


Agenda Item 8

		THE HEALTH SCRUTINY COMMITTEE FOR LINCOLNSHIRE	
Boston Borough Council	East Lindsey District Council	City of Lincoln Council	Lincolnshire County Council
North Kesteven District Council	South Holland District Council	South Kesteven District Council	West Lindsey District Council

Open Report on behalf of Richard Wills, the Director Responsible for Democratic Services

Report to	Health Scrutiny Committee for Lincolnshire
Date:	11 February 2015
Subject:	Working Protocol with NHS England Central Midlands

Summary:

On 23 July 2014, the Health Scrutiny Committee for Lincolnshire agreed that a protocol would be developed between the Committee and the NHS England's Leicestershire and Lincolnshire Area Team. A draft protocol was considered on 22 October 2014 and several amendments were made by the Committee. NHS England has undertaken a review of its area team structure, reducing the number of area teams from 27 to twelve, with the new arrangements operating in shadow form from 5 January 2015. Lincolnshire is in the NHS England Central Midlands area, which also covers Bedfordshire, Hertfordshire, Milton Keynes, Leicestershire, Northamptonshire and Rutland.

Actions Required:

- (1) To consider and to decide whether to approve the draft protocol with NHS England Central Midlands (Appendix A).

1. Introduction

NHS England Structures and Functions

NHS England, whose legal name is the NHS Commissioning Board, was established on 1 April 2013. NHS England performs a number of roles, including the commissioning of primary care and specialised services. NHS England also undertakes an assurance and developmental role in relation to the operation of Clinical Commissioning Groups; and performs a system leader role on issues requiring multi-organisation co-ordination, to improve patient experience or quality of care.

In addition to operating as a national organisation, NHS England operates with four regions: North of England; Midlands and East of England; London; and South of England. On its establishment 27 area teams were created, with Lincolnshire falling within the Leicestershire and Lincolnshire Area Team.

Protocol with NHS England

On 23 July 2014, the Health Scrutiny Committee for Lincolnshire agreed that a protocol should be developed between the Committee and the NHS England's Leicestershire and Lincolnshire Area Team.

On 22 October 2014 the Committee considered a draft protocol and requested two main amendments. Firstly, the Committee asked for the section of the protocol on the functions of the NHS England Leicestershire and Lincolnshire Area Team to be clarified. The Committee also asked for the provisions relating to the time available to NHS England to respond to recommendations from the Committee arising from a scrutiny review should be in line with the statutory timetable of 28 days.

Since the Committee's consideration in October 2014, changes to the structure of NHS England's regional structure have been confirmed, together with other developments, which have required amendments to the protocol.

Changes to the NHS England Area Team Structures and Functions

NHS England has undertaken a review of its area team structure, reducing the number of area teams from 27 to twelve, with the new arrangements operating in shadow form from 5 January 2015. Lincolnshire is in the NHS England Central Midlands area, which also covers Bedfordshire, Hertfordshire, Milton Keynes, Leicestershire, Northamptonshire and Rutland. A map showing the extent of this area is attached at Appendix B.

In addition, the functions of NHS England are changing, most particularly with the advent of co-commissioning - the process whereby clinical commissioning groups assume responsibility for the commissioning of primary care.

Revised Protocol

A revised protocol has been drafted, which takes account of the changes requested. In relation to the specific functions of the Area Team, the protocol makes reference to the NHS England website, which 'future-proofs' the protocol in relation to further changes in NHS England's role. The revised draft is attached at Appendix A to this report for the Committee's consideration.

Other Protocols

The Committee is also reminded that it has already agreed two other protocols: one with the four clinical Commissioning groups in Lincolnshire; and the other with Healthwatch Lincolnshire and the Health and Wellbeing Board.

2. Conclusion

The Committee is requested to consider and to decide whether to approve the draft protocol with NHS England Central Midlands, which is attached at Appendix A to this report.

3. Consultation

The protocol attached at Appendix A outlines circumstances, which would support the consultation arrangements between the Health Scrutiny Committee for Lincolnshire and the

4. Appendices – These are listed below and attached at the end of the report:

Appendix A	Health Scrutiny Committee for Lincolnshire and NHS England Central Midlands – A Protocol for Joint Working
Appendix B	NHS England Central Midlands Area Map

5. Background Papers – None.

This report was written by Simon Evans, who can be contacted on 01522 553607 or Simon.Evans@lincolnshire.gov.uk

**HEALTH SCRUTINY COMMITTEE FOR LINCOLNSHIRE
NHS ENGLAND CENTRAL MIDLANDS**

A Protocol for Joint Working

SUMMARY OF ROLES

The Role of the Health Scrutiny Committee for Lincolnshire

Lincolnshire County Council has established the Health Scrutiny Committee for Lincolnshire to undertake its health scrutiny functions. The Committee's role is essentially to review and scrutinise any matters relating to the planning, provision and operation of health services which affect the residents of Lincolnshire.

