

## Local Authority Health Scrutiny

Date: 21 June 2022

Report of: Head of Democratic Services

Report to: Scrutiny Board (Adults, Health and Active Lifestyles)

Will the decision be open for call in?  Yes  No

Does the report contain confidential or exempt information?  Yes  No

### What is this report about?

#### Including how it contributes to the city's and council's ambitions

- Local Authority Health Scrutiny was first introduced by the Health and Social Care Act 2001 and is a fundamental way by which democratically elected local councillors are able to voice the views of their constituents, and hold relevant NHS bodies and relevant health service providers to account.
- The Scrutiny Board (Adults, Health and Active Lifestyles) has been allocated special responsibility to fulfil the council's statutory health scrutiny function and therefore has a specific remit / responsibility in relation to reviewing and scrutinising any matter relating to the planning, provision and operation of local health services.
- NHS Commissioners and Service Providers have a duty to consult local authorities (through the health scrutiny function) where any proposal is under consideration for a substantial development of the health service or a substantial variation in the provision of such a service in the local authority area.
- This report also sets out some of the specific health scrutiny implications arising from the Health and Care Act 2022 and likely to impact on the future work of the Scrutiny Board, presenting further information and guidance to assist the Scrutiny Board (Adults, Health and Active Lifestyles) in undertaking its specific health scrutiny role.

### Recommendations

The Scrutiny Board (Adults, Health and Active Lifestyles) is recommended to:

- (a) Note the content of this report, alongside the associated appendices, information and guidance presented.
- (b) Re-establish the Health Service Developments Working Group as a forum that allows early engagement with the Scrutiny Board regarding proposed developments and/or changes to local health services, with the Terms of Reference as presented at Appendix 2.
- (c) Agree the Board's representatives to sit on the West Yorkshire Joint Health Overview and Scrutiny Committee (JHOSC) for this municipal year (2022/23).
- (d) Note that the JHOSC arrangements may be subject to further review and amendments as a result of the local implementation of the Health and Care Act 2022.

## Why is the proposal being put forward?

1. The Scrutiny Board (Adults, Health and Active Lifestyles) has been assigned to fulfil the council's statutory health scrutiny function and this report presents further information and guidance to assist the Board in undertaking this specific role.
2. In June 2014, the Department of Health published its 'Local Authority Health Scrutiny' guidance to support local authorities and partners deliver effective health scrutiny. A copy of this guidance is therefore appended to this report for Members' information (see Appendix 1).
3. In considering these details, and as highlighted elsewhere on the agenda, the Board's attention is drawn to the Health and Care Act 2022 that introduces new Secretary of State intervention powers associated with substantial service reconfigurations across the NHS.
4. Any specific requirements to amend the Council's Constitution arising from the new Secretary of State intervention powers will be considered and progressed through the appropriate decision-making processes within the Council.

### Health Service Developments Working Group

5. The Health and Social Care Act (2012) reinforced the duty of NHS Commissioners and Service Providers to make arrangements to involve and consult patients and the public in:
  - Planning service provision;
  - The development of proposals for changes; and,
  - Decisions about changes to the operation of services.
6. In accordance with Part 4 of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013, the requirement to consult on service changes and/or developments also includes a duty to consult local authorities (through the health overview and scrutiny function) where any proposal is under consideration for:
  - a substantial development of the health service; or,
  - a substantial variation in the provision of such a service in the local authorities area.
7. Such a duty does not apply to any proposals on which the responsible NHS body is satisfied that a decision has to be taken without allowing time for consultation because of a risk to safety or welfare of patients or staff. However, the Regulations state that the authority must still be notified immediately of the decision taken and the reason why no consultation has taken place.
8. The levels of service variation and/or development are not specifically defined in legislation and it is widely acknowledged the term 'substantial variation or development of health services' is subjective. Commissioners and providers are therefore advised to approach the local authority's health scrutiny function when proposals are first being considered to discuss and reach a view on whether the change proposed is substantial, as well as determining appropriate next steps.
9. To assist in this process, a Health Service Developments Working Group has previously been established to offer an environment that allows early engagement with the Scrutiny Board regarding proposed developments and/or changes to local health services.

