

Report of Head of Governance and Scrutiny Support

Report to the West Yorkshire Joint Health Overview and Scrutiny Committee

Date: 30 July 2018

**Subject: West Yorkshire Joint Health Overview and Scrutiny Committee –
Governance Matters**

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. This report presents a number of governance matters for the West Yorkshire Joint Health Overview and Scrutiny Committee 2018/19 for the Joint Committee's consideration, including:
 - i). Terms of Reference
 - ii). Arrangements for Chairing the meetings
 - iii). Membership of the Committee
 - iv). Proposed meeting dates and venue arrangements

Recommendation

The Joint Committee is requested to:

- i). Note the Scrutiny Committee's Terms of Reference as set out in Appendix 1 of the report;
- ii). Note the current membership of the Joint Committee;
- iii). Agree the arrangements for Chairing meetings of the Joint Committee for the remainder of the current municipal year, 2018/19;
- iv). Consider the appointment of non-voting co-opted member to the Joint Committee for the remainder of the current municipal year, 2018/19
- v). Consider and agree a schedule of meeting dates and venues for the remainder of the current municipal year, 2018/19.
- vi). Confirm it wishes officers to proceed to develop such proposals and seek the necessary approvals required by each constituent authority.

1.0 Purpose of this report

- 1.1 This report presents a number of governance matters for Members of the West Yorkshire Joint Health and Overview Scrutiny Committee to note and/or consider for the current Municipal Year (2018/19).

2.0 Background information

- 2.1 During the Municipal Year 2014/15, the Chairs of the five West Yorkshire Health Overview and Scrutiny Committees agreed to meet on an informal basis to maintain an overview of the joint work being progressed by the West Yorkshire Clinical Commissioning Groups through the 'Healthy Futures' programme of work.
- 2.2 In December 2015, the West Yorkshire Joint Health Overview and Scrutiny Committee (the JHOSC) was established by agreement of each of the constituent local authorities. This formalised the previous informal arrangements with the purpose of the JHOSC at that time being to:
- Consider any proposals from the NHS for substantial variation in service that had West Yorkshire wide implications;
 - Meet NHS England to discuss any matters with West Yorkshire wide implications; and,
 - Be the first place for dialogue between West Yorkshire Council's Health Overview and Scrutiny Committees and the West Yorkshire Commissioning Collaborative (the West Yorkshire Clinical Commissioning Groups).
- 2.3 The establishment of the JHOSC pre-dates the establishment of the West Yorkshire and Harrogate Health and Care Partnership (formally known as the West Yorkshire and Harrogate Sustainability and Transformation Plan/ Partnership) and associated national requirements, which were considered by the JHOSC at its meeting in November 2016.

3.0 Main issues

Terms of Reference

- 3.1 The current Terms of Reference for the Joint Committee is presented at Appendix 1 for information and/or comment.

Committee Membership

- 3.2 To continue the previous arrangements, each of the five West Yorkshire authorities has appointed two members to sit on the Joint Committee. The processes for appointing its membership have varied between authorities, depending on the governance arrangements of the constituent authorities. The elected Members nominated as members of the JHOSC from the constituent authorities for the current municipal year (2018/19), are set out on the front cover of the agenda for this meeting.

- 3.3 It should be noted that given the original purpose and scope of the JHOSC, North Yorkshire County Council (NYCC) is not a formal member of the Joint Committee. However, to continue with the operating arrangements in place to reflect the development and geography of the West Yorkshire and Harrogate Health and Care Partnership, the Chair of NYCC's Health Overview and Scrutiny Committee has been invited to attend and participate in the meeting.
- 3.4 Future membership issues for the JHOSC are also discussed elsewhere in this report, alongside interim but more formal arrangements to recognise NYCC's role on the JHOSC.

Chairing the Committee

- 3.5 Since its establishment, meetings of the JHOSC have been Chaired by Leeds City Council.
- 3.6 Members of the JHOSC are asked to consider and confirm the Chairing arrangements for the current municipal year (2018/19).

