

# ADULT CARE AND HEALTH OVERVIEW AND SCRUTINY COMMITTEE

Call-In meeting Tuesday, 27 November 2018

<u>Present:</u>	Councillor	J McManus (Chair)	
	Councillors	B Berry W Clements T Cottier A Gardner (In place of G Ellis) P Gilchrist M Jordan C Meaden	C Muspratt T Norbury L Rennie I Williams KJ Williams (In place of S Frost) J Walsh
<u>Children and Families OSC Members in attendance:</u>	Councillors	D Burgess-Joyce C Carubia	AER Jones
<u>Also in attendance:</u>	Councillors	B Mooney J Bird	P Stuart
<u>Witnesses:</u>	Councillors	K Cannon	C Jones

## 30 APOLOGIES FOR ABSENCE

Apologies for absence were received Councillors Gerry Ellis and Samantha Frost, and from Karen Howell, Chief Executive Wirral Community Health NHS Trust and Karen Prior, Chief Officer Healthwatch Wirral.

## 31 MEMBERS' CODE OF CONDUCT - DECLARATIONS OF INTEREST

Members were asked to consider whether they had any disclosable pecuniary interests and/or any other relevant interest in connection with any item(s) on this agenda and, if so, to declare them and state the nature of the interest.

Members were reminded that they should also declare whether they were subject to a party whip in connection with any item(s) to be considered and, if so, to declare it and state the nature of the whipping arrangement.

The following declarations were made.

Councillor Chris Meaden	Personal interest by virtue of her daughter's employment within the NHS.
Councillor Christina Muspratt	Personal interest by virtue of her daughter's employment as a GP.
Councillor Sharon Jones	Personal interest by virtue of her employment within the NHS.

Councillor Tony Norbury	Personal interest by virtue of his daughter's employment within Adult Social Services.
Councillor Joe Walsh	Personal interest by virtue of his daughter's employment within the NHS.
Councillor Tony Cottier	Personal interest by virtue of his daughters' employment within the NHS.
Councillor Phil Gilchrist	Personal interest by virtue of his role as a Governor appointed to the Cheshire and Wirral NHS Partnership Trust, and as a member of the Health and Wellbeing Board.
Councillor Mary Jordan	Personal – by virtue of employment within the NHS; and involvement in Incubabies, a charity raising funds for the neonatal unit at Arrowe Park; and her son's employment as a GP.
Councillor Adrian Jones	Personal – by virtue of marriage to Councillor Christine Jones (decision taker and Call-In witness).
Councillor Jerry Williams	Personal - By virtue of his membership of Merseytravel Committee of the Liverpool City Region Combined Authority.

## 32 **CALLED-IN BUSINESS - WIRRAL HEALTH AND CARE COMMISSIONING POOLED FUND ARRANGEMENTS**

### **Chair's Opening Remarks.**

Prior to the commencement of business, the Chair informed the Adult Care and Health Overview and Scrutiny Committee, visiting Members of the Children and Families Overview and Scrutiny Committee, Officers and members of the public on the reason for the meeting, and how the meeting's business would be conducted.

The Chair further informed that a series of speakers would be given set amounts of time to present information and evidence on the subject of the Wirral Health and Care Commissioning Pooled Fund Arrangements and that witness statements would be taken in the order detailed in the agenda papers. Time would also be allowed for questions and responses, and once final statements had been delivered, the Adult Care and Health Overview and Scrutiny Committee would debate the matter.

For clarity, the Chair also advised the Adult Care and Health Overview and Scrutiny Committee that any points of order raised by Members during the meeting would require reference to the relevant supporting Standing Order within the Council's Constitution.

### **Explanation of Call-In by the Lead Signatory.**

Councillor Kate Cannon set out the reasons for bringing this matter before the Adult Care and Health Overview and Scrutiny Committee. She informed that it was her view that inadequate, limited or no consultation had taken place with the electorate, and questioned why proposals for the Pooled Fund Arrangements were judged to be in the best interests of the Wirral residents.

Councillor Cannon believed that the decision taken was undemocratic - stating that the Clinical Commissioning Group (CCG) was not an elected body - and requested that the matter also be referred to the Children and Families Overview and Scrutiny Committee and/or referred to experts to look at the contract in detail. Councillor Cannon requested that she be allowed to share a document containing information relevant to the matter under consideration, and with the consent of the Chair and Members of the Committee this was agreed. The Chair suspended proceedings for five minutes to allow Members opportunity to review the document contents.

**Overview and explanation of the decision taken by the relevant Cabinet Member.**

Councillor Chris Jones, Cabinet Member Adult Care and Health set out the background to the decision, taken by Members of the Cabinet Committee and the CCG Board, sitting in common as the Wirral Joint Strategic Commissioning Board (JSCB).

