Health scrutiny protocols

A summary of the current position regarding the use of and development of protocols for health scrutiny's relations with its partners, from research carried out between October 2012 and February 2013. (Example documents are available where indicated in italics.)

Mike Cooper, February 2013.

1 Introduction and summary

With the Health and Social Care Act bringing about significant changes in the health landscape, local authorities and health scrutiny committees are reviewing how best they can develop their relationships with the new bodies they will need to engage with.

Health scrutiny has a broad remit to review and scrutinise health and social care, with the aim of improving the health of the local population. It has to work with a range of agencies, organisations and individuals that are independent of health scrutiny, and have their own different ways of working. Scrutiny does not manage the services or take the decisions over commissioning or service delivery, but relies upon its relationships with partners and stakeholders to exert its influence and carry out its role effectively.

Many local authorities have developed some form of protocol between health scrutiny and its partner and stakeholder bodies, which seeks to clarify the relationship between them by setting out their roles and relationships and expectations about engagement and communication.

However, many others have declined to go down the route of formal protocols, preferring a more flexible approach, and putting the emphasis on informal arrangements and the ongoing management of the relationships.

Most agree that the process of developing an agreement or protocol, and of considering the challenges and options, is as valuable or more valuable than the finished document.

The health scrutiny protocols that exist and are in development vary in detail and formality. Protocols are most widely applied to the relationships between health scrutiny and the health service bodies that it has a role in scrutinising, and are often focused on the engagement of scrutiny in proposals for substantial variation in service. Protocols are also used to set out arrangements between health scrutiny bodies and with other authorities, and are being developed to foster joint working between health scrutiny and the new Health and Wellbeing Boards. There are also protocols for the relationship between health scrutiny and the local LINk / Healthwatch.

A number of authorities have been working actively to update their existing protocols or develop new protocols for the relationships that health scrutiny will require in the new health landscape from April 1023. A few have been approved or are at final draft stage, and others are still being developed. Where example protocols or drafts have been obtained, they are identified in section 2.

Some authorities have recognised that their existing arrangements will need to be updated to take account of the new health landscape, but only the original protocols are currently available (see section 3).

Some authorities do not use 'protocols', or do not consider what they do have to be a 'protocol', but do have an established procedure in the form of guidance or a checklist. Other authorities have explicitly decided that they do not want to have formal protocols, preferring a more flexible and informal approach to developing relationships. See section 4.

Finally, some examples of previous protocols including protocols to promote collaboration between health scrutiny and the Local Involvement Network are described in section 5.

2.1 Examples of authorities developing formal protocols for the new health landscape - protocols agreed or nearly agreed

North Lincolnshire have agreed a protocol between health scrutiny and the CCG. It gives a brief (4 page) outline of the roles of the health scrutiny panel and the CCG and how they will work together to further their common goals. *(N Lincs HS CCG protocol jan13.doc)*

The protocol was developed in workshop sessions bringing together stakeholders, facilitated by CfPS, and with meetings between health scrutiny and HWB officers. They used a list of questions to address drawn up jointly with Lincolnshire. *(Lincs protocol dev questions Oct12.doc)*

They have also drafted a protocol with the HWB, similar to the protocol for the CCG, which may require amending following the publication of the regulations and is awaiting approval.
(N Lincs HS HWB protocol Draft jan13.doc)

Oldham have produced a protocol for overview and scrutiny of health, outlining how health scrutiny operates, its role, how it engages, and the role of task and finish groups, that includes a set of 'joint working protocols' with each of the CCG, public health, HWB and Healthwatch.
(Oldham O&S Health Protocols feb13.pdf)

Oldham worked with Bury to develop their protocol, facilitated by CfPS. Oldham built on a previous protocol they had developed for their Community Safety Partnership.

Birmingham have a draft protocol; it sets out the role of health scrutiny, scope, powers (4 pages); what is expected of partners (2 pages); and a form for notifying the committee of potential substantial variations. *(Birm Protocol for working with Scrutiny.pdf)*

This has been agreed by one of the CCGs; awaiting response from the other two (15 feb 13).

