Leicestershire County Council

SCRUTINY COMMISSION : 18 JUNE 2003

OVERVIEW AND SCRUTINY OF THE HEALTH SERVICE

REPORT OF THE CHIEF EXECUTIVE

PURPOSE

1 The purpose of this report is to set out the current position with regard to the implementation of the provisions in the Health and Social Care Act 2001 enabling Social Services Authorities to scrutinise the actions of NHS bodies. The item has been placed on the agenda at the request of Mr S Galton, CC.

BACKGROUND

Health Bodies

2 It is important at the outset of this report to identify the health bodies with responsibility for strategic issues and the delivery of services to the area of Leicestershire. Clearly, over time the number of such bodies and their responsibilities may change. Thus, new Care Trusts may be created from existing partnership arrangements, as has been the case with the development of Primary Care Trusts from Primary Care Groups over recent years. In Leicestershire the relevant health bodies are as follows:

- Leicestershire, Northamptonshire and Rutland Strategic Health Authority
- University Hospitals of Leicester NHS Trust
- Leicestershire Partnership NHS Trust
- East Midlands Ambulance Services NHS Trust
- Eastern Leicester PCT
- Leicester City West PCT
- Melton, Rutland and Harborough PCT
- Hinckley and Bosworth PCT
- Charnwood and North West Leicestershire PCT
- South Leicestershire PCT

In addition, many residents of Leicestershire receive health services from NHS bodies based in other Social Services authority areas : examples are hospitals in Kettering, Northampton, Nuneaton, Coventry, Burton, Derby, Nottingham and Grantham. The extent to which members of authorities in Leicestershire may be involved in scrutiny of these bodies will depend on arrangements for scrutiny made elsewhere and is not therefore discussed further in this report. Two NHS bodies, the Strategic Health Authority and the Ambulance Trust provide services to an area far wider than Leicestershire. This report puts forward a proposal for scrutiny of those bodies from a Leicestershire perspective; it does not propose a solution for the whole of the area covered by those bodies. It has to be recognised that any 'Leicestershire Solution' will have to be considered in the light of proposals from other local authorities.

3 The role of the Strategic Health Authority has been described as being to:-

- develop strategies and interpret national policy within a local context
- develop and agree performance targets with PCTs and other health trusts
- build capacity and ensure the infra-structure and skills are in place to deliver local plans

The headquarters of the Authority, which covers the area of 4 Social Services authorities, are in Enderby,

4 The University Hospitals of Leicester NHS Trust is responsible for the services provided at the 3 Hospitals in Leicester for Leicestershire and on a regional basis. The Headquarters of the Trust are based within the area of Leicester City Council.

5 The East Midlands Ambulance Services Trust provides services across the East Midlands, including the areas of the old Counties of Derbyshire and Nottinghamshire, a total of 7 Social Services Authorities. The headquarters of the Trust is in Nottingham.

6 The Leicestershire Partnership NHS Trust provides hospital accommodation and community health services from the Trust's headquarters at Gipsy Lane, Leicester and at or from Glenfield Hospital, Leicester General Hospital and associated hospitals or establishments across Leicestershire. The two main areas of service provision are those related to mental health and learning disabilities.

7 The main roles of PCTs have been summarised as being:

- improving the health of the community
- securing the provision of high quality services
- integrating health and social care locally

From around October 2002, PCTs have been responsible for the delivery of the vast majority of previous Health Authority functions.

In Leicestershire 6 PCTs provide primary care to their areas. This includes primary care provided through GP practices, community nursing and community hospitals.

It is important to emphasise that each PCT has responsibility for major aspects of service delivery on a county-wide basis, summarised in Appendix A.

Two PCTs are located within the geographical area of Leicester City Council. The remaining 4 Trusts cover areas within Leicestershire which are not coterminous with District Council boundaries. Services to Rutland Council are provided by the Harborough, Melton and Rutland PCT which, as its name implies, covers a considerably larger geographical area.

THE DEVELOPMENT OF A FRAMEWORK FOR OVERVIEW AND SCRUTINY OF HEALTH BODIES

8 The Health and Social Care Act 2001 extended the powers of Overview and Scrutiny Committees of Social Services Authorities to include the power "to review and scrutinise in accordance with Regulations . . . matters relating to the Health Service in the Authority's area and to make reports and recommendations on such matters in accordance with the Regulations". Under the provisions of the Act, local authorities are obliged to ensure that Constitutional arrangements are in place to enable relevant committee(s) to exercise that power. It will be for the Constitution Committee to make recommendations for amendments to be made to the Constitution of the County Council which will then have to be considered by full Council. Development of the entire infrastructure to support the operation of the new function, including the nature of these Constitutional arrangements, was left to regulations.

