

Minutes



To: All Members of the Health
Scrutiny Committee, Chief
Executive, Chief Officers, All
officers named for 'actions'

From: Legal, Democratic & Statutory Services
Ask for: Elaine Manzi
Ext: 28062

SPECIAL HEALTH SCRUTINY COMMITTEE

WEDNESDAY 21 MARCH 2018

M I N U T E S

ATTENDANCE

MEMBERS OF THE COMMITTEE (20) - QUORUM 7

COUNTY COUNCILLORS (10)

S Brown; E H Buckmaster; M A Eames-Petersen; D Hart; D J Hewitt; T Howard
(*substituting for F Guest*); S Quilty (*Chairman*); M A Watkin (*substituting for R G
Tindall*); C J White (*Vice Chairman*);

DISTRICT COUNCILLORS (10)

J Birnie (Dacorum); S Deakin Davis (*substituting for J Green (North Herts)*); A Scarth
(3 Rivers); N Symonds (East Herts); F Thomson (Welwyn Hatfield)

OTHER MEMBERS IN ATTENDANCE:

N Bell, T Heritage, C B Wyatt-Lowe

Upon consideration of the agenda for the Special Health Scrutiny Committee
meeting on Wednesday 21 March 2018 as circulated, copy annexed, conclusions
were reached and are recorded below.

*Note: No conflicts of interest were declared by any member of the Committee in
relation to the matters on which conclusions were reached at this meeting.*

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PART 1 ('OPEN') BUSINESS

1. MINUTES

- 1.1 As this was a special meeting of the committee there were no minutes to be agreed. Minutes of the meeting of the committee held on 15 and 29 March will be considered at the next ordinary meeting.

2. PUBLIC PETITIONS

- 2.1 None received.

3. SCRUTINY OF HERTS VALLEYS CLINICAL COMMISSIONING GROUP'S PROPOSAL TO WITHDRAW £600,000 FUNDING FROM NASCOT LAWN NHS RESPITE CENTRE (THE "PROPOSAL")

Officer Contact:

Natalie Rotherham Head of Scrutiny (Tel: 01992 588485)

- 3.1 The Chairman outlined the structure and purpose of the Committee to attendees. Members were reminded that the special meeting had been called as Herts Valleys Clinical Commissioning Group (HVCCG) wished to carry out a consultation on the proposal to withdraw £600k of funding from Nascot Lawn, in accordance with regulation 23 of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 (SI 2013 / 218) (the Regulations).
- 3.2 The Committee were reminded that the request from HVCCG had been as a result of a Judicial Review undertaken on 6 & 7 February 2018. The Court Determined that respite services, at Nascot Lawn, were health provision and therefore that HVCCG's previous decision to withdraw £600k of funding from Nascot Lawn was unlawful as it was a substantial variation in the health service and HVCCG should have consulted the County Council..
- 3.3 The Chairman advised that a number of witnesses had been called to the meeting today and stressed to the Committee that any discussion or agreements made by Members during the meeting should be based on the evidence provided for and heard during the meeting, and not any information provided for or heard any previous meetings where the subject of Nascot Lawn had been discussed.

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- 3.4 The Chairman invited the representatives of **Herts Valleys Clinical Commissioning Group (HVCCG)** to address the meeting.
- 3.5 Members heard that HVCCG fully accepted the decisions made by the court, and highlighted that out of the six grounds on which they were challenged, the judge had only upheld the requirement for HVCCG to consult with the Local Authority regarding the withdrawal of funding. The remaining five grounds for the judicial review had been dismissed.
- 3.6 It was noted that the remaining five grounds were as follows:
- Failure to assess the needs of users
 - Failure to consult
 - Breach of the Public Sector Equality Duty set out in section 149 of the Equality Act 2010
 - Breach of Art 8 of the ECHR taken with Art 3 of the UNCRC
- 3.7 Members heard that HVCCG recognised how difficult the continued uncertainty regarding the future of Nascot Lawn was for parents, and assurance was received that discussions would be ongoing between the council and both CCGs to find a resolution.
- 3.8 HVCCG also expressed, on behalf of the CCG Board, its sympathy and admiration for the parents and children affected .
- 3.9 It was advised that the final decision regarding the proposal to withdraw £600k of funding from Nascot Lawn would be made at HVCCG's Finance and Performance Committee scheduled to be held on the 3 May 2018. It was explained that that Committee was chaired by a Lay Member, and its membership included senior directors of HVCCG, GP's and clinical managers.

