

TOWER HAMLETS HEALTH SCRUTINY PROTOCOL

(DRAFT)

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1 Introduction

Background

- 1.1 The role of Local Authority Health Scrutiny is to consider health services in the widest possible sense and act as a lever for improving the health and well-being of local people. Its powers are drawn from the Health and Social Care Act 2001 which gave local authorities the power to "review and scrutinise, matters relating to the health service in the authority's area, and to make reports and recommendations".
- 1.2 The Act is part of a series of legislative developments aiming to place patients and the public at the heart of decision-making in the NHS. It gave democratically elected community leaders the opportunity to voice the views of their constituents and require local NHS bodies to listen and respond through a statutory duty on Health Overview & Scrutiny to comment on NHS developments.
- 1.3 The Health and Social Care Act 2001 also placed a duty on NHS bodies to consult health scrutiny on "substantial developments and variations in services." Subsequent legislation has consolidated the duty on Health Trust Executives to attend meetings when required and for NHS Trusts to respond to any recommendations made by Health Scrutiny.
- 1.4 Through the NHS Reform & Health Care Professions Act 2002, Health Scrutiny was given further powers to refer contested issues to the Secretary of State for Health or to the independent regulator of Foundation Trusts.
- 1.5 Most recently the Local Government and Public Involvement in Health Bill 2007 introduced provisions for new Local Involvement Networks to replace patient forums and has laid the foundation for health services to be more accountable to patients and the public. The key new features of Local Involvement Networks include powers of inspection of services and the ability to refer issues to Health Scrutiny.

Health Scrutiny In Tower Hamlets

- 1.6 In Tower Hamlets the Health Scrutiny Panel has been established as a standing sub-committee of the Overview and Scrutiny Committee (OSC). Its Terms of Reference are:
 - (a) to review and scrutinise matters relating to the health service within the Council's area and make reports and recommendations in accordance with any regulations made
 - (b) to respond to consultation exercises undertaken by an NHS body

(c) to question appropriate officers of local NHS bodies in relation to the policies adopted and the provision of the services.

- 1.7 This Protocol has been produced in consultation with the East London NHS Foundation Trust, Tower Hamlets Primary Care Trust and the Barts and London NHS Trust, to provide a framework for that scrutiny to take place. It is intended that this is a working document to be updated annually to ensure that it reflects changing needs and evolving good practice
- 1.8 The aim of the Health Scrutiny Protocol is to set out a shared agreement for how the Council, NHS partners and health stakeholders will work together to respond to the statutory responsibilities placed on them within the wider duty to improve the health and wellbeing of local people.
- 1.9 The protocol seeks to ensure a shared understanding about the intended purposes of health scrutiny and to agree procedures for working together.

2 Principles of Joint working

Health Scrutiny in Tower Hamlets will be carried out in accordance with Government Guidance and on the basis of the following principles :

2.1 Shared Responsibility

The health of local residents is dependent on a number of factors, not just the quality of health services provided by NHS organisations, but also the quality of other services, many of which are provided by the Council.

Many health services are provided jointly or as the result of partnerships between the local authority and local NHS organisations, as well as other partners.

2.2 Cooperation

Health scrutiny will be successful only if the key agencies involved work together within a climate of mutual respect and constructive challenge as well as a shared aspiration of the purpose of health scrutiny.

The key agencies involved must be willing to share knowledge, respond to requests for information, invitations and reports as appropriate and carry out any duties expected of them in relation to health scrutiny.

2.3 Accountability

The process of health scrutiny will be open and transparent.

The Health Scrutiny Panel, whilst working within a framework of partnership and cooperation, is independent of the NHS. It also has the authority to hold views independent of those of other Members of the Council and the Council's Executive. Its aim should always be to work for the benefit of local residents.

2.4 Accessibility

Health Scrutiny will work best if it is seen as a process that enables Elected Members to engage with both patients and the public and where the key agencies engaged in the process are working together to ensure that opportunities for patient and public involvement are maximised.

