

<b>Subject:</b>	<b>Establishment of a Joint Health and Overview Scrutiny Committee (JHOSC) January 2019</b>		
<b>Date of Meeting:</b>	<b>23 January 2019</b>		
<b>Report of:</b>	<b>Executive Lead for Strategy, Governance &amp; Law (Monitoring Officer)</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Giles Rossington</b>	<b>Tel: 01273 295514</b>
	<b>Email:</b>	<b>giles.rossington@brighton-hove.gov.uk</b>	
<b>Ward(s) affected:</b>	<b>(All Wards);</b>		

**FOR GENERAL RELEASE****1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 This report outlines the legislative background to JHOSCs and proposes that members agree to recommend that a JHOSC be established with HOSCs from East Sussex, West Sussex and Surrey in anticipation of the announcement of specific NHS change plans, this in the terms indicated below.
- 1.2 The proposal to establish a joint committee with other authorities is a matter for full Council and as a result HOSC is asked to make recommendations in the terms outlined below.

**2. RECOMMENDATIONS:**

- 2.1 That HOSC approve the establishment of a JHOSC in principle.
- 2.2 That the HOSC recommends that Full Council agrees to establish a JHOSC and approves the Terms of Reference appended to the Report as well as the Ways of Working also appended hereto; and
- 2.3 That it recommends that Full Council grants delegated authority to the Monitoring Officer to amend and re-publish the Constitution to include reference to the JHOSC; and
- 2.4 That it recommends that Full Council appoints a member of HOSC from each of the main political groups to sit on the JHOSC; and
- 2.5 That Full Council appoint one of the HOSC's co-optees as a non-voting co-optee to the JHOSC.

**3. CONTEXT/ BACKGROUND INFORMATION**

- 3.1 Health scrutiny legislation states that, if there is a proposal for a 'substantial development of the health service in the area of the local authority or for a substantial variation in the provision of such a service' ('SViS'), there is an

obligation on the NHS body or health service provider to consult the relevant HOSC.

- 3.2 Where the NHS body or health service provider must consult more than one local authority, as the area covered by the change affects several local authority areas, then the relevant local authorities must establish a Joint HOSC (JHOSC) to scrutinise these plans. The JHOSC will assume all the statutory powers and responsibilities of its constituent HOSCs with regard to the SViS in question, with the exception of the power to refer a SViS plan to the Secretary of State for Health which may either be delegated to the JHOSC or retained by individual local authorities.
- 3.3 This is mandatory: there is no option for individual HOSCs to separately scrutinise an issue once the conditions requiring a JHOSC have been met (i.e. the formal announcement of plans for a SViS that impacts on two or more local authority areas and of a deadline by which HOSC comments are to be received). All affected HOSCs must join a mandatory JHOSC; any HOSC that declined to do so would be in breach of its statutory duties and the local authority could be directed to join the JHOSC by the Secretary of State.
- 3.4 In addition to mandatory JHOSCs, HOSCs may also choose to form voluntary HOSCs to jointly scrutinise issues (e.g. a JHOSC might jointly scrutinise NHS change plans that do not meet the bar requiring the establishment of a mandatory JHOSC). Membership of a voluntary JHOSC is optional.
- 3.5 There has not been a JHOSC involving Brighton & Hove and our direct neighbours for a number of years, the last being the 'Fit For the Future' initiative to reconfigure West Sussex hospitals in 2006-2008. However, recent developments in the region, including the establishment of the Sussex & East Surrey STP and the creation of a CCG Alliance, have increased the likelihood of the NHS instigating SViS plans on a wide geographic scale. Local HOSC Chairs consequently asked NHS leaders to give them advance warning of possible SViS plans in order to give the HOSCs time to establish a JHOSC.
- 3.6 In autumn 2018 Chairs were informed that it was likely that SViS plans affecting more than one local authority area would be published in the next few months and that in consequence HOSCs might wish to begin planning to establish a JHOSC encompassing the STP area (Brighton & Hove, East Sussex, West Sussex and Surrey HOSCs). SViS plans were likely to include elements of the NHS Clinically Effective Commissioning (CEC) programme, but potentially also other regional initiatives.
- 3.7 Officers from these HOSCs drew up JHOSC Terms of Reference and Ways of Working which were agreed by HOSC Chairs and presented to each of the HOSCs. East Sussex County Council, West Sussex County Council and Surrey County Council have subsequently agreed to join a JHOSC and have signed-up to the Terms of Reference and Ways of Working.
- 3.8 A report was presented at the October 2018 Brighton & Hove HOSC meeting asking members to agree to join a JHOSC and to approve the suggested Terms of Reference and Ways of Working. However, this was deferred until January

2019. The current report re-presents the recommendations of the October 2018 report.

3.9 At the October 2018 meeting, members expressed concern or sought additional clarity about a number of aspects of the JHOSC planning. These concerns are addressed below:

- **Is BH HOSC required to join the JHOSC?** The JHOSC is currently voluntary and membership is optional. However, as soon as NHS bodies publish plans for SViS that affect more than one local authority area, the JHOSC will be mandatory and BH HOSC will have to join. The officer recommendation is that we join the voluntary JHOSC now, so as to best represent local interests in JHOSC planning. However, there is no legal requirement to do so at the current time as NHS bodies have not yet formally announced any SViS plans.
- **Can we delay establishing a JHOSC until after the 2019 local elections?** The establishment of a JHOSC has already been agreed by the other STP area HOSCs, and it seems likely that they will choose to begin to plan together in early 2019, at an officer and/or a member level, whether or not Brighton & Hove HOSCs agrees to join at this point. As there is no requirement to join anything other than a mandatory HOSC, Brighton & Hove HOSC could delay joining a JHOSC as long as the JHOSC remains voluntary (i.e. until the NHS formally announces specific SViS plans). Equally, the HOSC could agree to join the voluntary JHOSC but could decline to appoint members until after the May 19 elections on the basis that there is little sense in making appointments in early 2019 when it is unclear what the post-May composition of the HOSC will be. However, if a mandatory HOSC was required before May 2019, this position would have to be re-considered. Whether or not a mandatory HOSC is required within this time period will depend entirely on when NHS organisations release detailed SViS plans.
- **Can co-optees be included on the JHOSC?** In the plans presented to the HOSC in October 2018 there were no co-optee places on the JHOSC. The HOSC Chair subsequently discussed this issue with his counterparts and it was agreed that each HOSC should nominate one non-voting co-optee to sit on the JHOSC. There is no realistic prospect of gaining more co-optee seats as the one co-optee per HOSC provision has now been formally adopted by all the other HOSCs. In addition, some HOSCs only have one non-voting co-optee, and are therefore not in a position to appoint further co-optees.
- **What provision is there for local interests to be reflected at the JHOSC?** There is no alternative to a JHOSC (once mandated). However, the constituent members of a JHOSC can agree that the power of referral to the Secretary of State be retained by individual local authorities rather than delegated to the JHOSC. Brighton & Hove lobbied for, and was successful in getting, agreement that power of referral be retained by local authorities.
- **What about public involvement in the JHOSC?** There is nothing in the JHOSC Terms of Reference or Ways of Working that either specifically encourages or specifically discourages public involvement in the JHOSC process. If Brighton & Hove JHOSC members wanted to argue for particular public involvement measures, they would be free to do so provided they were members of the

JHOSC. However, it is probably worth noting that none of the other HOSCs in the JHOSC have public engagement mechanisms that mirror those of Brighton & Hove HOSC (i.e. provision for public questions, deputations or petitions). There may therefore be a limited opportunity here. However, there is nothing to stop Brighton & Hove HOSC from agreeing that its representatives would seek to get answers to questions presented to the HOSC by local residents, or agreeing any other mechanism whereby local people could influence BH HOSC contributions to the JHOSC.

#### **4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS**

- 4.1 It is recommended that Brighton & Hove HOSC agrees to join the JHOSC. However, the JHOSC is currently voluntary and membership is consequently optional. The HOSC could decline to join anything other than a mandatory JHOSC, although this would mean that there would be no one to represent local interests in JHOSC planning.
- 4.2 Alternatively, the HOSC could agree to join the JHOSC, but could decline to appoint members to a voluntary JHOSC until post-May, with local interests represented in the interim by the Chair. This position would only hold for a voluntary JHOSC: Brighton & Hove would have to nominate members to a mandatory JHOSC (or risk being directed to do so by the Secretary of State).

#### **5. COMMUNITY ENGAGEMENT & CONSULTATION**

- 5.1 None for this internal planning report.

#### **6. CONCLUSION**

- 6.1 It is recommended that members agree to join the voluntary JHOSC so as to maximise local influence in JHOSC planning.

#### **7. FINANCIAL & OTHER IMPLICATIONS:**

##### Financial Implications:

- 7.1 None to this internal planning report.

##### Legal Implications:

- 7.2 While the Health Overview & Scrutiny Committee has a key role in reviewing these proposals and considering whether to recommend their approval, only Full Council may make a decision on behalf of BHCC to establish a Joint Health & Overview Scrutiny Committee and to approve its composition and terms of reference.

The legal implications of these proposals, including the statutory framework which gives rise to them, are contained in the body of this Report. Section 30 of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013/218 (made under section 244 of the National Health Service Act 2006) is of particular relevance as it requires a joint committee to be established in the circumstances specified in this Report.

*Lawyer Consulted: Victoria Simpson Date: 14/01/2019*

Equalities Implications:

7.3 None identified

Sustainability Implications:

7.4 None identified

Any Other Significant Implications:

7.2 None identified

## **SUPPORTING DOCUMENTATION**

**Appendices:**

- 1 JHOSC: Essential Points
- 2 JHOSC Terms of Reference
- 3 JHOSC Ways of Working

**Documents in Members' Rooms**

None

**Background Documents**

None