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- 3.10 The Committee's attention was then drawn to the proposed agreement for an alternative funding proposal contained within the committee papers, (at Appendix Dx), which outlined that HVCCG and East & North Herts Clinical Commissioning Group (ENHCCG) would each provide the council with £100k per annum to support overnight short breaks for children and young people with complex health needs should the decision be made by HVCCG to withdraw the full £600k of funding at its meeting on 3 May 2018. This proposal also had the agreement of Hertfordshire County Council
- 3.11 Members received assurance that HVCCG would also continue to work with Hertfordshire Community Trust (HCT) to ensure that HCT were able to restore its contracted position of commissioned service provision for the children and families currently using Nascot Lawn during the transition period.
- 3.12 Members were advised that HVCCG also commissioned Community Children's Nurses - who specialised in working with children with complex needs and requiring end of life care.
- 3.13 The Committee were reminded of the considerable financial challenges faced by HVCCG, and it was stressed that difficult decisions had to be made to achieve savings across the entire portfolio of commissioned services. These had been detailed within the recent Let's Talk Consultation.
- <http://www.hertsviewpoint.co.uk/events-collection/a-healthier-future-lets-talk-nhs-consultation-on-local-services>
- 3.14 The Chairman maintained that such a decision should be taken to the by the main executive board of HVCCG and not the Finance and Performance Committee. It was explained that under the current governance structure of HVCCG, the Finance & Performance Sub-Committee has delegated powers and is the appropriate body, to make this type of decision.
- 3.15 Assurance was received that although an alternative funding agreement had been proposed and shared with the Health Scrutiny Committee, the outcome of the meeting of the HVCCG's Finance and Performance Committee on the 3 May 2018 was not predetermined and the members of the Finance and Performance Committee would discuss the proposal to withdraw £600k of funding from Nascot Lawn with an open mind.

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- 3.16 In response to a Member question, it was established that the figure of £100k per CCG outlined in the alternative funding proposal had been based on the discussions in November 2017, where it was understood that five children from Nascot Lawn would be eligible for continuing healthcare funding by Herts Valleys CCG. It was calculated that this would cost £20k per year per child. ENHCCG had subsequently agreed to match this funding.
- 3.17 The Chairman invited officers from **Hertfordshire County Council's Childrens Services** to address the meeting.
- 3.18 The Committee heard that the Local Authority were pleased with the intention of both CCGs to work together with the Council, in an integrated way, to provide short breaks for special needs children and young people and their parents. It was noted that this was in line with the Council's longstanding plan to provide a 'local offer' to children and young people with special or complex needs.
- 3.19 It was noted that the intention, should the full £600k be withdrawn and the alternative funding agreement be implemented, that the £100k from HVCCG would be used to fund a senior nurse and two other nurses, whose combined skills would meet the needs of a majority the children.
- 3.20 It was further noted that all children were assessed on a case by case basis and any children with particularly complex needs, which would require additional support would receive funding through either CCGs continuing healthcare (CHC) budget in addition to the £100k.
- 3.21 The Committee were advised that to date eight children have been transitioned from Nascot Lawn and are receiving short breaks at other settings, 19 are in the process of transition and a further 16 are yet to have an agreed transitional setting.
- 3.22 It was established that the delay in transitioning was due to the complexity of need of some of the children and young people and also the capacity issue at the other respite centres.
- 3.23 Members learnt that to improve capacity, a feasibility study at West Hyde (one of the other respite centres in the county), had found that a greater proportion of children could be accommodated if the property was extended to create two extra bedrooms.