The scrutiny process should have high regard for the need to be inclusive in its dealings with all appropriate groups and should pay particular attention to the challenge of health inequalities.

2.5 Outcome-focussed

Health Scrutiny in Tower Hamlets is focussed on improving health service provision and improving the health of local people.

It is not the role of the Health Scrutiny Panel to take up and scrutinize individual cases. Nor is it appropriate for health scrutiny to act as a complaints service for individual patients and members of the public.

Self-evaluation, as well as evaluation by others, will be welcomed by those involved in the health scrutiny process as useful ways of ensuring effective scrutiny.

2 Developing the Health Scrutiny Work Programme

The Health Scrutiny Panel opted to develop a four year rolling work programme in 2006 to provide a long-term strategic vision for Health Scrutiny activities. Members were keen that their work focused on health inequalities, reflecting the health needs of the borough and the Council's vision for improving the quality of life for local people. The four year work programme runs in parallel to an electoral cycle to help build a coherent body of work over the lifetime of an administration.

Membership of the Panel is renewed every year and Members review issues against a scheduled work programme covering key business items for example the annual Commissioning Intentions report as well as issues that Trusts have said they would like to consult the Panel on.

The Panel also look into areas of concern as raised by local residents and elected Members about health service provision as they come up during the year.

This protocol sets out key criteria for determining items to be placed on to the work programme. This is to help clarify the purpose and role of health scrutiny but also to support Trusts in considering which issues to put forward for the work programme.

Health Scrutiny selection criteria

Health Scrutiny topics are prioritised against defined criteria to ensure that the work:

Importance

- would assist in tackling an area of poor or challenging performance
- would assist with sustaining high performance that has a high priority within Local Area Agreement
- would assist in addressing an area of national policy development that has significant implications for the NHS or the Council and where member input would be valuable
- relates to a planned service inspection and member input would be valuable in providing a robustness test before inspection (or submission of self-assessment)
- would help address a gap between community perception or concern and objective performance by utilising the members' leadership role
- would contribute particularly toward improving VFM

Impact

- area of benefit (eg ward, LAP, borough or number of people that will benefit)
- significant budget commitment (by Council or partners)
- appropriate for Scrutiny investigation (this would include consideration of action or work elsewhere (BV, Audit Commission), resources, timing and impact)

3 Scrutiny Reviews

- 3.1 Each year the Health Scrutiny Panel carries out an in-depth review into a local health priority engaging health service providers and community stakeholders to help inform service improvements.
- 3.2 A scoping document will be produced for all in-depth scrutiny reviews on health matters, which will identify specific concerns or issues to be considered. This will be discussed by members of the panel and be

sent to the relevant services/departments/partner organisations for any comments or observations. The working group will also decide whether there is any need to appoint external advisers to the review or co-opt appropriate individuals (non voting) with particular knowledge or expertise of the issue in question.

3.3 Reviews on health issues will: -

- Identify key stakeholders and potential witnesses
- Inform representatives of these groups about the scrutiny review
- Hold interviews with witnesses to receive oral and written evidence
- Be focussed in choosing information to avoid overload
- Be sophisticated and imaginative in gathering evidence both written and oral. This may include visits to key stakeholders or other organisations.
- Meet to discuss the evidence gathered and to draw conclusions and Recommendations.

3.4 Review meetings will, except in exceptional circumstances, take place in public. They will be minuted for reference with a record of all participants and witnesses. A final report will be drafted which summarises the evidence considered and explains the recommendations and conclusions of the review. The report will normally be the consensual view of the review panel. The report will be evidence based and present a balanced view of the issues. It will contain clear recommendations and direct these towards the appropriate executive decision-maker of specific named implementing agencies.

3.5 Prior to the report being submitted to OSC, the report will be sent to relevant chief officers and executive bodies and other identified key stakeholders to check its factual accuracy.

3.6 Following approval of the report by OSC, the final report will be sent to the relevant executive body of the implementing agencies and the Cabinet of Tower Hamlets Council. The executives of the relevant implementing agencies will subsequently be invited to respond formally to the review and its recommendations. Four weeks will normally be allowed for such a response but this period may be extended in consultation with the Chair of the OSC.

