

# Dorset Health Scrutiny Committee

**Dorset County Council**



Date of Meeting	15 June 2018
Officer	Helen Coombes, Transformation Programme Lead for the Adult and Community Services Forward Together Programme
Subject of Report	<b>Joint Health Scrutiny Committee re Clinical Services Review and Mental Health Acute Care Pathway Review – Update</b>
Executive Summary	<p>A Joint Health Scrutiny Committee was convened in July 2015 in response to the undertaking of a wide-ranging Clinical Services Review (CSR) by NHS Dorset Clinical Commissioning Group (CCG), which officially commenced in October 2014. The remit of the Committee was subsequently expanded to cover a Mental Health Acute Care Pathway (MHACP) Review, running separately but in parallel to the CSR.</p> <p>This report provides an update following the decision made by Dorset Health Scrutiny Committee on 8 March 2018 to review whether there is a case to make a referral to the Secretary of State for Health with regard to some of the proposals for changes agreed by the CCG. The resolution agreed on 8 March was as follows:</p> <p><i>"That the Committee, in the light of the referral of the proposals to Judicial Review, the concerns raised by Councillors and members of the public, establishes a task and finish group of five members including the Chairman, to reconsider the evidence and any new evidence which might be submitted and to report to a special meeting on a date to be arranged."</i></p> <p>The Task and Finish Group subsequently met on 1 May 2018 with a view to establishing the scope and context of their work and the process involved in making a referral to the Secretary of State. In addition, the Group needed to consider the impact and implications arising from the progress of the Judicial Review which has been lodged by a Purbeck resident, and will come before the courts on 17/18 July 2018.</p> <p>Following discussion, it was agreed that it would be prudent for the work of the Task and Finish Group to be adjourned until the outcome of the Judicial Review is known. This decision was made on the basis that the grounds on which the Judicial Review have been brought mirror the</p>

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	<p>concerns that the Task and Finish Group were expected to investigate. To continue would have been a duplication of work and, regardless of this, the outcome of the Judicial Review would, in legal terms, override any recommendation made by the Group.</p> <p>The minutes of that meeting are attached at Appendix 1. Although the Task and Finish Group does not meet in public, it was agreed by the members that the minutes should be made available to the Dorset Health Scrutiny Committee in full, to enable transparency.</p>
Impact Assessment:	<p>Equalities Impact Assessment: Not applicable</p>
	<p>Use of Evidence: Reports and summaries prepared for the Task and Finish Group; minutes of the Task and Finish Group.</p>
	<p>Budget: Not applicable</p>
	<p>Risk Assessment: Current Risk: LOW Residual Risk: LOW</p>
	<p>Outcomes: Not applicable</p>
	<p>Other Implications: None.</p>
Recommendation	<p>1 That members consider and comment on the report;</p> <p>2 That members support the decision by the Task and Finish Group to adjourn until the outcome of the Judicial Review has been published.</p>
Reason for Recommendation	<p>The Committee supports the County Council's aim to help Dorset's citizens to remain safe, healthy and independent.</p> <p>The Dorset Health Scrutiny Committee has the power to make referrals to the Secretary of State for Health, but is required to abide by certain conditions. It would not be good use of public funds if the Task and Finish Group duplicated the work which will be undertaken by others in the course of the Judicial Review. In addition, it would be highly likely that key witnesses would be unwilling or unable to speak to the Task and Finish Group whilst the legal process of the Judicial Review was on-going.</p>
Appendices	<p>1 Minutes of Task and Finish Group, 1 May 2018</p>

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Background Papers	Committee papers – Joint Health Scrutiny Committee: <a href="http://dorset.moderngov.co.uk/ieListMeetings.aspx?Committeeld=268">http://dorset.moderngov.co.uk/ieListMeetings.aspx?Committeeld=268</a>  Committee papers – Dorset Health Scrutiny Committee: <a href="http://dorset.moderngov.co.uk/mgCommitteeDetails.aspx?ID=142">http://dorset.moderngov.co.uk/mgCommitteeDetails.aspx?ID=142</a>
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### Task and Finish Group - Clinical Services Review

Minutes of the meeting held at County Hall on  
Tuesday, 1 May 2018

**Present:**

Ray Bryan, Nick Ireland, Tim Morris and Peter Shorland

Other Members Attending

Bill Pipe attended the meeting as an observer.