The Committee's full terms of reference may be found on the County Council's website:

<http://www.lincolnshire.gov.uk/local-democracy/how-the-council-works/the-constitution/part-2-articles-of-the-constitution/73385.article>

The Role of NHS England Central Midlands

NHS England Central Midlands is not a separate legal entity, but is part of NHS England with responsibility for Bedfordshire, Hertfordshire, Milton Keynes, Leicestershire, Lincolnshire, Northamptonshire and Rutland. NHS England Central Midlands undertakes three roles:

- (1) NHS England Central Midlands directly commissions services, which are detailed on the NHS England website;
- (2) NHS England Central Midlands undertakes an assurance and developmental role in relation to the operation of Clinical Commissioning Groups; and
- (3) NHS England Central Midlands performs a system leader role on issues requiring multi-organisation co-ordination, to improve patient experience or quality of care.

Context of Relationship with Health Scrutiny Committee for Lincolnshire

NHS England Central Midlands works with all the Clinical Commissioning Groups, upper tier local authorities, local Healthwatch organisations, district councils, Public Health England, Health Education and the NHS Trust Development Authority to achieve improvements to the health and wellbeing of the public in the NHS England Central Midlands area.

GENERAL LIAISON ARRANGEMENTS

Regular Briefing Meetings

There should be regular meetings (approximately two / three meetings per annum) between the Chairman of the Health Scrutiny Committee and the Director of Commissioning Operations, NHS England Central Midlands, or another senior manager. The purpose of these meetings is to support the work of the Committee and

the development of its work programme; and to advise on any issues which are likely to impact on Lincolnshire residents.

The purpose of these arrangements is that there are no 'surprises' to either NHS England Central Midlands or the Health Scrutiny Committee.

Provision of Information to the Committee by the NHS England Central Midlands – Content of Reports

The Health Scrutiny Committee would like NHS England Central Midlands to provide information that is informative and at the right level of detail to enable the Committee to give valid consideration of any particular item that is on its agenda.

SCRUTINY REVIEW ACTIVITY

Task and Finish Groups

The Health Scrutiny Committee may undertake in-depth scrutiny review activity. These scrutiny reviews are undertaken by a smaller group of Committee members, referred to as a Task and Finish Group, over a period of three to six months. The Task and Finish Group gathers evidence as part of its review process and at the end of the process compiles a report with recommendations, which may be submitted on behalf of the Health Scrutiny Committee to the relevant Clinical Commissioning Groups or NHS England Central Midlands, as appropriate.

Provision of Information and Gathering Evidence

NHS England Central Midlands undertakes to co-operate in the participation of these reviews, where it is relevant to their commissioning responsibilities and activities. This could involve members of the task and finish group meeting and interviewing various members of staff, and getting involved in a high level of detail about a particular topic. Members of the task and finish group will be expected to observe the normal practice of confidentiality prior to the conclusion of a task and finish group and the publication of the final report

Draft Scrutiny Review Reports

The Health Scrutiny Committee undertakes to share its draft scrutiny review reports, including all recommendations, where these are relevant with NHS England Central Midlands, which will be invited to make comments on the factual accuracy of the information in the report, prior to its publication.

Responding to Final Scrutiny Review Reports

The Regulations require a 28 day response by any NHS body, such as NHS England, to any recommendation or report from the Health Scrutiny Committee.

CONSULTATION ARRANGEMENTS

A key role for the Health Scrutiny Committee is responding to consultations on the proposals for changes to health care provision affecting the residents of Lincolnshire. In this regard, the Health Scrutiny Committee will be particularly guided by the regulations; and guidance issued by the Secretary of State.

Substantial Variations and Substantial Developments in Health Care Provision

Regulation 23 of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 refers to the requirement for consultation by NHS bodies on any proposal for the "substantial development" of the health service in the area, or for a "substantial variation" in the provision of such service. NHS England Central Midlands is one of the organisations, which commission health services.

Pre-Consultation Engagement

The terms "substantial development" and "substantial variation" are neither defined in the Regulations nor in the Secretary of State's statutory guidance.