3.7 The relevant implementing agencies will draw up an implementation action plan within four weeks and send it to the Council's Cabinet to respond formally to the Health Scrutiny report. The Action Plan will

include strategies, actions, aims and goals, measurable outcomes and timescales against each of the agreed recommendations. OSC will monitor implementation of the Action Plan every six months and will identify the tangible benefits achieved.

4 Substantial Variations in Service

- 4.1 The Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002 provides that an NHS body shall consult with the relevant local authority Overview and Scrutiny Committee where it is considering a substantial development of/or variation to the health service. However there is little Government guidance on what is a substantial variation and the guidance as it is recommends that the definition is agreed between the Local Authority and the NHS body.
- 4.2 In agreeing that definition, the guidance advises that NHS bodies, committees and local partners should consider the impact upon patients, carers, and the public taking into consideration accessibility; impact on the wider community; and the patients affected.
- 4.3 It is considered that the following criteria provides a framework for defining what is meant by a substantial development or variation.

The proposed development or variation must:

Affect [London Borough of Tower Hamlets] residents as service recipients or as carers of service recipients, both current and/or potential recipients.

Involve one or more of the following:

- The provision of a new service
 - The closure of a service
 - A major expansion or significant diminution of a service
 - A change in the location where patients would receive an existing service
 - A switch in the management and/or provision of a service as between primary, acute and specialist care setting
 - A change in the way in which people gain access to a service
 - An expansion or restriction in the degree of choice that patients have about the location and nature of a service
 - The imposition of charges on patients where none had previously applied
- 4.4 All consultation with the Health Scrutiny Panel and with the public will take place in the context of the general duty placed on all NHS bodies by Section 11 of the Health and Social Care Act 2001 to involve and

consult actual and potential service recipients, or their representatives on:

- the planning of the provision of services
- the development and consideration of proposals for changes in
- the way services are provided, and
- decisions to be made by that body affecting the operation of services.

4.5 Attached at Appendix 2 is the recourse of the Health and Scrutiny Panel if it considers that the consultation on substantial variations is inadequate.

5 Role and Responsibilities

The Health Scrutiny Panel

5.1 The Tower Hamlets Health Scrutiny Panel has its own terms of reference and has a four year rolling work programme. The work programme is designed to ensure that the work of the committee is informed by longer term developments across the NHS Trusts so that a strategic approach can be taken in tackling health inequalities in the borough.

5.2 The primary role of the Health Scrutiny Panel is to:

- identify whether health and health services reflect the views and aspirations of the local community
- ensure all sections of the community have equal access to services
- and have an equal chance of a successful outcome from services.

5.3 Duties & Responsibilities of the Health Scrutiny Panel

1. Co-ordinate the development of a rolling work-programme in consultation with NHS Trusts and patient representative groups.
2. Arrange for agendas, reports and minutes to be distributed to established circulation lists at least 5 working days before the meeting
3. Invite the trust representatives to the meeting giving adequate and appropriate notice.
4. Give at least two weeks notice of requests for information
5. Nominate a lead officer/single point of contact for all the trusts

6. Engage with a wide range of local community stakeholders and colleagues from across NHS Trusts to take part in health scrutiny reviews and advise the Panel as appropriate.
7. Take part in an induction programme when there is a change of membership which must include an on-site visit to each of the trust organisations.
8. Dedicate at least one scheduled meeting to a single topic area (e.g. smoking cessation; obesity; mental Health) where each trust organisation can contribute a report.
9. Prepare an annual report setting out the Health Scrutiny Panel's work in that municipal year and reporting against the planned work programme.
10. Ensure that all acronyms are explained as an appendix to any papers/reports or recommendations.
11. Provide independent commentary as part of the Annual Health Check Process
12. Send draft scrutiny reports on matters relating to the Trust so that they may have the opportunity to comment on scrutiny recommendations prior to the finalisation of the report.
13. Ensure that all recommendations are made in writing and addressed to the Chairs and Chief Executives of the trust.
14. Consult with and make available to the trust and their identified partners their programme of work and in particular the topics for review
15. Through its chair, maintain regular contact with the chair/chief executive of the trusts and partner organisations.
16. Familiarise themselves with the subject under scrutiny/review.