9 The NHS Reform and Health Professions Act 2002 requires the Secretary of State to establish a Patients' Forum in respect of each NHS or Primary Care Trust, with responsibility for monitoring and reviewing the range and operation of services provided by the Trust, and related issues. A Patients' Forum may refer any matter to an Overview and Scrutiny Committee if it considers that the issue should be considered by that Committee. The formulation of Regulations relating to the Overview and Scrutiny function was delayed until after the passage of the 2002 Act through Parliament in order to accommodate those provisions.

10 The provisional timetable for introduction of the Overview and Scrutiny process proposed by the Department of Health included the following stages:

• January 2002	Issue of consultation document
• April 2002	Close of consultation period
• Early summer 2002	Consideration of consultation responses
• Autumn 2002	'Listening exercise' on draft Regulations and Guidance
• December 2002	Regulations passed and Guidance produced
• January 2003	Overview and Scrutiny Committees assume health scrutiny powers

11 This timetable has slipped. The current position is that the relevant Regulations were made in December 2002, but Guidance has only just been issued (May 2003).

12 Although the recently issued Guidance does not make an unequivocal statement to this effect, it appears to have been the intention of the Department of Health that Community Health Councils should be abolished at a date to coincide with implementation of the new system of patients forums and overview and scrutiny committees. The most recent ministerial statement of 4 June expresses confidence that the new systems will be in operation from 1 September, but that the CHCs will not be abolished until 1 December 2003.

13 The Guidance describes the purpose of health scrutiny thus: "its primary aim is to act as a lever to improve the health of local people, ensuring that the needs of local people are considered as an integral part of the delivery and development of health services".

14 It is clear that overview and scrutiny committees dealing with health scrutiny do not operate in the same way as other overview and scrutiny committees. Reports or recommendations on health matters will not be made to the Cabinet or Council but direct to health bodies, who will be required to respond to those reports. Health bodies will also have statutory responsibility to consult with those committees rather than with executives or with councils as a whole. An overview and scrutiny committee may make a referral to the Secretary of State if it considers that either the process of consultation has been inadequate or it has concerns about the merits of the proposal. In short, overview and scrutiny committees with responsibility for health matters have statutory responsibilities which are not shared with the executive or the council as a whole and so operate outside the normal constitutional arrangements for the conduct of business within councils, whether before or after the Local Government Act 2000.

15 Discussions have taken place at meetings of the County Council Group Leaders, Leaders of the County and District Councils, County Council Cabinet Members and Scrutiny Reference Group. Preliminary discussions have also taken place between the Directors of Social Services for the County Council and City Council and Rutland Council and at the Leicestershire Executive Group, an informal forum created to enable discussion between Chief Executives of the relevant health bodies in Leicestershire and the Directors of the three Social Services Authorities.

16 The Act and Regulations allow for the appointment of a joint committee of two or more authorities with Social Services functions who may arrange for their functions to be discharged by that committee. The Guidance recommends that "scrutiny of services provided, commissioned or planned by a single NHS body covering more than one local authority area "should be undertaken by a joint committee". A joint committee in Leicestershire including representatives from the County Council, Leicester City Council and Rutland Council may be an appropriate vehicle for scrutiny of the county-wide responsibilities of the University Hospitals of Leicester NHS Trust, the Leicestershire Partnership NHS Trust and the PCTs. The Strategic Health Authority and Ambulance Services Trust with their wider, regional responsibilities, are likely to favour an approach which reduces the number of scrutiny committees responsible for overviewing their actions; from this perspective one joint committee in Leicestershire may be better than three separate committees.

17 The second model is for an authority with responsibility for scrutiny of health to delegate that function to another authority which it considers will be better placed to undertake that function. It is thought unlikely that the County Council would wish to delegate the Health Overview and Scrutiny function generally.

18 A third option is for a County Council to arrange for co-option onto its scrutiny committee of members of a District Council Overview and Scrutiny Committee. Such appointment may be made for the duration of the committee, for a particular piece of work or until such time as the County Council decides to terminate the appointment. If the option of a joint committee, as suggested in paragraph 20 above is accepted, then consideration should be given to the co-option of district members onto that committee. However this could have the result of creating a committee which would be so large as to be unwieldy.