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- 3.24 In response to a Member question, Members received assurance that the Local Authority were confident that all the children currently attending Nascot Lawn would receive an appropriate alternative respite provision at least as good as they were currently receiving.
- 3.25 In response to a Member concern that CHC (continuing health care) budget meetings, where decisions regarding CHC funding were made, were not attended by parents of the children, assurance was received that representatives from the Local Authority attended CHC panel meetings, and because representatives from the Council regularly liaised with parents of children and young people this ensured that their views were included.
- 3.26 It was also established that the Council also intends to reinstate its Short Breaks panel, attended by parents, to ensure that parental views on what they would require from their short breaks allocation was heard and recorded.
- 3.27 The Committee were advised that in terms of future need for new children requiring a respite service, this would be undertaken at a single point of entry through the council's 0-25 service. Currently this is utilised by ENHCCG, and it has been agreed that HVCCG will use this moving forward.
- 3.28 The Chairman invited officers from **East & North Herts Clinical Commissioning group (ENHCCG)** to address the meeting.
- 3.29 The Committee learnt that ENHCCG also welcomed the progress in joint working with HVCCG and the Council with regard to short breaks and Members received assurance that work would continue with parents to get the best outcomes for the families.
- 3.30 Members were advised that from ENHCCG's perspective the key issues to address were personalisation of care, effective use of personal budgets and ensuring that there was a consistent assessment process.
- 3.31 In response to a Member question, it was established that ENHCCG had agreed to match HVCCG's contribution to the alternative funding plan of £100k, as it was a sum that both CCGs and the local authority could agree on, and was a good starting point to continue discussions in a constructive way.

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- 3.32 During discussion it was established that any discussion regarding an inflation linked increase to future payments was yet to be agreed. It was noted that should the alternative funding proposal be implemented, this would be undertaken through an annual review of the agreement.
- 3.33 The Chairman invited **Angela Kitching, parent representative**, to address the meeting
- 3.34 It was suggested to the Committee that since the last time parents had addressed Members of the council, the consequent recommendations made by Members had been ignored by HVCCG resulting in the case twice being taken to the High Court. As a result of this, the families did not have faith in the scrutiny process as HVCCG had previously ignored the outcome of previous scrutiny meetings. The Committee were urged to ensure that HVCCG did not ignore Members on this occasion.
- 3.35 Members were provided with the details of a number of fundamental future requirements for respite care by parents of children with special and complex needs as outlined in the report, these included:
- the need for a registered nurse even if the child(ren) did not qualify for CHC funding;
 - easy accessibility to the centre (no more than 20 minutes' drive);
 - easy accessibility to the named hospital from the centre where the child(ren) receive care to ensure continuity of acute care if required;
 - the need for the alternative respite centre to be suitable and safe (in light of current issues with capacity, staffing and accessibility);
 - an appropriate pathway for 3 age groups with differing needs (0-5, 5-17, 17-25);

Members noted that currently, parents are not confident that any of these issues were being considered or would be addressed.

- 3.36 The Committee were advised that the impact of the impending threat of closure of Nascot Lawn through withdrawal of funds was already having a detrimental impact on parents and families. Due to staff leaving the centre because of the ongoing uncertainty, parents and children were now only receiving a quarter of the respite care they were entitled to. This was leading to concerns that parents may now be presenting with

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mental health issues due to the stress, and siblings also feeling pressured. It was highlighted that it was a crucial time for siblings as number of them were undertaking exams.

- 3.37 Members were also advised that there had also been cases where children with the most complex of needs had needed to remain in hospital due to the lack of respite provision, resulting in beds that could have been used for other patients being taken for longer periods than necessary. Members were provided with examples of where this had occurred.
- 3.38 It was reiterated to Members that, in the nine months since the initial announcement regarding the withdrawal of funding had been made, only eight children had successfully transitioned from Nascot Lawn to other respite settings which evidenced how complex the needs of the children were. It was illustrated that even something as apparently straightforward as transferring a bed had taken a significant amount of time to organise.
- 3.39 Members also heard that training the appropriate staff for the alternative respite provisions was something that was also a lengthy process. It was explained that for children who did not qualify for CHC funding the medical requirements of the children (such as the management of a Hickman line) was something that could only be undertaken by a registered nurse.
- 3.40 In response to a Member query, the Chairman acknowledged the presence of other parents in the public gallery, but stressed that due to the process of the meeting, Ms Kitching and the two parent representative organisations would be representing their views.
- 3.41 In discussing the report, Members learnt that since the initial announcement by HVCCG to withdraw funding, no 'new' children had been referred to Nascot Lawn, leading to concerns that there were a number of children within the county not gaining access to respite care. It was suggested that both parents and health professionals were now unclear of where to refer children requiring the service.
- 3.42 During discussion it was reiterated that the uncertainty of the future was the key concern for parents, particularly for those who did not qualify for CHC funding. It was suggested that there was no clear structure or process for any child in crisis.
- 3.43 It was also repeated that parents believe that the alternative respite provision could not meet the needs of the children, due

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to the lack of specialist staff, capacity, and lack of accessibility, especially for children with large specialist wheelchairs.

