

Liberating the NHS: Local democratic legitimacy in health



East Sussex Health Overview and Scrutiny Committee Response to consultation

East Sussex Health Overview and Scrutiny Committee (HOSC)

East Sussex HOSC comprises seven elected local councillors from East Sussex County Council and one elected councillor from each of the five district and borough councils within the county: Eastbourne Borough Council; Hastings Borough Council; Lewes District Council; Rother District Council; and Wealden District Council. The Committee also includes three co-opted representatives, two representing the local voluntary and community sector and one from the East Sussex Local Involvement Network (LINK).

The Committee undertakes the statutory health scrutiny functions for East Sussex. It aims to contribute to improving health and healthcare for East Sussex residents and to hold commissioners and providers of NHS care to account on behalf of local communities. This response represents the view of the HOSC from a scrutiny perspective, and does not constitute the response of the constituent authorities or organisations.

The Committee has focused its response on key questions from the consultation document 'local democratic legitimacy in health' which have most relevance from a scrutiny and accountability perspective, and where HOSC experience can add most value.

Q1. Should local HealthWatch have a formal role in seeking patients' views on whether local providers and commissioners of NHS services are taking account of the NHS Constitution?

No.

East Sussex HOSC's view is that local Healthwatch, as with health scrutiny, should be able to determine its own work programme and activities in response to local needs and concerns. Allocating a specific formal role in relation to the NHS Constitution risks creating an overly bureaucratic and burdensome process, and the diversion of Healthwatch resources away from locally identified priorities. Aspects of the NHS Constitution will no doubt form part of the work of Healthwatch, but this should not be prescribed.

Q2. Should local HealthWatch take on the wider role outlined in paragraph 17, with responsibility for complaints advocacy and supporting individuals to exercise choice and control?

East Sussex HOSC recognises the importance of these roles, particularly in supporting the less able to exercise the same degree of choice and control as other sections of the population to avoid inequality and disadvantage.

However, the Committee does not agree that Healthwatch would necessarily be best placed to take on these roles. These specialist roles will require suitably qualified and experienced staff, as opposed to volunteers. Existing organisations such as ICAS

(Independent Complaints Advocacy Service) and voluntary sector bodies such as Citizens Advice Bureaux, or advocacy organisations, already provide some similar services. We would argue that local authorities should have the freedom to commission the proposed functions in the way which will best meet local needs and build on existing resources and skills. It would be entirely feasible and desirable for organisations providing such support to form relationships with local Healthwatch to share intelligence about local concerns and information needs.

There is also a risk that taking on such demanding additional functions supporting individuals will detract from Healthwatch's key role of acting as a voice for local communities, particularly in relation to the commissioning process.

Q3. What needs to be done to enable local authorities to be the most effective commissioners of local Healthwatch?

In the Committee's view, local authorities should be offered the maximum freedom to commission the Healthwatch functions in the way which best meets local needs and best builds on existing local resources, networks and skills.

Appropriate funding is of course a prerequisite for enabling effective Healthwatch functions to be commissioned. There is a particular issue in 2011/12 as existing Local Involvement Network (LiNK) funding (and many host organisation contracts) ends in March 2011 and new Healthwatch arrangements are not envisaged to start until April 2012. The Committee would urge early clarity on the funding available to local authorities to commission support for LiNKs/shadow Healthwatch arrangements in 2011/12 to facilitate continuity and stability during the transitional period.

Q6. Should the responsibility for local authorities to support joint working on health and wellbeing be underpinned by statutory powers?

Yes, but retaining maximum local flexibility.

Q7. Do you agree with the proposal to create a statutory health and wellbeing board, or should it be left to local authorities to decide how to take forward joint working arrangements?

Yes, but retaining maximum local flexibility.

East Sussex HOSC welcomes the extended role for local authorities and their elected representatives in relation to the 'joining up' of health care, social care and public health. The role of second tier authorities in two tier areas should be recognised here.

We support the establishment of statutory powers and a statutory health and wellbeing board in the interests of a degree of consistency nationally and to ensure clarity that key players such as GP consortia should engage in partnership arrangements. Experience from health scrutiny suggests that statutory powers can be a helpful foundation in establishing clear expectations of engagement and participation.

However, experience also confirms that local flexibility is essential to establish and manage arrangements in the way which best suits local circumstances. We are also clear that the success of arrangements is predicated on building positive relationships between key partners locally, rather than on statutory powers alone. The Committee's view is that while a statutory basis is important, this should be a minimal framework, allowing as much local freedom and flexibility as possible.

Q8. Do you agree that the proposed health and wellbeing boards should have the main functions described in paragraph 30?

No – see below.

East Sussex HOSC supports the proposed functions with the exception of, *‘to undertake a scrutiny role in relation to major service redesign’*.

It is clear to the Committee that the boards are intended to undertake an ‘executive’ or ‘decision-making’ role in relation to assessing need, promoting integration and joined up commissioning plans, and supporting joint commissioning and pooled budgets. The boards are also expected to have a *‘lead role in determining the strategy and allocation of any... place based budgets for health’*. The boards will bring together the local leaders of the health and social care economy who will be shaping the system and therefore have a clear role in developing change within that system. There is therefore a clear conflict in the same players responsible for leading change, each with specific ‘interests’, also taking responsibility for scrutinising that change.

A key principle within local government is the separation of ‘executive’ decision making and the ‘check and balance’ of accountability provided by scrutiny. Given the boards’ clear executive role it would not be possible or appropriate for it to also undertake an independent scrutiny role in relation to major service redesign.

East Sussex HOSC’s experience in relation to scrutiny of major service redesign is that the local community has a very clear expectation of, and value for, independent scrutiny which facilitates open debate from all perspectives. The Committee is concerned that, in light of the conflicts mentioned above, the proposal represents a backward step in terms of accountability and transparency to communities.