Councillor Jones explained that the decision was planned for to deliver the best possible services for residents, given the budgetary restraints imposed from Central Government. The associated service redesign would allow patients / service users to tell their story once - enabling money to go further i.e. a better return on investments, and how suggestions that the plan supported privatisation of the NHS was ludicrous. She added that NHS and Social Care Staff agreed that the integration of care (and joined-up funding) was needed, particularly when it came to those with disabilities.

Members of the Committee questioned Councillor Jones, in particular regarding the absence of opportunity to scrutinise the documentation relating to risk prepared by the Independent Auditors, PWC. Councillor Jones responded, informing that the report originally referred to earlier plans when more funding had been proposed, since amended, negating the identified risk.

Councillor Jones also informed how the JSCB had been structured to allow the Council Cabinet Committee one vote, and the CCG Board one vote, and how – only those decisions approved by both bodies would be allowed to progress.

**Evidence from Call-In witnesses.**

Dr Derek Timmins GP (retired) informed the Overview and Scrutiny Committee that it was his belief that the recent signing of the agreement was against the public interest. He also stated that MP's had advised against its signing and that there had been a breach of duty of care in doing so.

Dr Timmins questioned how a reported £19 million CCG deficit would be managed under the joint arrangement and that with no legal power of veto, no public consultation, and the use of unproven models compounded his view that the agreement and pooled funding was unlawful, unnecessary and a deliberate 'hoodwinking' of Members. He believed that the decision had not been thought through correctly and informed that the experiences of Manchester and the NHS had resulted in acrimonious relations between Elected Members and NHS Partners.

Members questioned Dr Timmins, with some Councillors believing that they had been mis-led, others disagreeing vehemently with a suggestion that the complexity of documents made it difficult for the lay person to understand.

Ms Yvonne Nolan, former Deputy Director Social Services at Manchester City Council introduced herself, declaring herself as a Labour Member and Candidate in the forthcoming Local Elections. Ms Nolan informed that her experience of a similar situation in Manchester where Partner Organisations were in a healthy financial state, and the CCG was in a strong position to assist the City Council in a number of ways. However even in this instance, it had been hard to balance parity and esteem and the model used had taken two years of negotiation and a further year to implement. Ms Nolan pointed out that it was important in any such arrangement to take full account of the Council's statutory duties and budgetary responsibilities by ensuring a right of veto.

When questioned, Ms Nolan confirmed that given the circumstances that existed in Wirral, she would have advised caution and in her view, although not privatisation per se, this model could pave the way in future. Ms Nolan responded to further questions from Members indicating that joint working between the Council's Social Services and the NHS could still work without the need for pooled funding and that the biggest risk would be ensuring adequate arrangements for safeguarding, with possible exposure to challenge from the Ombudsman. Ms Nolan also expressed concern that NHS England could step in and Cap the CCG Budget.

#### **Evidence from decision-taker's witnesses.**

Graham Hodgkinson, Director Adult Care and Health, and Statutory DASS since 2012 informed Members of the Overview and Scrutiny Committee that three Section 75 arrangements were currently in place, namely:

- Integrated Commissioning – which includes the Pooled Funding, the subject of Call-In;
- S.75 for Delivery of Statutory Health and Care Assessment with Cheshire Wirral Partnership – All Age Disability Service; and
- S.75 with Wirral Community Foundation Trust – for the delivery of Statutory Assessment i.e. Nurses and Social Workers working together in a single organisation.

Mr Hodgkinson informed that since 2014 there had been a statutory duty through the Care Act to integrate services, this was not a choice, and it had also been proven that 'partial' integration did not work. He added that proper Constitutional process had been followed through decisions of Cabinet and via Scrutiny at key stages, with Members being kept informed of developments. In Summer of 2018 the establishment of the JSCB had taken place and the Council's Constitution updated accordingly (including responsibilities of the key Elected Member). Mr Hodgkinson further informed that Members still retained absolute control of veto regarding matters relating to Social Care, and how without a Section 75 agreement in place the Council would not have had access to Better Care Funding.

Mr Hodkinson concluded his evidence, confirming that the funding arrangement was not a precursor to privatisation, but a direct provision of care packages.

Members questioned Mr Hodkinson on aspects of a lack of time to scrutinise documentation relating to the process and access to advice from experts. Mr Hodkinson responded, referring to the timeline, consultations and budget setting processes. He re-iterated that access to the Better Care Fund was dependent on a Section 75 agreement being in place.

Mr Hodkinson provided clarity in so far as the CCG deficit was not part of the pooled funding arrangement or the Section 75 agreement, and that the pooled funds were ring-fenced for service delivery.

Dr Sue Wells, Wirral GP working within the NHS for 30 years and Chair of Wirral CCG thanked the Committee for the opportunity to speak.