- 3.44 Members also heard that another key factor for consideration was that it was whether it was possible to mix children with physical disabilities with those with behavioural issues. Due the reduced capacity of respite that the closure of Nascot Lawn would present, this would mean that more advanced planning would be required for parents requiring the service and there would be minimal opportunity to use the service at short notice.
- 3.45 Given the concerns, clearly articulated by parents and in the evidence provided in the papers for the meeting, parents believe that not all matters regarding Nascot Lawn would be resolved by November 2018 and that this date was 'aspirational'.
- 3.46 Members recalled that HVCCG had discussed the provision of Community Children's Nurses. It was acknowledged that, whilst the Community Children's Nurses had the requisite skills, it was suggested that this was not comparable to what was available on site at Nascot Lawn nor was it available 24 hours per day.
- 3.47 In response to a Member question, the Committee were advised that parents do not believe that they have been adequately engaged in the consultation surrounding the current proposal by HVCCG to withdraw funding from Nascot Lawn since the Judicial Review had taken place.
- 3.48 The Chairman invited the representative from **Carers in Herts** to address the Committee.
- 3.49 It was restated to the Committee the impact of caring for a child or young person with special needs on carers own mental and physical health, and also the wider impact experienced by other members of the family.
- 3.50 It was stressed to Members that it should be remembered that overnight short breaks were not a holiday, but crucial respite and a much needed break for the carers and families, and also an opportunity for the child/young person to experience an environment outside of the family home.
- 3.51 The Committee were advised that evidence had already been heard about the impact on parents due to the reduction of hours available at Nascot Lawn and it was maintained that this would only get worse should Nascot Lawn be forced to close

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completely.

- 3.52 Members discussed and acknowledged the significant challenge presented by the current and future reducing of respite provision at Nascot Lawn.
- 3.53 The Committee heard that Carers in Herts do not consider that they had not had a meaningful role in the consultation or had ongoing engagement with HVCCG.
- 3.54 The Chairman invited the representative from **Hertfordshire Parent Carer Involvement (HPCI)** to address the Committee
- 3.55 Members were provided with an explanation of the purpose of HPCI and were advised that HPCI was a Parent Carer Forum, where parents attended strategic meetings across the county.
- 3.56 It was noted that HPCI echoed the comments made in the meeting so far regarding the pressures on families, and the concerns that parents had not been consulted or engaged with by HVCCG before or since the judicial review. HPCI also confirmed that they do not perceive that it has consulted and engaged with by HVCCG.
- 3.57 Members expressed their disappointment about the apparent lack of consultation and engagement with parents by HVCCG before and since the judicial review had taken place.
- 3.58 The Chairman invited the representative from **Healthwatch Hertfordshire** to address the Committee.
- 3.59 Members heard that Healthwatch considered that moving forward, there was a positive message being heard about the alternative funding proposal that had been presented, but was concerning to hear that there were a number of issues highlighted in their report that were outstanding, particularly the ongoing lack of consultation with parents, and the impact of the reduced respite on families.
- 3.60 During discussion it was confirmed that Healthwatch Hertfordshire had expressed its concern within their report to the Committee about the inadequate exploration of the needs of the users by HVCCG when making its decision.
- 3.61 It was noted that, in line with its remit, Healthwatch Hertfordshire was briefed, but not consulted on the ongoing developments regarding the proposal to withdraw funding from Nascot Lawn.