The East London NHS Foundation Trust, Tower Hamlets Primary Care Trust and the Barts and London NHS

- 5.4 The NHS has been required to consult on changes to health services for many years. The Health and Social Care Act 2001, and subsequent Regulations, developed these requirements and identified new statutory consultees as well as conferring duties on NHS bodies in relation to local authority overview and scrutiny committees.
- 5.5 NHS trusts have a duty to consult scrutiny committees, to attend these committees when requested to answer questions, to respond to their requests for written information and to respond to scrutiny committee

reports and recommendations within 28 days of the request of the committee.

5.6 Duties and Responsibilities of Tower Hamlets Primary Care Trust, East London NHS Foundation Trust and Barts and the London NHS Trust

1. Provide information relating to the planning and operation of the Trusts that the Health Scrutiny Panel requires so that it can carry out its functions including commenting on NHS Plans, proposals and consultations, and carrying out health scrutiny reviews (excluding patient and NHS employee identifiable personal information or information that is non disclosable by law).
2. Provide the Panel with that information when requested within 14 days.
3. Respond to Health Scrutiny Panel review reports within 4 weeks.
4. Within 4 weeks copy that response to patient representative bodies including the Local Area Partnerships; CPAG; the Local Involvement Network (LINK); and anyone else who may have an interest in the content therein
5. Provide the Health Scrutiny Panel with Patient Survey or Customer Access information at least once a year.
6. Ensure that all reports are addressed to members of the panel and include an executive summary and clearly state the expectation of the Health Scrutiny Panel.
7. Present an "Issues and Options" paper as an integral part of all reports.
8. Nominate a single point of contact for panel members/Council officers.
9. Commit to providing reports on a single topic area (e.g. smoking cessation; obesity; mental Health) in order to present the panel with a strategic picture of the issue across the three trust areas.
10. Ensure that all acronyms are explained as an appendix to any papers/reports.
11. Present Trust self-assessment declarations against Core Standards to the Health Scrutiny Panel as part of the Annual Health Check process.
12. Consult with and provide information to the partner organisations at an early stage on its plans for substantial developments or variations in its service provision.
13. Report the outcome of the consultations to the next available committee/panel meeting.

14. Send the Chair and any other members who request them all trust board agendas and associated papers including the Annual Health Report.
15. Through its chair or Chief Executive maintain regular contact with the panel and partner organisations.

Local Involvement Network

(to be agreed with the LINK)

- 5.7 Under the NHS Reform and Health Care Professions Act 2002 made provision for independent Patient and Public Involvement Forums for every NHS trust in England. Forum members have been volunteers recruited and supported nationally by the Commission for Patient and Public Involvement in Health (CPPIH) and supported by local Forum Support Organisations.
- 5.8 The government's intention in establishing forums was for them to be a key vehicle for raising awareness of the needs and views of patients and the public, and placing them at the centre of health services. Forums are expected to monitor and review health services, finding out the views of patients, carers and the public and, taking account of these views, make reports and recommendations to the health trusts.
- 5.9 From 1 April 2008, Local Involvement Networks (LINKs) replaced PPI forums. The aim of the new model is to achieve greater inclusion of a wider number of stakeholders with access to independent resources to carry out research and build up an evidence base on patient experiences and needs. The essential role of LINKs will be to find out what people think about health and social care issues and tell commissioners and providers what they have heard. Primary Care Trusts will have to publish an annual report for communities that sets out how local people have influenced commissioning decisions over the year. LINKs will also have additional powers of inspection over some NHS services and facilities.