Co-opted Members

- 3.7 Currently, the JHOSC operates under the terms of Leeds City Councils' Scrutiny Board Procedure Rules, which allow for the appointment of non-voting co-opted members to Scrutiny Committees.
- 3.8 In general terms, Scrutiny Committees (in this case, the JHOSC) can appoint:
- Up to five non-voting co-opted members for a term of office that does not go beyond the next Annual Meeting of Council ; and/or,
 - Up to two non-voting co-opted members for a term of office that relates to the duration of a particular and specific scrutiny inquiry..
- 3.9 It is widely recognised that in some circumstances, co-opted members can significantly aid the work of Scrutiny Committees. However, Article 6 of Leeds City Council's Constitution makes it clear that co-option would normally only be appropriate where the co-opted member has some specialist skill or knowledge, which would be of assistance to the Scrutiny Committee. Particular issues to consider when seeking to appoint a co-opted member are set out below.
- 3.10 In considering the appointment of co-opted members, the JHOSC may wish to give careful consideration to the following matters:
- (a) The JHOSC should be satisfied that a co-opted member can use their specialist skill or knowledge to add value to the work of the Joint Committee. However, co-opted members should not be seen as a replacement to professional advice from officers.
 - (b) Co-opted members should be considered as representatives of wider groups of people. However, when seeking external input into the JHOSC's work, consideration should always be given to other alternative approaches, such as the role of expert witnesses to help achieve a balanced evidence base.

(c) When considering the appointment of a standing co-opted member for a term of office, the JHOSC should be mindful of any potential conflicts of interest that may arise during the course of the year in view of the JHOSC's terms of reference. To help overcome this, the JHOSC may wish to focus on the provision available to appoint up to two non-voting co-opted members for a term of office that relates to the duration of a particular and specific scrutiny inquiry.

- 3.11 Despite the lack of any national guidance, what is clear is that any process for appointing co-opted members should be open, effective and carried out in a manner which seeks to strengthen the work of the Joint Committee.
- 3.12 Earlier in this report, it has been highlighted that due to the original purpose and scope of the JHOSC, North Yorkshire County Council (NYCC) is not a formal member of the Joint Committee. While future longer-term membership issues for the JHOSC are discussed elsewhere in this report, the JHOSC may wish to consider formally 'co-opting' a member or members from NYCC to the membership of the JHOSC for the remainder of the current municipal year.
- 3.13 While any such appointment(s) would be in a non-voting capacity, members of the JHOSC are reminded that currently the JHOSC is operating as a discretionary rather than statutory joint committee.
- 3.14 As such, formally 'co-opting' a member or members from NYCC to the membership of the JHOSC for the remainder of the current municipal year, may offer an alternative and more formal arrangement in lieu of the JHOSC's longer-term membership being confirmed.

Future Meetings and Venues

- 3.15 In order to support work planning, a schedule of meeting dates has been drafted taking into account meeting commitments across the constituent authorities, for the Committee's consideration and determination:

September/October 2018	Tuesday 25th September at 10.30 am OR Monday 8th October 2018 at 1.30 pm
December 2018	Wednesday 5th December 2018 at 10.30 am OR Monday 10th December 2018 at 1.30 pm
February 2019	Monday 11th February 2019 at 1.30 pm
April 2019	Monday 8th April 2019 at 1.30 pm

- 3.16 The JHOSC is specifically asked to indicate preferred dates for the proposed September/October and December meetings when determining the future meeting dates for the remainder of the current municipal year, 2018/19. A pre-meeting for Members will be held prior to each Committee.

3.17 The JHOSC is also asked to confirm the meeting venues for each of the agreed meeting dates for the remainder of the current municipal year, 2018/19.

Review of the West Yorkshire JHOSC arrangements

3.18 As members of the JHOSC will be aware, there is provision in the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013/218 (the Regulations) that allows local authorities to establish and delegate appropriate functions to Joint Health Overview and Scrutiny Committees.

3.19 Such joint committees can be formed on the following basis:

- (a) Discretionary joint committee – where two or more local authorities may appoint a joint committee and arrange for relevant functions in relation to any (or all) of those authorities to be exercisable by the joint committee (subject to such terms and conditions as the relevant local authorities may consider appropriate).
- (b) Statutory joint committee – where relevant NHS organisations (referred to as a ‘responsible person’) seeks to consult more than one local authority in relation to any proposal for a substantial development or variation of health service(s) across the areas of the constituent local authorities, those local authorities must appoint a joint committee for the purpose of that consultation.

3.20 Therefore, it should be noted that relevant NHS organisations have an inferred key role in the establishment of statutory Joint Health Overview and Scrutiny Committees – insofar as NHS organisations need to be clear about the local authority areas affected by any proposed substantial development or variation of local health services and with which they will seek to consult.

3.21 This is highlighted in recent advice from the Independent Reconfiguration Panel (IRP) to the Secretary of State (March 2018)¹, where the IRP highlight some of the potential pitfalls to be avoided around joint health overview and scrutiny arrangements, including stating that, ‘*The Department of Health and NHS England should consider whether the regulations and guidance are sufficiently understood and used effectively by all parties, particularly in the current context of STPs and “systems of care” rather than “organisations”.*’ It is not clear to what extent this recommendation has been acted on – or is planned to be acted on – but this should not prevent there being clarity across the WY&H H&CP.