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- 3.62 The Committee received confirmation that a number of parents contacted Healthwatch Hertfordshire subsequent to the initial announcement by Herts Valleys CCG that it intended withdrawing funding from Nascot Lawn.
- 3.63 The Chairman invited the representative from **Hertfordshire Community Trust (HCT)** to address the Committee.
- 3.64 The Committee were advised that HCT's current focus was to bring Nascot Lawn back to the commissioned level of service. It was noted that there were currently issues with staffing levels which had resulted in the reduction of respite availability already illustrated in the meeting.
- 3.65 In response to a Member question HCT confirmed that it would continue to provide staff training at other respite centres and would be willing to be part of any future respite provision that was commissioned.
- 3.66 Members received assurance that training was undertaken in conjunction with the local authority on an individualised basis and where required was bespoke, as it was recognised that some children and young people present as having very complex needs.
- 3.67 The Committee received confirmation that, as the previous notice period presented by HVCCG had been rescinded, HCT would continue to provide services at Nascot Lawn until such a time that any further notice period was presented. It was noted that, should HVCCG make the decision to withdraw the funding at their Finance and Performance Committee on the 3 May 2018, this would mean that HCT would continue to provide a commissioned service until the end of the six month notice period, which would expire in November 2018.
- 3.68 In response to a Member question as to how the staffing issues were being addressed, given the uncertain future of Nascot Lawn, it was explained that staff were being recruited into generic children's healthcare roles such as registered nurses and healthcare assistants that were initially assigned to Nascot Lawn with the view to them transferring to an alternative provision if required.
- 3.69 Members also received assurance that to ensure a duty of care to the families and children was maintained, it was HCT's intention to continue to support families up to and beyond the transition period if required.

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- 3.70 The Chairman invited representatives **Herts Valleys Clinical Commissioning Group (HVCCG)** to respond to the comments made by witnesses.
- 3.71 HVCCG stated that it was concerned that a number of factual inaccuracies had been presented to the Committee, particularly in relation to the comments regarding lack of consultation and engagement on the proposed withdrawal of funding.
- 3.72 Members were advised that parents, Carers In Herts, HPCI and Healthwatch Hertfordshire had all been extensively consulted with on the process and the Committee were reminded that in the outcome of the court hearing, the Judge had clearly confirmed that there had been an extensive consultation.
- 3.73 HVCCG also challenged the apparent misunderstanding of the responsibility of the areas of acute care, medical care and respite care. It was stressed that no acute care was undertaken at Nascot Lawn. This was undertaken in a medical setting and was the responsibility of the CCGs. Respite care was the responsibility of the local authority, but where a child requiring respite care had medical need, this was where the CCGs and the local authority would work together to provide the appropriate provision.
- 3.74 On return from adjournment for lunch, the Chairman and Head of Scrutiny summarised the morning's events.
- 3.7 Prior to Member debate, the Chairman allowed the Director for Public Health to provide a brief example of a joint agreement between the local authority and the CCGs by way of illustration to the committee to how these arrangements worked in practise.
- 3.76 The Chairman then proceeded to invite questions from Members to officers who had presented evidence in the morning sessions.
- 3.77 In response to a Member question regarding alternative uses for short break funds, it was noted that rather than using a respite provision, the carers could use the funding to pay a relative to look after the child or young person or use the funding towards allowing the child to attend an activity. It was stressed that the use of the funds would be carer led and would be discussed through the re-established short breaks carers group. Members noted that the local authority has a

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Brokerage Service to assist parents with managing any funding they receive.

- 3.78 In response to a Member question as to whether as the lead commissioner for Nascot Lawn, the Local Authority could register it as a children's home through Ofsted, it was explained that this option had already been explored, however to be eligible for children's home status the children would need to have single bedrooms, which was not possible or practical at Nascot Lawn.
- 3.79 Members expressed concern regarding the continued provision of respite and issues regarding transition. It was reemphasised that HCT would continue to work towards providing a full commissioned service until such a point that notice was given and completed.
- 3.80 In response to Member challenge regarding the evidence heard regarding lack of consultation with parents and partner organisations in the proposal to withdraw funding from Nascot Lawn, it was reiterated to Members that the judge in his ruling on the judicial review had stated that appropriate consultation had taken place, and had only upheld the decision regarding HVCCG's failure to formally consult with the local authority.
- 3.81 Members discussed the validity of HVCCG's counter challenge regarding the judge's ruling in more detail and the Committee's attention was drawn to point 17 of the ruling (Appendix L) which stated 'having reached this primary conclusion, it is strictly speaking unnecessary, and arguably otiose for me to pronounce on the remaining five grounds'.
- 3.82 The Committee noted that if the alternative funding arrangement discussed in the meeting was implemented, this would mean that overall funding from both CCGs would be reduced from £460,000 to £200,000. It was established that the shortfall will be met by the local authority and used to invest in the remaining three respite settings to extend the contracts and make the necessary adaptations and recruitment to accommodate all children. This will be a short term budget need as members were informed that the local authority will not be required to spend this money from beyond 2020/21.
- 3.83 On invitation from the Chairman, the representative from Carers in Herts took the opportunity to reiterate the undue stress for families caused by the uncertainty of future provision and the current reduction of provision of respite care.