19 Thus far, the debate in this report has focussed upon scrutiny of strategic and county-wide responsibilities of NHS bodies. How are the local, area-based responsibilities of Primary Care Trusts (though they also have Leicestershire-wide responsibilities) to be scrutinised? District councils may have a part to play in this process which has not been envisaged in the discussion above in the creation of a joint committee. It would be possible to invite District Councils to attend at meetings of that committee when issues specific to particular Primary Care Trusts are discussed. However, it has to be recognised that many District Councils may wish to pay a greater part in the process. This leads to consideration of the creation of one or more additional committees to undertake this role. Given the configuration

of the PCT boundaries, it is of particular importance that discussions take place at an early stage with Rutland Council, with a view to ascertaining that Authority's preferred option. The options in relation to a structure for scrutinising PCTs range from the establishment of eight area based committees, one for each district and one for Rutland, to establishing a single body covering all districts and Rutland. The City Council would not be directly affected as the two city PCTs boundaries are co-terminous with the County Council.

20 The discussion above has focussed on arrangements for discharging the new responsibilities under the Health and Social Care Act 2001. The County Council does of course have an existing Health and Social Care Overview and Scrutiny Committee. Should the functions of that committee be combined with those of committee(s) set up to meet those new responsibilities? There are a number of reasons to retain the existing model alongside new proposals. The new scrutiny committees will be fundamentally different in terms of their relationship with the Executive and the County Council. Membership of the new committees will look very different from the existing arrangements, both in terms of members drawn from other authorities and in the light of the restrictions imposed upon executive members of district councils, who may serve, in their capacity as County Councillors on the existing Health and Social Care Committee. Finally and perhaps of greatest importance, the County Council must retain the responsibility for scrutinising its own executive functions in respect of Social Services functions. For this reason it is proposed that the existing Health and Social Care Overview and Scrutiny Committee should be retained; some change in title may be appropriate to avoid confusion with the new committees.

THE PRESENT POSITION

21 The difficulties of creating a system of health scrutiny which would be acceptable and effective in an area including the shire county, two unitary authorities, seven district councils and ten health bodies, with little or no co-terminous boundaries led the County and District Leaders to conclude, at a meeting on 12 September 2002, that further consideration of the issues should be deferred until that advice had been received. The pending local elections in all the authorities within the Leicestershire with the sole exception of the County Council also meant that no meaningful consideration of proposals through appropriate Member processes could take place until, at the earliest, June 2003. In these circumstances, it was acknowledged by the Group Leaders of the County Council that substantial progress in developing proposals in consultation with those other authorities could not take place until after the Local Elections. Nonetheless, as stated earlier, discussions have taken place with other authorities and agencies in order to develop some proposals.

Discussions relating to the possible options for the development of a committee system for scrutiny of health bodies in Leicestershire have taken place at the Scrutiny Reference Group and with Cabinet members. Strong support has been expressed for the creation of a joint committee with responsibility for considering the strategic and county-wide responsibilities of health bodies, as discussed at paragraph 16 above. In addition, consideration will be given to the creation of either one or four committee(s) responsible for scrutiny of locally-based functions of the four PCTs, with members co-opted from District Councils. As noted above, the views of Rutland Council as a Social Services Authority are of crucial importance in the further development of the approach to be adopted.

22 It is perhaps worth emphasising that, even if a measure of agreement can be achieved within a relatively short period of time, it will be some time before scrutiny of health bodies can be effective. The new arrangements will have to be included as amendments to the Constitution of a number of authorities and so will have to be approved through the appropriate member processes. More importantly, there is a major issue for Councils of credibility; there is no point embarking upon the scrutiny of complex public bodies which operate in a very different way from that of local government, until such time as members have acquired an appropriate level of familiarity with the issues. Training programmes will be required. It is to be hoped that some national programmes will be developed; the DOH, LGA, Democratic Health Network and Association of Community Health Councils for England and Wales are known to have an interest in producing training programmes. The principles for scrutiny in existing guidance, provide only a starting point for the development of the process. In short, it would be wrong for anyone, even an enthusiast, to think that this is a process which will produce results or change overnight. The process needs to be carefully managed at all levels.

23 Resources for local government are also an issue. In March 2002, the LGA requested that £22m be made available over the course of the three years of the 2002 spending review for Local Government to undertake the new Overview and Scrutiny function effectively. A more recent analysis by the LGA suggests that the average sum for upper tier authorities to implement the proposals could be in the region of £97,000 per authority per annum. The outcome of that lobbying is, as yet, unknown.

THE NEXT STAGE

24. This report sets out, in broad terms, the options for the creation of the new system of health scrutiny. Discussions on these options will now take place with Leicester City Council, Rutland Council, the health bodies identified above and with District Councils. The outcome of these discussions will form the basis of a report to the Constitution Committee with a view to recommendations being made to Council for appropriate amendments to the Constitution.

Background Papers

Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002

Strengthening Accountability – Involving Patients and the Public - DoH Policy Guidance

Overview and Scrutiny of Health – DoH Guidance (May 2003)

Patients Forums – Draft Regulations

Guidance on undertaking scrutiny of substantial developments or variations to health services until the abolition of CHCs

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