In the absence of a definition of the terms "substantial development" and "substantial variation", NHS England Central Midlands undertakes to have early engagement with the Health Scrutiny Committee to seek the Committee's initial views on whether a proposal is substantial NHS England Central Midlands and the Committee will aim to reach an agreement, guided by the following questions:

- (1) Will the proposal lead to substantial changes in the accessibility of services? Will services be delivered in a different setting, for example in the community rather than in a hospital, which will make it harder or easier for patients to reach the services?
- (2) How many patients will be affected? How extensive will the impact be, particularly for patients needing to continue to access the service over a period of time? If a small number of patients are affected, how profound will that effect be on them?
- (3) Has there been any initial engagement or involvement with affected patients to seek their initial views on the proposal? If not, are there expected to be concerns from patients?
- (4) Does the proposal have a clear clinical evidence base?
- (5) Is the proposal being developed in accordance with an Operational Plan or Strategy of NHS England Central Midlands, on which the Health and Wellbeing Board has offered its opinion?
- (6) Does Healthwatch Lincolnshire have any initial views on the proposal?

Pre-consultation engagement seeks the Committee's views on whether the proposal constitutes a substantial variation or a substantial development in local health care provision. The Committee may indicate that the proposal is not substantial or even if

the proposal is substantial, it may not merit a full consultation. These outcomes will be clearly recorded in the Committee's minutes.

Where a full consultation is necessary, pre-consultation engagement also enables the Committee to put forward its views on the content of any consultation activity or materials, prior to the formal launch.

Responding to Consultations

Regulation 23(1)(a) of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 specifies that NHS England needs to notify the Committee of the timing of the consultation period and the date that NHS England Central Midlands intends to make any decision on the proposal.

In accordance with Regulation 23(4), the Health Scrutiny Committee may submit comments on any consultation and may also include a recommendation in addition to its comments. Where the Committee agrees to make a recommendation in addition to making comments, this will be clearly indicated in the Committee's response. This will also be clearly recorded in the Committee's minutes and communicated directly to NHS England Central Midlands.

Regulation 23(5) also sets out the process if NHS England Central Midlands disagrees with any recommendation from the Health Scrutiny Committee in relation to the consultation and how the Committee and NHS England Central Midlands may reach an agreement.

Risk to Safety and Welfare of Patients

In accordance with Regulation 23(2), where NHS England Central Midlands is satisfied that there is a risk to the safety or welfare of patients or staff, it may proceed to make a decision without consultation on a proposal, but NHS England Central Midlands will notify the Committee of its decision and the reason why no consultation has taken place.

Specific Exemptions to Consultations

It should be noted that any proposal to establish or dissolve an NHS Trust or Clinical Commissioning Group is exempt from the provisions Regulation 23; similarly any proposal in a Trust Special Administrator's report is also exempt from Regulation 23.

Where possible, the liaison mechanisms outlined above should form the basis of supporting all forms of consultation activity to aid the Committee's consideration, involvement and any response.

Pre-Election Periods and Consultations (Purdah)

NHS England Central Midlands will seek to avoid any major consultations on health care provision during the six week period in advance of General Elections and County Council Elections.

It may also be necessary to take account of the District Council Elections, if a consultation particularly affects a specific District Council area.

Clinical Commissioning Group and Other Consultation Duties

This section of the protocol covers the specific consultation provisions in the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013, which affect the Health Scrutiny Committee for Lincolnshire. It should be noted that NHS England is obliged to comply with other legal duties on patient and public involvement and consultation, which include: -

- the promotion of the involvement of patients and their carers in decisions affecting their care and treatment (*Sections 13H and 14U of the National Health Service Act 2006*); and
- the involvement of patients or potential patients in the planning of commissioning arrangements (*Section 14Z2 of the National Health Service Act 2006*).

Stakeholder Events

Where NHS England Central Midlands holds a stakeholder event and invites a representative from the Health Scrutiny Committee to attend, the Committee will aim to be represented. This will enable the Committee to give more informative consideration to the matter when it is on the Committee's agenda.

NHS ENGLAND FEEDBACK ON HEALTH SCRUTINY ACTIVITY

NHS England Central Midlands may provide feedback to the Chairman of the Health Scrutiny Committee on their views of the outcomes arising from the Committee's activities. This feedback could include:

- suggestions for in-depth scrutiny reviews; and
- suggestions for topics that might be included in the Committee's work programme.

Signed:

**Councillor Mrs Christine Talbot
Chairman of the Health Scrutiny
Committee for Lincolnshire**

Signed:

**David Sharp, Director of
Commissioning Operations,
NHS England Central Midlands**

SUMMARY OF PREFERRED APPROACH TO CONSULTATION BY NHS ENGLAND CENTRAL MIDLANDS ON SUBSTANTIAL VARIATION PROPOSALS