3.22 The IRP also suggests the need for clarity around the appropriate involvement of relevant local authorities early on in any consultation process, stating: ‘*...it is important that consultation about the future of services, on whatever scale, takes account of patient flows and is not constrained by administrative boundaries.*’

The West Yorkshire Joint Health Overview and Scrutiny Committee

3.23 As mentioned previously, in December 2015 the West Yorkshire Joint Health Overview and Scrutiny Committee (the JHOSC) was established by agreement of

¹ In relation to the referral of the proposed permanent closure of consultant-led maternity services at the Horton General Hospital by the Oxfordshire Joint Health Overview and Scrutiny Committee

each of the constituent local authorities – thereby establishing a discretionary joint committee to exercise the functions set out in Appendix 1.

- 3.24 Furthermore, the JHOSC was established using the principals set out in the Yorkshire and Humber Joint Health Scrutiny Protocol – the Protocol – (attached at Appendix 2), which was initially drafted as a framework for carrying out scrutiny of regional and specialist health services that impact upon residents across Yorkshire and the Humber.
- 3.25 The Protocol was previously adopted by each of the fifteen top-tier local authorities across Yorkshire and Humber, prior to the establishment of the regional JHOSC examining proposals for children’s (and subsequently, adult’s) congenital heart disease services, which formally commenced in March 2011 and held its last meeting in January 2017.
- 3.26 Since the protocol was adopted, there have been changes in the legislative framework affecting local authorities and the NHS; alongside significant operational and administrative developments – including an increase in the likelihood for JHOSCs to be required and formed across England.
- 3.27 It should also be noted that the establishment of the JHOSC pre-dates the West Yorkshire and Harrogate Health and Care Partnership (WY&H H&CP) – previously known as the West Yorkshire and Harrogate Sustainability and Transformation Plan/ Partnership. However, in the longer-term, it is important to consider the JHOSC as an integral part of the overall governance arrangements for the WY&H H&CP.

Issues to consider

- 3.28 Members of the JHOSC have previously recognised that, in its current form, the JHOSC is unlikely to meet the future needs (or demands) placed upon it resulting from the increasing formality of the WY&H H&CP and associated arrangements. As such, a review of the JHOSCs terms of reference and membership is required – which will then require the agreement of each constituent local authority.
- 3.29 Members of the JHOSC have also highlighted concern about there being sufficient flexibility between the JHOSC operating as a discretionary joint committee and a statutory joint committee (if/when required). This includes the potential need for different memberships, should any future proposed NHS service variations or developments affect different geographies within the overall geography of the West Yorkshire and Harrogate footprint.
- 3.30 While further work is required across constituent local authorities, initial advice suggests there are permissible arrangements that would allow for the establishment of new (refreshed) arrangements of a discretionary committee and the establishment of statutory joint committee arrangements (as required) as sub-committee(s) of the discretionary JHOSC. Potentially, this would provide greater flexibility to the current arrangements.
- 3.31 It should be noted that in order to operate such arrangements, it would be necessary to develop, agree and operate a singular and consistent set of Procedural Rules across the JHOSC and any sub-committee(s). Again, this would be subject to the agreement of each constituent local authority.

3.32 The JHOSC is asked to confirm it wishes officers to proceed to develop such proposals and seek the necessary approvals required by each constituent authority.

4.0 Corporate Considerations

4.1 Consultation and Engagement

4.1.1 The terms of reference have previously been formally considered and approved by each of the constituent West Yorkshire authorities, based on the associated governance arrangements for each authority.

4.2 Equality and Diversity / Cohesion and Integration.

4.2.1 The Joint Committee will ensure that equality and diversity/cohesion and integration issues are considered as part of its future work.

4.3 Resources and Value for Money

4.3.1 This report has no specific resource and value for money implications.

3.4 Legal Implications, Access to Information and Call In

4.4.1 The establishment of the joint committee and the associated terms of reference were previously formally considered and approved by each of the constituent West Yorkshire authorities, based on the associated governance arrangements for each authority.

4.5 Risk Management

4.5.1 This report has no risk management implications.

5.0 Recommendations

The Joint Committee is requested to:

- i). Note the Scrutiny Committee's Terms of Reference as set out in Appendix 1 of the report;
- ii). Note the current membership of the Joint Committee;
- iii). Agree the arrangements for Charring meetings of the Joint Committee for the remainder of the current municipal year, 2018/19;
- iv). Consider the appointment of non-voting co-opted member to the Joint Committee for the remainder of the current municipal year, 2018/19
- v). Consider and agree a schedule of meeting dates and venues for the remainder of the current municipal year, 2018/19.
- vi). Confirm it wishes officers to proceed to develop such proposals and seek the necessary approvals required by each constituent authority.

6.0 Background documents²

None

² The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.