

# MIDDLESBROUGH COUNCIL

AGENDA ITEM 7

## OVERVIEW & SCRUTINY BOARD

5 MARCH 2013

### DEPARTMENT OF HEALTH PUBLICATION – CHANGES TO HEALTH SCRUTINY POWERS

#### PURPOSE OF THE REPORT

1. To appraise the Overview & Scrutiny Board of recent national policy developments, relating to the Health Scrutiny powers.
2. To request that the Overview & Scrutiny Board takes a view on the future allocation of the Health Scrutiny powers.

#### RECOMMENDATIONS

3. That the Overview & Scrutiny Board notes & considers the contents of this briefing paper.
4. That the Overview & Scrutiny supports the Health Scrutiny Panel's view that the existing Health Scrutiny arrangements in Middlesbrough, should be reaffirmed by Full Council and continue, following the new regulations coming into force on 1 April 2013.

#### Consideration

5. Members of the Overview & Scrutiny Board may recall that during the summer of 2012, the Department of Health published a consultation document relating to the Health Scrutiny powers and their development, which the Health Scrutiny Panel responded to. A copy of the Health Scrutiny Panel's that response can be found at Appendix 1.
6. The Department of Health, on 14 December 2012, subsequently published a document that outlines the responses it received to the consultation, its consideration of those responses and the next steps that the Department of Health will be taking. A full copy of the Department of Health can be found at Appendix 2, although the key points of the document are outlined in this briefing paper.
7. As Members will be able to read, the Department of Health's document reinforces its support for Health Scrutiny as "an important part of the

Government's commitment to place patients and the public at the centre of health services<sup>1</sup>." It goes on to say that "It is a fundamental way by which democratically elected community leaders may voice the views of their constituents and hold local NHS bodies and providers of NHS and public health services to account".<sup>2</sup>

8. Allied to this clear and continued support for the principles of Health Scrutiny is a broadening of its powers. Under existing Health Scrutiny powers, Health Overview & Scrutiny Committees can only insist on the attendance at meetings, of NHS Trusts. Any other organisation could only be invited to attend meetings. Under the broadened powers of Health Scrutiny, it will be able to insist on the attendance of any organisation that is in receipt of NHS funds, to deliver NHS services. This undoubtedly represents a strengthening of the powers available to Health Scrutiny. The document suggests a number of technical and procedural amendments, particularly when a statutory consultation is being considered, which seem sensible and clarify a number of points.
9. The allocation of those Health Scrutiny powers, however, is subject to a significant change. Under existing Health Scrutiny regulations, a top tier local authority is obliged to identify an Overview & Scrutiny Committee that was responsible for undertaking Health Scrutiny, in its various forms. In Middlesbrough's case, the Health Scrutiny Panel has performed the function and it is the Health Scrutiny Panel that would exercise the power to refer contested matters to the Secretary of State for Health, should there be a need.
10. As Members will see from the attached document, recent legislative and policy developments change this. From April 2013, the Health Scrutiny Power will now be given to the local authority per se and it will be for the local authority to decide how it exercises the Health Scrutiny Power. This was stipulated in the Health & Social Care Act 2012 and has been reinforced in the recently published Health Scrutiny regulations<sup>3</sup>.
11. Consistent with this theme, the power to refer matters to the Secretary of State for Health following statutory consultations, will now be within the gift of Full Council.
12. On the specific point of Full Council being required to make referrals to the Secretary of State for Health, the Department of Health reports that there was a mixed response from consultees, with only around 25% supporting Full Council making the final decision on whether to refer a matter or not. The Department of Health makes the argument that

---

<sup>1</sup> Paragraph 10, Page 7

<sup>2</sup> Please see Paragraph 10 on page 7.

<sup>3</sup> The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013

having Full Council making such decisions, increases their democratic legitimacy.

13. On the other hand, The Department of Health notes that the majority respondents to the consultation argue against Full Council having the final decision over referrals to the Secretary of State for Health. Rationale for that position includes the risk of an issue becoming politicised and the concern that Full Council would have insufficient detail on the topic, before making a decision.
14. The Department of Health has the following to say:
  - 14.1 *The Department recognises the concerns expressed by those who opposed this proposal. However, under the changes made by the 2012 Act it is the local authority that will hold the statutory powers of health scrutiny and they will determine how those functions are discharged. This is consistent with principles of localism. While they may choose to retain an HOSC arrangement, there will be no obligation to do so and the authority may choose to undertake health scrutiny through another committee or other suitable arrangement. The current system, therefore, need(sic) to change to reflect this.*
  - 14.2 *The Department takes the view that, as the holder of the statutory health scrutiny powers, the local authority is accountable for decisions over how those powers are exercised. As local authorities will be able to determine the arrangements for discharging their health scrutiny functions, the Department recognises that this should be reflected in the arrangements for referrals.*
  - 14.3 *The power of referral is a function of the full council, as are other health scrutiny functions under changes made by the 2012 Act. Where a local authority chooses to retain a HOSC as the means of discharging their health scrutiny functions under the new regulations, they will not be prevented from delegating the power of referral to that HOSC should they choose to do so. They may similarly delegate the power of referral to a joint scrutiny arrangement. Where an authority discharges health scrutiny functions through an arrangement other than a HOSC or joint scrutiny arrangement, only the full council will be able to exercise the power of referral.*
  - 14.4 *The Department believes that, in a delegated arrangement, it is right and proper that the full council should be fully sighted on how the powers for which it is accountable are being exercised. While the power of delegation will not be conditional upon this point, it would be prudent for local authorities to consider whether to set in place additional safeguards or processes to achieve this, for examples requiring the HOSC to notify the Full Council of an intention to refer a matter to the Secretary of State, before that referral is made. This will*