The protocol was developed by working on relationships through issue based meetings with partners and officer liaison, facilitated by CfPS. This was informed by a set of principles agreed by the O&S Committee *(Birm O&S Principles Priorities.doc)* that set out members' expectations based on their track record of what works. The O&S Committee wanted to shape the relationships, rather than have extended negotiations about protocols.

2.2 Protocols still in development or draft

Lincolnshire are developing protocols with the CCGs and HWB. The county and the 7 districts, that come together as a JHOSC; worked together through workshop sessions, facilitated by CfPS, and used the same list of questions to address as North Lincolnshire.

Bury have drawn up a draft protocol for o&s, but actually focusing on health; a 3 page outline of how health scrutiny operates and relates to other bodies including expectations on information, attendance, engagement in reviews and resolving disputes; it needs to be developed by inserting specific references to partner bodies and being agreed with them. Bury are working jointly with Oldham, facilitated by CfPS. *(Bury draft o&s protocol Oct12.doc*)

Surrey are drafting a protocol for health scrutiny and NHS partners for April 2013 – CCGs and Trusts. It sets out the role of health scrutiny, expectations on NHS bodies, process for substantial, variation, plus checklist / proforma for assessing substantial variations; needs some more work to incorporate the NHSCB and the new regulations, but hope to agree by 1 April. Currently draft – confidential to scrutiny officers. *(Surrey SubsVar draft confidential.pdf)*

Bristol are working to develop protocols. Meetings and workshops have engaged scrutiny practitioners and HWB members in examining relationships, and it was agreed to develop a protocol, first for health scrutiny and the HWB, and subsequently for other partners.

3.1 Authorities with existing protocols who are considering updating them

Staffordshire health scrutiny committee has a code for joint working, last updated june 2010; involving the County, the 8 Districts, SHA and Trusts, it outlines the role of health scrutiny and the provision of information by NHS bodies. It includes, but does not major on, substantial variation. There is also a more detailed Appendix setting out how health scrutiny is carried out..They are planning to update the code taking account of the new regulations and the Francis Report.
(Staffs HS jt working code Jun10.doc)

Medway have a protocol for substantial variation, agreed in 2009 by SHA, PCT and local NHS trusts; it includes a fairly detailed explanation of substantial variation, 2 page 'checklist' of factors health scrutiny will take into account, and a 4 page assessment form. They intend to update it shortly and agree it with the CCG, new Trusts, and 'hopefully' the NHSCB.
(Medway substvar protocol 2009.doc)

Hampshire, along with Southampton, Portsmouth and the Isle of Wight, have a 'framework' for assessing substantial change. It gives an explanation of substantial variation (5 pages, purpose, background and principles) and assessment form for providing evidence against criteria for determining if a proposal is a substantial variation (6 pages). It is used by all NHS partners and shared with neighbouring authorities. Hampshire intend to update the framework for April 2013.
(Hampshire HOSC Substantial change framework.pdf)

Hampshire have also started work on developing a protocol between the health scrutiny committee and the HWB.

Bracknell Forest have a health scrutiny protocol and 'code practice' adopted July 2010, endorsed by the local authority and 6 local NHS trusts; it outlines the role of health scrutiny, procedures followed by Bracknell Forest, and undertakings from NHS trusts to consult and provide information. They say it may need updating for CCGs etc. *(BracknellForest HS Protocol jul10.doc)*

Warwickshire developed a guide to working with health scrutiny some years ago, and are working on updating their arrangements.

Kent has a protocol for health scrutiny in their constitution, but it was 'out of date 4 years ago and is not used'; informal liaison between County Council officers and NHS bodies works well - better than envisaged in protocol. Officers are considering redoing the protocol in light of the new heakth landscape, but nothing on paper yet.