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3.84 The Chairman thanked the parents and the officers from health providers and support organisations for attending the meeting. The Chairman concluded the discussion by repeating his earlier comment that the final decision regarding the withdrawal of funding from Nascot Lawn should take place at HVCCG's main Executive Board meeting and not the Finance & Performance Committee as indicated. This was acknowledged.

3.85 The meeting adjourned at 2.45pm to allow the Chairman, Vice Chairman and Labour Lead to discuss a motion and recommendation for the Committee to consider.

3.86 **CONCLUSION**

The meeting reconvened at 3.25pm. The following motion and recommendation was **proposed by the Chairman, S Quilty and seconded by J Birnie, District Member for Dacorum**:

'The Committee notes the progress that has now been made towards partnership working and the commitment from both HVCCG and E&NHCCG to support and provide services for children with complex health needs to safely access overnight short breaks.

However The Committee is not satisfied that the Proposal as put forward by HVCCG is in the interests of the health service but considers that it may be possible to reach an appropriate agreement with HVCCG.

The Committee has comments on the following aspects of the Proposal ("the Recommendations"):

Members raised the importance of active engagement with Parents, Carers, Carers Groups and Healthwatch in the future planning of any replacement service;

Members were concerned about the financial agreement that has been reached including the issues of revenue and capital. Members also raised concerns on the amount of funding and how the sums of money would be managed to address:

- Current and future needs,
- Equipment costs,
- Inflationary pressures

Members raised the importance of transparent decision making and responsibilities;

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Members were concerned about the availability of future respite provision and equity of location;

Members were concerned as to the impact on the wider health and social care system, the disruption and / or reduction in the level of respite service currently available;

Members were concerned about transition planning, staff costs and retention;

Members are concerned that the offer would leave any new arrangement initially underfunded and that the County Council would be required to meet the shortfall caused by the removal in funding;

Members considered that the new service should be in place before Nascot Lawn is decommissioned.

Members encouraged partnership working, putting the needs of children using respite services at the centre of decision making to provide proper health care and to avoid deviation from the Concordat.

The Committee agreed that:

1. A Report be prepared in accordance with Regulation 23(4) of The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 setting out the issues considered by the Committee and the Recommendations being in relation to:
 - a. Transitional arrangements
 - b. Financial contribution
 - c. Details of nursing available for OSB
 - d. Type and nature of legal agreement
 - e. Engagement and consultation
2. The Chief Legal Officer be authorised to take all necessary steps to prepare and submit the report referred to in 1 above in consultation with the Chairman of Health Scrutiny Committee. Such report to be submitted to HVCCG no later 4 April 2018
3. The HVCCG's decision on the Proposal and Recommendations, which will be taken on 3 May 2018,

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is further considered at the meeting of the Health Scrutiny Committee on 9 May 2018

4. The Committee will consider on 9 May 2018 whether any further action is required, including but not limited to the possibility of a recommendation that Full Council refer the final decision to the Secretary of State in accordance with Regulation 23(9) of the Regulations

The Motion and recommendation was voted on upon by the Committee by a show of hands. The Committee **unanimously** voted in favour of the motion and recommendation.

4. OTHER PART I BUSINESS

Due to the nature of the meeting, so other Part I business was considered

5. ITEMS FOR REPORT TO THE COUNTY COUNCIL (STANDING ORDER SC. 7(2))

To agree items for inclusion in the Committee's report to County Council. In the absence of a decision, a summary of all items will be reported

**KATHRYN PETTITT
CHIEF LEGAL OFFICER**

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