*give the full council the opportunity to debate that intention, if they so wish<sup>4</sup>.*

15. The Department of Health reports that some responses to the consultation argued that the current approach and something 'shouldn't be fixed, when it works'. Indeed, the Department of Health document quotes Middlesbrough's Health Scrutiny Panel making that specific point. In response, the Department of Health says:

- 15.1 *We agree that the HOSC model is a strong one, which, as Wakefield Council said "has generally proved to be effective". However, maintaining the status quo is not an option. The 2012 Act has already changed the regulation making powers around health scrutiny and from April 2013, the holder of the statutory powers will be the local authority. They will have the flexibility to discharge these powers through a HOSC or other suitable arrangement.*

- 15.2 *Regulations need to change to reflect this. Regulations will enable a local authority to continue with a HOSC if they choose to have one, but this will no longer be required of them<sup>5</sup>.*

16. To emphasise that, despite the change of where the Health Scrutiny power will lie, Health Scrutiny is a major component of the new Health structures, the Department of Health makes the following point

- 16.1 *As a committee of the local authority exercising particular functions, health and wellbeing boards would be subject to overview and scrutiny. We expect that overview and scrutiny arrangements will want to review and scrutinise the decisions and actions of health and wellbeing boards, and make reports and recommendations to the authority or its executive. Separately, health scrutiny is an important way that the local authority (and through it, local people, can hold some health and wellbeing board members to account for their role in the delivery of health services, or consider how the JSNA and JHWS process is used by them to plan services<sup>6</sup>.*

17. The above, therefore makes it clear that the Department of Health expects that the local Health & Wellbeing Board will be subject to Scrutiny and will be expected to contribute to, and participate in, Health Scrutiny's activities. This will create issues for the local authority to consider when allocating the health scrutiny powers, as there could potentially be issues around conflict of interests if there was a close involvement with health scrutiny and the health and wellbeing boards.

18. As is clear from this briefing paper and the appended Department of Health document, most the focus is on the sort of work that Health Scrutiny gets involved in when there are a set of proposals to consider,

---

<sup>4</sup> Please see Para 53-56.

<sup>5</sup> See para 66

<sup>6</sup> Please see para 73

under a statutory consultation process. It should be noted, however, that the Department of Health is well aware of the more proactive, enquiry-based work that Health Scrutiny does and is very keen to see it continue to develop.

19. As the Department of Health says

19.1 *While recognising that the proposals under consultation related primarily to service reconfiguration and the process of referrals, respondents felt it important to not lose sight of the overview role of health scrutiny in holding the NHS to account for the quality of services they provide. The North East Regional Joint Health Scrutiny Committee, for example, wished to emphasise “the more proactive nature of health scrutiny activity including in depth reviews of issues of local concern”. We agree, and fully support the continued scrutiny of broader system issues such as thematic reviews, pathways of care and wider access issues. This is an essential role of health scrutiny and will be fully preserved within the new system*

## **Conclusions & Next Steps**

20. The Health Scrutiny Panel considered this subject at a meeting on 7 February 2013, following its consideration of the matter originally during summer 2012. The Health Scrutiny Panel welcomes the reaffirmation of the worth of Health Scrutiny and is pleased to see that it will continue to play an important part in the planning and provision of local health services. In addition, the extension of the powers of Health Scrutiny to seek attendance & information from any organisation providing NHS funded services, not simply NHS organisations, is hugely welcome.
21. The Panel does, however, have some concerns. The Panel is of the view that Health Scrutiny around the country has broadly been found to be a successful addition to local health and social care economies. As a result, the Panel is not convinced that the argument has been sufficiently made that Health Scrutiny needed to change. The Panel is not convinced that Full Council would be the best place to decide on important matters such as whether or not to refer something to the Secretary of State for Health. Nonetheless, the Health Scrutiny Panel notes that the Health Scrutiny powers will be within the gift of the local authority per se, as opposed to being specifically designated to Overview & Scrutiny.
22. As such, The Health Scrutiny Panel has taken the view that Full Council should resolve to keep the existing Health Scrutiny structure in place and formally delegate the associated powers to the Health Scrutiny Panel, post April 2013. To ensure that Full Council remains satisfied with the quality of the work emanating from Health Scrutiny, carried out on its behalf, it could request periodic updates on its work.

23. The Overview & Scrutiny Board is asked to support this position and articulate this view to the Executive & Full Council.

## **BACKGROUND PAPERS**

Appendix 1 – Letter sent by Health Scrutiny Panel to Department of Health consultation, held in summer 2012.

Appendix 2 - Please see the Department of Health document – entitled *Local Authority Health Scrutiny, A Summary of Consultation Responses*. Can be accessed at <https://www.wp.dh.gov.uk/publications/files/2012/12/Local-Authority-Health-Scrutiny-Summary-of-Consultation-Responses.pdf>

Appendix 3 – Please see the Health Scrutiny regulations at the following <http://www.legislation.gov.uk/uksi/2013/218/contents/made>

### **Contact Officer:**

Jon Ord - Scrutiny Support Officer  
Telephone: 01642 729706 (direct line)  
Email: jon\_ord@middlesbrough.gov.uk