The Living Well Community Plan Action Group

(to be revised in light of New Community Plan)

- 5.10 The Living Well CPAG is the main forum in Tower Hamlets for developing and taking forward partnership strategies to improve the health and well being of the local population. It is supported by a network of joint planning bodies, including Partnership Boards for older people, people with learning disabilities, people with physical and sensory disabilities, people with mental health needs and children and young people. The membership of the Boards includes the voluntary sector and users and carers.

Local Area Partnerships (LAPS)

- 5.11 There are eight Local Area Partnerships (LAPs), based across 17 Tower Hamlets wards, through which residents are involved. They involve local people in considering ideas on how things can be improved and the ways in which they can influence the delivery of services in their area, but also the borough as a whole. They also provide the chance to scrutinise service performance to ensure that standards are met and promises kept.
- 5.12 As part of the Council's commitment to addressing local priorities, Local Area Action Plans are produced each year for each of the LAPs. These set out targeted programmes for improvement and reflect Community Plan priorities at a local level. Significant amounts of Neighbourhood Renewal Funding – £1 million in each LAP for the period 2004-2006 – have been used to support improved outcomes against these local priorities.

Agreed and Signed on behalf of:

Tower Hamlets Health Scrutiny Panel

Name.....

Signature.....

Position.....

The East London NHS Foundation Trust

Name.....

Signature.....

Position.....

Tower Hamlets Primary Care Trust

Name.....

Signature.....

Position.....

The Barts and London NHS Trust

Name.....

Signature.....

Position.....

Appendix 1

Powers of local authority overview and scrutiny committees

The Overview and Scrutiny Committee may:

1. Review and scrutinise any matter relating to the planning, provision and operation of health services in the area of the committee's local authority;
2. Make reports and recommendations to local NHS bodies and to its local authority on any matter reviewed or scrutinised using the overview and scrutiny of health power;
3. Require the attendance of an officer of a local NHS body to answer questions and provide explanations about the planning, provision and operation of health services in the area of the committee's local authority;
4. require a local NHS body to provide information about the planning, provision and operation of health services in the area of the committee's local authority, subject to exemptions outlined in the Health and Social Care Act 2001;
5. establish joint committees with other local authorities to undertake overview and scrutiny of health services;
6. delegate functions of overview and scrutiny of health to another local authority committee; and
7. report to the Secretary of State for Health:
 - where the committee is concerned that consultation on substantial variation or development of services has been inadequate; or
 - where the committee considers that the proposal is not in the interests of the health service.

Appendix 2

Inadequate Consultation on Substantial Variations

The committee is not satisfied:

- (i) with the content of the consultation or that sufficient time has been allowed; or
- (ii) that the reasons given for not carrying out consultation are inadequate;

it will in the first instance attempt to resolve the issue locally but can ultimately refer the issue to the Secretary of State in writing.

"Any such referral should make clear the grounds on which it has reached its conclusion. It should be noted, that the referral power for overview and scrutiny committees in the context of inadequate consultation, only relates to the consultation with committees by the NHS and not consultation with other stakeholders. Section 11 of the Act requires more wide ranging involvement and consultation but no referral power relates to that wider duty."

The Secretary of State can require the NHS body concerned to carry out "such consultation or further consultation with the committee as he considers appropriate", after which the NHS body must reconsider its decision in the light of that additional consultation.

Where the committee considers that the proposal is not in the interests of the health service in its area, it can refer the issue to the Secretary of State in writing and he may make a final decision on the proposal. The Secretary of State can require the NHS body "to take such action or desist from taking such action as he may direct."

A referral on the basis of a proposal not being in the interests of the health service should also set out the grounds on which the committee came to that conclusion. The power "should not be used lightly ... local resolution of issues is always preferable."

The Secretary of State may ask the Independent Reconfiguration Panel (IRP) to advise him on a referral. This is an advisory non-departmental public body with a chair and members drawn equally from health service professionals, health service managers and patients and citizens.

It "will wish to be satisfied that all options for local resolution have been fully explored" before considering an issue in detail. The IRP may visit the NHS body and consider the OSC's report and recommendations.