Redbridge has a protocol for communication between health scrutiny and NHS partners focused on substantial variation. Adopted Nov 2009, jointly with the PCT, local NHS trusts and LINk. 40 pages long, including roles and responsibilities of health scrutiny, LINk and NHS bodies; an outline of substantial variations; involvement, joint committees and referrals to the Secretary of State; a topic selection flowchart; scrutiny witness guide; and report template; Terms of Reference of the Outer NE London JHOSC; and a copy of CfPS substantial variation flowchart (2005). Redbridge say they need to update it. *(Redbridge HS comms Protocol Nov09.pdf)*

4 .1 Authorities that have decided against protocols, but use alternative mechanisms for managing relationships

West Sussex have a 'trigger list' for substantial variations, and are reworking it. They favour more of a 'checklist' of things to consider / questions, rather than a more formal protocol.

Derbyshire do not have a protocol; they did consider it but are focusing on the development of a 'health scrutiny liaison partnership' – a county-wide forum bringing together health scrutiny with partners including CCGs, Districts and potentially HWB and HW. They have produced a draft 'agreement' – essentially a brief terms of reference for the partnership.
(Derbyshire draft HS Partnership Ag feb13.doc)

Derbyshire have a Guide to the Scrutiny of NHS Service Reconfigurations that 'guides' their relationships. Adopted 2010, updated April 2011, it gives a brief context, plus outline of substantial variations and health scrutiny processes as a Q&A; plus a service variation flow diagram. *(Derbyshire Health Scrutiny Guide 2011-13.pdf)*

Hackney does not use protocols; they have good informal relationships with partners and have found no need for more formal mechanisms. They are working on setting out some example scenarios to illustrate how health scrutiny and the HWB will deal with issues.

Richmond do not have protocols; they are working with OPM on developing relationships with health partners in the new landscape.

4.2 Other authorities that have decided not to use protocols

East Sussex say they tend to avoid protocols as its difficult to cover every eventuality without being bureaucratic and every issue needs to be dealt with differently; they focus on establishing and maintaining effective relationships, dealing with issues as they arise, and retaining flexibility.

Brighton & Hove do not have any protocols; they have considered it but feel a protocol would not capture what members are interested in; they are a small unitary authority with a coterminous PCT and are able to maintain relationships and informal contacts with providers, so did not feel any need for more formal mechanisms.

5 Some other examples of current or previous protocols (framed for the old health landscape and possibly out-of-date)

- **Swindon** have a protocol for referrals between health scrutiny and LINk; 4 pages, outline of roles and relationships and commitments to each other, adopted March 2008. *(Swindon LINk Protocols Mar08.pdf)*
- **Merton** have a protocol between health scrutiny and the LINk that described roles and relationships, and referrals between the bodies and their commitments to each other. *(Merton HOSC LINk Protocol 2008.doc)*
- Merton also have an 'external scrutiny protocol' setting out how scrutiny operates when dealing with partners, including health. *(Merton External Scrutiny Protocol.doc)*
- **Buckinghamshire** have a 2 page 'simple screening checklist' for substantial variation, setting out the factors health scrutiny will take into account in assessing a proposal as a substantial variation – similar to the checklist in the Medway protocol.
- **Lambeth** have an 'external scrutiny protocol' that sets out how scrutiny operates when dealing with partners, including health, similar to Merton's.
- **Newham** had a protocol for seeking information on and identifying substantial variations.
- **Camden** had a protocol for working with the PCT, NHS Trusts and patient groups.
- **Haringey** had a lengthy and detailed protocol for working with heath partners.
- **Bournemouth, Poole and Dorset** had a protocol for joint health scrutiny across the three authorities, that included the SHA, PCTs, NHS Trusts and LINks.
- **Essex** had a protocol for substantial variation, involving the County Council, unitary councils, PCTs and NHS Trusts.
- **The SW authorities** worked with the specialised commissioning group to developed a protocol for specialised commissioning / substantial variations, with a process flow chart, that is held ready to be used to establish joint health scrutiny committees as required.