

Subject:	Increasing Democratic Legitimacy in Health: Department of Health Consultation on Elements of the Health White Paper		
Date of Meeting:	29 September 2010		
Report of:	The Director of Strategy and Governance		
Contact Officer:	Name: Giles Rossington	Tel: 29-1038	
	E-mail: Giles.rossington@brighton-hove.gov.uk		
Wards Affected:	All		

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 In July 2010 the Department of Health (DH) published a white paper: "Equity and Excellence: Liberating the NHS".
- 1.2 Allied to the white paper are several DH consultation exercises. The one which has direct relevance to HOSCs is the "Increasing Democratic Legitimacy in Health" consultation. This focuses on the white paper plans for changing the ways in which the NHS is to be governed and held to account, including proposals to significantly alter health scrutiny.
- 1.3 The closing date for submissions to this consultation is 11 October 2010. Should members wish to submit comments from HOSC, they may therefore wish to take the opportunity to agree a submission at the 29 September 2010 committee meeting.
- 1.4 The DH consultation paper 'Increasing Democratic Legitimacy in Health' is reprinted as **Appendix 1** to this report.

2. RECOMMENDATIONS:

- 2.1 That members:
 - (1) Note the contents of this report and its appendix;

- (2) Decide whether to submit comments to the 'Increasing Democratic Legitimacy in Health' Department of Health consultation;

And if members do decide to submit comments:

- (3) Agree on the contents of their submission.

3. BACKGROUND INFORMATION

- 3.1 The DH consultation paper 'Increasing Democratic Legitimacy in Health' asks respondents to comment on a series of questions relating to the governance and democratic oversight of NHS health services.
- 3.2 Whilst the DH welcomes comments on any of its proposals, there are two questions which are likely to be of particular interest to HOSC members. These are:

Q14: Do you agree that the scrutiny and referral function of the current health OSC should be subsumed within the health and wellbeing board (if boards are created)?

Q15: How best can we ensure that arrangements for scrutiny and referral maximise local resolution of disputes and minimise escalation to the national level?

- 3.3 **Q14** refers specifically to the statutory powers that HOSCs were granted by the Health and Social Care Act (2001). In short, these powers enable HOSCs to require senior NHS trust officers to attend committee meetings and also make it possible for HOSCs to refer NHS plans to make 'substantial variations' in local health services to the Secretary of State for Health on the grounds that the plans have either been introduced without properly consulting local people/stakeholders, or are detrimental to the health interests of local people. The health white paper proposes that these statutory powers be transferred to health and well-being boards.
- 3.4 Perhaps the most obvious effect of this proposal would be to transfer scrutiny and referral powers from a cross-party scrutiny committee to an executive committee (assuming that health and well-being boards will be executive bodies – the exact nature of these boards is also up for consultation). It would also presumably transfer scrutiny from a *disinterested* body to one which, insofar as it is also charged with overseeing local commissioning strategies and will presumably include service commissioners and providers, has a potential *interest* in developments in the local health economy.

- 3.5 **Q15** is essentially concerned with the powers of referral currently enjoyed by HOSCs. In recent years, these powers have quite frequently been used in the context of major NHS reconfiguration plans – for instance, East Sussex PCT plans to reconfigure East Sussex consultant-led maternity units were referred to the Secretary of State by East Sussex HOSC; NHS West Sussex plans to reconfigure West Sussex acute health services were referred to the Secretary of State by the Joint HOSC examining this initiative. Referrals can be very time-consuming and awkward for the NHS (not least because any reconfiguration is suspended whilst the referral is being heard), and it is unsurprising that the Government should wish to minimise them, particularly ones which are of questionable merit. (However, several recent HOSC referrals, such as the East Sussex maternity issue, have been upheld by the Secretary of State. It is therefore by no means the case that HOSC referrals are invariably unmerited.)
- 3.6 The main question here may be whether questionable referrals would be more or less likely should the power to refer be vested with health and well-being boards rather than HOSCs? It may also be relevant to note that many major NHS reconfiguration plans cut across local authority boundaries (for example) the ‘Fit For the Future’ proposals which potentially impacted upon West Sussex, East Sussex, Surrey, Portsmouth, Hampshire and Brighton & Hove) and are typically scrutinised by Joint HOSCs which are required to make decisions in the joint best interest of their residents rather than the interests of their specific populations. There may therefore be a question as to whether it is thought that local authority executives would be more or less likely to work together constructively for the common good than local authority scrutiny committees.

4. CONSULTATION

- 4.1 No formal consultation has been undertaken in preparing this report.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 None directly in terms of a HOSC response. Brighton & Hove City Council will submit its own response to this consultation, and this response may be made with reference to financial implications for the council.

Legal Implications:

- 5.2

Equalities Implications:

5.3 None to this report.

Sustainability Implications:

5.4 None to this report.

Crime & Disorder Implications:

5.5 None to this report.

Risk and Opportunity Management Implications:

5.6 None to this report.

Corporate / Citywide Implications:

5.7 None to this report.

SUPPORTING DOCUMENTATION

Appendices:

1. Increasing Democratic Legitimacy in Health: Department of Health consultation document

Documents in Members' Rooms:

None

Background Documents:

1. "Equity and Excellence: Liberating the NHS" – Department of Health white paper