC.

INEL JHOSC Scrutiny Officer will ensure item is on appropriate Agenda to allow papers to be presented and recommendations to be reviewed.

Following meeting, the Scrutiny Officer will continue to liaise with NHS partners to ensure recommendations are accurately fed back and to ensure INEL JHOSC Members are kept abreast of current issues and receive responses to any additional questions they submit.

* a substantial variation is considered to be a major change to services that affect patients.



Substantial Development / Variation Discussion Pro-forma form:

Substantial Variation Discussion Pro-forma

What are the Recommendations you are asking from INEL JHOSC?

(eg: endorse, submit further recommendations).

What is the background for this change?

(ie: why is this change required?)

What is the change proposed?

(for example relocation of wards, change of service model, closure of services)

What is the likely impact of the change for patients?

How many patients are likely to be affected?

(include specific groups where identified)

What are the financial implications if changes do not occur?

To date, how have people been involved in the planning for the change?

What is the timescale for the change and what consultation activity is planned?

What consultation has occurred and is planned?

Has this topic been considered by the committee before, and if so what was the outcome?

What equalities impact analysis has been undertaken, and what were the key findings?



INEL JHOSC cover sheet:

INNER NORTH EAST LONDON (INEL) JOINT HEALTH and OVERVIEW SCRUTINY COMMITTEE (JHOSC)

Report title	INEL JHOSC
Date of Meeting	
Lead Officer and contact details	Robert Brown Senior Scrutiny Policy Officer DDI: 020 3373 7142 robert.brown@newham.gov.uk
Report Author	
Witnesses	
Boroughs affected	<ul style="list-style-type: none"> ● City of London Corporation ● Hackney ● Newham ● Tower Hamlets
Recommendations: That INEL JHOSC: <ul style="list-style-type: none"> ● ● 	



Background

xxx

Key Improvements for Patients

- x

Implications

Financial Implications

x

Legal Implications

x

Equalities Implications

x

Background Information used in the preparation of this report

- x