Q9. Is there a need for further support to the proposed health and wellbeing boards in carrying out aspects of these functions, for example information on best practice in undertaking JSNAs?

Yes.

If the boards were to take on the scrutiny role in relation to major service redesign (which we do not support), there would be a need to make use of existing experience and knowledge from health scrutiny. This could be facilitated locally within and between local authorities, but also nationally through the Centre for Public Scrutiny and Independent Reconfiguration Panel.

Q11. How should local health and wellbeing boards operate where there are arrangements in place to work across local authority areas (e.g. Greater Manchester, London)?

East Sussex HOSC would highlight the need for health and wellbeing boards to have sufficient flexibility to develop appropriate local arrangements in two tier areas for the involvement of district and borough councils. These authorities have effectively engaged in health scrutiny and the Committee recognises the important roles of second tier authorities in relation to health and wellbeing.

The Committee would also highlight the need to consider how neighbouring health and wellbeing boards would work together on issues which affect residents of more than one top-tier area. Again, local areas are best placed to develop their own locally appropriate

arrangements. However, if the boards were to take on the scrutiny role in relation to major service change (which we do not support), consideration would need to be given to how consultation arrangements and associated statutory powers to refer proposals to the NHS Commissioning Board or Secretary of State would operate across multiple boards. Arrangements are currently in place to support joint health overview and scrutiny arrangements across authorities in these circumstances.

Q12. Do you agree with our proposals for membership requirements?

East Sussex HOSC's view is that appropriate membership should be left to local decision, rather than defined by statute. However, the Committee welcomes the expectation of a leading role for elected members and the expectation that GP consortia would be represented. The Committee also believes any framework which is put in place should make provision for the involvement of second tier council representatives in two tier local authority areas.

Q13. What support might commissioners and local authorities need to empower them to resolve disputes locally, when they arise?

Experience from health scrutiny suggests that the majority of disputes are effectively worked through locally. HOSCs have previously argued that access to independent clinical advice, expert facilitation and the advisory role of the Independent Reconfiguration Panel have all been helpful in resolving disputes.

Q14. Do you agree that the scrutiny and referral function of the current health OSC should be subsumed within the health and wellbeing board?

No.

A key principle within local government is the clear separation of 'executive' decision making and the accountability provided by scrutiny. Given the boards' executive role it would not be possible or appropriate for it to also undertake independent scrutiny of functions it would be charged with leading or influencing.

The Committee's view is that a separate scrutiny function, with the associated statutory powers, should be maintained. There are a number of reasons for this:

- Avoiding actual and perceived conflicts of interest within the health and wellbeing board.
- Providing assurance to local communities that the scrutiny functions are undertaken independently from those taking decisions about the health and social care system.
- Maintaining visible and transparent accountability of commissioners and providers of healthcare to democratically elected representatives without specific 'interests'.
- Maintaining the principle of clear executive/scrutiny split within local authorities.
- Capacity of the health and wellbeing board to undertake major scrutiny functions (particularly in relation to service redesign) alongside an already significant remit.

Whilst strongly supporting the need for a continued statutory health overview and scrutiny function, the Committee also believes that HOSCs will need to evolve and adapt to the new landscape. It will be important for health scrutiny arrangements to reflect the increased integration and joint commissioning with social care, the new roles for local authorities in public health and the development of GP consortia. The scrutiny function will need to build a new key relationship with the health and wellbeing board – for

example, it may be appropriate for scrutiny reports and recommendations to be received by the board.

Statutory scrutiny powers will also need to be adapted to reflect the new structures, particularly the need for GP consortia to be accountable to scrutiny and scrutiny's relationship with the health and wellbeing board.

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

East Sussex HOSC believes that this has already been achieved. In the Committee's seven year lifetime there has been only one occasion when it has found it necessary to escalate a proposal to the Secretary of State. The referral was upheld. This mirrors the national picture where the number of referrals from scrutiny has been very low when compared to the number of service changes considered. There is a very clear expectation that referral is a measure of 'last resort' and that only a well evidenced and reasoned referral will be acceptable.

The Committee's experience is that the most important factors in minimising disputes are early and effective public engagement, meaningful consultation and a clearly evidenced, clinically supported case for change.

Q16. What arrangements should the local authority put in place to ensure that there is effective scrutiny of the health and wellbeing board's functions? To what extent should this be prescribed?

East Sussex HOSC strongly supports the retention of an independent scrutiny and referral function with statutory powers. This function would incorporate, but not be restricted to, scrutiny of the health and wellbeing board's functions.

Local authorities have well established scrutiny arrangements and have significant experience of developing and adapting these to meet local needs. The Committee's view is that local authorities should be able to determine their own arrangements as appropriate to local circumstances.

Statutory health scrutiny powers should be retained as these provide a strong basis for accountability, but they will require updating to reflect new organisations and structures. Local authorities are best placed to determine how to implement these powers within their own governance arrangements.

East Sussex HOSC is concerned that services of considerable local importance, such as maternity and dentistry, will be commissioned by the national NHS Commissioning Board. There is a risk that commissioning decisions in relation to these services will be remote from local needs. It will be essential for commissioners of these services to be clearly accountable to local scrutiny arrangements and this accountability should be made clear through updated health scrutiny powers.

Finally, the Committee would stress the importance of ongoing health scrutiny during the transitional period. It will be important for HOSCs to hold NHS organisations and their local authority partners to account for the way change is implemented, to ensure local needs are recognised and the interests of local people and patients are central to new arrangements. Although the current statutory health scrutiny powers do not cover GP

commissioners, we hope to work with local GP representatives to understand and scrutinise emerging GP consortia arrangements on behalf of East Sussex residents.