Jill Haynes, Cabinet Member for Health and Care, attending the meeting as an observer.

Officers Attending: Ann Harris (Health Partnerships Officer), Denise Hunt (Senior Democratic Services Officer), Jonathan Mair (Service Director - Organisational Development and Monitoring Officer) and David Phillips (Director of Public Health, Bournemouth, Dorset and Poole).

These notes have been prepared by officers as a record of the meeting and of any decisions reached. They are to be confirmed at the next meeting of the Task and Finish Group.

**Election of Chairman**

1 **Resolved**

That Ray Bryan is elected as Chairman of the Task & Finish Group.

**Election of Vice-Chairman**

2 **Resolved**

That Tim Morris is elected as Vice-Chairman of the Task & Finish Group.

**Apologies for Absence**

3 An apology for absence was received from Cllr Bill Batty-Smith.

**Code of Conduct**

4 There were no declarations by members of disclosable pecuniary interests under the Code of Conduct.

Ray Bryan declared a general interest as a Governor of the Dorset Healthcare University NHS Foundation Trust.

Cllr Peter Shorland declared a general interest as a Governor of Yeovil Hospital.

Cllr Nick Ireland declared a general interest as his spouse was employed at Yeovil Hospital.

Cllr Tim Morris declared a general interest as a member of the Friends of Swanage Hospital.

**Terms of Reference**

5 The Terms of Reference had been drafted in order to give focus to the work of the Group.

It was noted that the reference to the Judicial Review (JR) mentioned in the Terms of Reference could influence the work of the group as it related to ongoing legal proceedings.

**Resolved**

That the Terms of Reference of the Task and Finish Group be agreed.

**Confidentiality**

6 **Resolved**

That the agenda and notes of meetings of the Task and Finish Group are available to the public.

**Context**

7 Members considered the paper outlining the chronology of involvement of the Dorset Health Scrutiny Committee (DHSC) and Joint Health Scrutiny Committee (JHSC) in the Clinical Services Review (CSR).

The requirement to set up a Joint Health Scrutiny Committee to consider the CSR had been necessary due to the need for the Clinical Commissioning Group (CCG) to consult across the local authorities. Hampshire and Somerset County Councils had been invited to join the Committee, the latter choosing to participate as an observer. Only the JHSC could formally reply to the CSR consultation, however, the CCG had been willing to undertake informal workshops for members of the DHSC prior to the JHSC meetings. Notes from these workshops had been included in the paperwork.

The formal response of the JHSC to the CSR consultation and consultation outcome was sent in March 2017 and August 2017 respectively, with the DHSC having had an opportunity to consider matters prior to the JHSC meetings. A subsequent letter from the CCG in September 2017 recognised the concerns and the way in which it would respond.

Jill Haynes, Cabinet Member for Health and Care, explained that when it commenced in 2015, the CSR had been the start of how the CCG could control costs and make services better, particularly in mental health and community provision. However, the CSR had since been superseded by the Sustainability and Transformation Plan (STP) that was a continuously evolving Plan agreed 18 months ago. The Plan formed the work programme for the health integration boards and Health and Wellbeing Boards as well as being an avenue for Central Government funding. It challenged some of the original elements of the CSR and it could no longer be assumed that its proposals were set in stone. Dorset had been chosen as one of the 8 accountable care systems due to the positive support that the STP had received.

The Director of Public Health informed members that overall there were 3 dimensions to be addressed including:

1. the widening health and wellbeing gap across the population
2. variations in quality of care across health and care systems
3. gaps in finance & efficiency

Whilst the CSR had addressed primarily the gaps in efficiency and quality of care, the STP focussed more widely on health and wellbeing outcomes and looking forward the focus would increasingly be on joint action at a locality level, enabling greater local engagement in discussion.

Members commented that the CSR and STP would not address the issue of hospital travel times for Purbeck residents and the inadequate road network around Bournemouth Hospital. Attention was also drawn to proposals that had been withdrawn in respect of the maternity service.