Dr Wells informed that in her role as a GP she often dealt with elderly, frail or disabled people who needed a joined up approach to treatment i.e. taking account of social determinant and health conditions. She further informed that the NHS could not manage the complexity of cases on its own and needed to work with the Council (Social Care provider) to avoid 'fragmented' care. People did not want to contact multiple places or to tell their story multiple times, and since the introduction of joint working arrangements, as a GP, she had already noticed improvements in terms of admin, provision and commissioning. She added that the JSCB was working well and the input from Elected Members played a key role in its decisions.

In response to questions from Members Dr Wells explained that the JSCB met in public and Councillors views were considered and the Board (Council and NHS) came together in reaching a decision. Dr Wells also informed that, contrary to what may have been said elsewhere, the CCG was not in special measures, and that the figure of £19 million had been identified as a target for savings under legal directions from NHS England.

#### **Summary of the lead signatory.**

Councillor Kate Cannon requested that the evidence provided had confirmed initial concerns and requested that the existing contract be reviewed but should not continue in its current format. Cllr Cannon appreciated the need for a Section 75 agreement but had concerns that the Council had given over a lot of democratic control to the CCG.

#### **Summary of the decision-taker.**

Councillor Chis Jones, Cabinet Member Adult Health and Care countered stating that collaborative working between the Council and the NHS/CCG under the Section 75 agreement actually increased democratic control and was in the public's best interest, providing accountability.

Councillor Jones informed that joined up care works better, allowed one process for procurement, and was not privatisation or a precursor to privatisation.

**Committee debate and decision.**

A Member stated the importance of the Section 75 agreement, believing that she would look to move a Motion in support of its retention, upholding the original decision of the JSCB.

Another Member advised that the matter should be taken back to Council for a variety of reasons, namely:

- Concern over the Council's Statutory Duties;
- Lack of clarity on budgetary matters; and
- Councillors had not been provided sufficient time to scrutinise the matter (i.e. pre-decision).

Councillor Christina Muspratt moved, and Councillor Tony Norbury seconded the following Motion:

*"That the matter be referred to Council to review and reconsider the proposed contract with the Clinical Commissioning Group (CCG), to ensure that the Council retains control of its statutory duties, and that the Council's budgetary position is protected".*

The Council Solicitor and Deputy Monitoring Officer advised of three options available to the Committee, whereby it may decide to:

- A. Refer the matter to the Cabinet Committee for reconsideration;
- B. Refer the matter to Council (noting that Council has no further powers, than those of this Committee); or
- C. Agree to uphold the original decision.

At this point in proceedings the Chair suggested a short break to enable legal advice to be sought. After a short break, and having consulted with the Council's Solicitor and the Director Adult Care and Health, the Chair reconvened the meeting and invited Members to continue their deliberations. With the agreement of the mover and seconder the Motion, previously tabled, was withdrawn.

Councillor Julie McManus (Chair) then moved, and Councillor Phil Gilchrist seconded, the following Motion:

*"This matter be referred to Council because the committee has the following concerns:*

- (1) *The Cabinet Committee needs to review and reconsider the developing and proposed contract with Wirral CCG to ensure:*
  - a. *that the Council retains control of its statutory duties*
  - b. *the Council's budgetary position is protected;*
- (2) *In view of the substantial funds pooled and managed by the new organisation further channels of communication need to be developed with Adult's Overview and Scrutiny Committee - so that they might have*

*more insight and make more meaningful contributions to the oversight of that body;*

- (3) Similar parallel arrangements be made for Children and Families Overview and Scrutiny Committee; and*
- (4) In addition work on the preparation of the system sustainability plan shall be placed before members at the earliest opportunity”.*

Councillor Wendy Clements moved and Councillor Mary Jordan seconded the following Amendment:

*“Committee moves that this decision is upheld and implemented without delay.*

*In the light of the considerable funds involved the Chair and Party Spokespersons will bring forward further scrutiny of the developing arrangements and legal agreement to ensure council fulfils its statutory duties and its budgetary position is protected so that members might have more insight and make more meaningful contributions to the oversight of the body”.*

The amendment was put and lost (5:10) (no abstentions).

The original motion was then put and carried (10:5) (no abstentions).

**Resolved (10:5) No abstentions - This matter be referred to Council because the Committee has the following concerns:**

- (1) The Cabinet Committee needs to review and reconsider the developing and proposed contract with Wirral CCG to ensure:**
  - a. that the Council retains control of its statutory duties**
  - b. the Council’s budgetary position is protected;**
- (2) In view of the substantial funds pooled and managed by the new organisation further channels of communication need to be developed with Adult’s Overview and Scrutiny Committee - so that they might have more insight and make more meaningful contributions to the oversight of that body;**
- (3) Similar parallel arrangements be made for Children and Families Overview and Scrutiny Committee; and**
- (4) In addition work on the preparation of the system sustainability plan shall be placed before members at the earliest opportunity.**