With regard to ambulance travel times, the group was informed that the issues raised had been in part due to the reliance on travel data provided by the South Western Ambulance Service Trust (SWAST). However, they were reminded that this was

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being investigated as part of the remit of another JHSC that was scrutinising the NHS 111 Service provided by SWAST.

The Director of Public Health explained that there would be a period of up to 3-5 years before the proposed physical changes to Bournemouth and Poole hospitals were completed and this provided opportunities for further input by people on all sides, including the clinicians. Work was also ongoing with the Dorset County Council's Communications Team to convey clearer messages to the public that would be given a much higher priority during 2018.

### **Noted**

#### **Process of Referral to Secretary of State for Health**

8 This item was included as part of the discussion below (Minute 9).

#### **Judicial Review of the Clinical Services Review**

9 The group was advised that Judicial Review (JR) proceedings had been brought by a service user in Dorset and a copy of the applicant's statement and the CCG's response had been shared with the Monitoring Officer in advance of the meeting. The group was verbally notified of the grounds of the JR at the meeting as outlined below :-

**Ground 1:** The CCG has failed to take into account a material consideration, when it expressly declined to consider the capacity of the social care sector to act as alternative provision.

**Ground 2:** The CCG failed to take reasonable steps to inform itself of whether alternative provision would be in place ahead of or alongside the cuts.

**Ground 3:** The CCG has misdirected itself when it claimed that NHS England's bed closure test is not applicable or relevant to its Decision.

**Ground 4:** Having misdirected itself in this way, the CCG then failed to consult on whether or not this test was satisfied.

**Ground 5:** If the CCG purports to have considered whether the Decisions met the bed closure test, this assertion is an error. To the extent that the CCG has taken the view that the Decisions comply with the bed closure test, that view is erroneous and unlawful.

**Ground 6:** The CCG's consideration of the important issue of travel times to the reconfigured hospital services was in breach of its duties under s. 14R of the National Health Service Act 2006 ("the 2006 Act") and of its duty to inform itself of essential information and was irrational.

**Ground 7:** The CCG's consultation was so misleading as to be unlawful, in respect of 24/7 consultant care and/or the probability of large scale acute bed closures, particularly at the PGH.

It was noted that the grounds of the JR overlapped with one of the tests for a referral to the Secretary of State for health as not being in the interests of the health service in its area and that there was the potential for the JR proceedings to replicate the scope and work of the Task and Finish Group.

It was further highlighted that the outcome of the JR would override any recommendation the group might make and that if a judge upheld the approach used by the CCG, then a referral to the Secretary of the State for Health would not succeed. In addition, if a judge found that there had been shortfalls in the process and directed the CCG to revisit the CSR, this would also mirror the actions of the Secretary of State if a referral was successful.

Following some discussion it was concluded that the work of the group had been overtaken by the legal process and it would therefore be appropriate to wait until the outcome of the JR was known before meeting again, in order to avoid duplication of work that the Court was already doing.

It was felt that adjourning the task and finish group until after the hearing, scheduled in mid July 18, would therefore be appropriate. A statement would be prepared to answer any enquiries received by individuals following the task and finish group meeting that would also form the basis of a media response.

It was also suggested that the Monitoring Officer attend the DHSC meeting on 15 June 2018 to provide background to the decision to postpone the group in light of the legal advice received at the meeting.

**Resolved**

1. That the work of the Task and Finish Group is postponed until the outcome of the JR is known.
2. That a short statement prepared in response to enquiries by members of the public is circulated to members of the group for information.
3. That a copy of the request for JR is circulated to the group once it is confirmed that this information can be shared.

**Next Steps**

- 10
- a) The work of the Task & Finish Group is postponed until the outcome of the JR is known.
  - b) The meeting scheduled on 24 May 2018 is cancelled.
  - c) A further meeting of the group to be convened in August 2018, with suggested dates to be circulated.

**Date of Next Meeting**

- 11 August 2018 - To be confirmed

*Please delete the meeting on 24 May 2018 from your diaries.*

Meeting Duration: 10.00 am - 11.30 am