## Health and Care Act 2022

10. As outlined elsewhere on the agenda, the Board's attention is also drawn to the likely impact of the Health and Care Act 2022 on the Council's future Health Scrutiny functions – including the introduction of new Secretary of State intervention powers associated with substantial service reconfigurations across the NHS.
11. Under the Health and Care Act 2022, the duty remains for NHS bodies to consult local authorities (through the health overview and scrutiny function) where substantial reconfiguration proposals are under consideration. In relation to substantial service reconfiguration there is existing provision for the local authority (delegated to the Scrutiny Board (Adults, Health and Active Lifestyles)) to make formal referrals to the Secretary of State where those proposals are not considered to be in the interest of local health services and/or it is deemed that insufficient consultation has taken place with the Scrutiny Board. However, it is expected that the new Secretary of State intervention powers will supersede the local authority's existing referral power. Nonetheless, on a practical level, it is anticipated that the new Secretary of State intervention powers will not be introduced until April 2023, with the existing power of referral remaining in place during this transitional period. Such arrangements may require transitional government guidance.
12. The Scrutiny Board will continue to be kept up-to-date with further developments as they progress, however it is recommended that arrangements are put in place to re-establish the Health Service Developments Working Group for the current municipal year (2022/23). Draft terms of reference are attached at Appendix 2 for the Boards consideration and approval.

## Joint Health Scrutiny

13. As explained within the Department of Health guidance document, Regulation 30 of the Local Authority (Public Health, Health and wellbeing boards and Health Scrutiny) Regulations 2013 requires local authorities to appoint mandatory joint health scrutiny committees where a relevant NHS body or health service provider consults more than one local authority's health scrutiny function about substantial reconfiguration proposals.
14. Under Regulation 30, local authorities may also appoint a discretionary joint health scrutiny committee to carry out all or specified health scrutiny functions, for example health scrutiny in relation to health issues that cross local authority boundaries. Establishing a joint committee of this kind does not prevent the appointing local authorities from separately scrutinising health issues. However, it is recognised that there are likely to be occasions on which a discretionary joint committee is the best way of considering how the needs of a local population, which happens to cross council boundaries, are being met.
15. In November 2014, the chairs of the five West Yorkshire Councils health overview and scrutiny committees agreed to pursue establishing a discretionary joint health overview and scrutiny committee and in November 2015, Leeds City Council agreed to join other West Yorkshire authorities in making joint arrangements and approving terms of reference for a discretionary West Yorkshire Joint Health Overview and Scrutiny Committee (JHOSC). The original terms of reference for this Committee are set out in Appendix 3 for Members' information.

## Working arrangements of the JHOSC

16. The JHOSC formally consists of Leeds, Bradford, Calderdale, Kirklees and Wakefield Councils, with North Yorkshire County Council formally appointed as a co-opted member since 2018/19, and continues to maintain oversight for the development of the West

Yorkshire Integrated Care Board (currently operating in shadow form until 1 July 2022) and the West Yorkshire Partnership Board (due to become the West Yorkshire Integrated Care Partnership) which will set the overall system strategy.

17. Membership of the JHOSC currently consists of two members from the relevant scrutiny committee within each constituent local authority. Leeds' representatives on the JHOSC have been the Chair and another member of the Scrutiny Board (Adults, Health and Active Lifestyles). Historically this position has been filled by a Scrutiny Board Member representing the council's largest opposition political group.
18. The support resource for the JHOSC will remain within the remit of colleagues at Calderdale Council for 2022/23 and the JHOSC will appoint a new Chair from its membership at its first meeting of 2022/23.
19. As in previous years, the Scrutiny Board (Adults, Health and Active Lifestyles) will continue to be kept up-to-date on the work being undertaken by the JHOSC to help ensure any broader views of the Scrutiny Board are fed into the work of JHOSC, to help ensure the effective use of resource and avoid any unnecessary duplication.
20. The Scrutiny Board is asked to note the current JHOSC arrangements and agree the Board's representatives for this municipal year (2022/23), while also recognising that such arrangements may be subject to further review linked to Health and Care Act 2022.

#### **What impact will this proposal have?**

**Wards affected: All**

Have ward members been consulted?

Yes

No

21. This report presents information and guidance to assist the Scrutiny Board (Adults, Health and Active Lifestyles) in undertaking its specific health scrutiny role.

#### **What consultation and engagement has taken place?**

22. The terms of reference of the West Yorkshire Joint Health Overview and Scrutiny Committee and draft terms of reference of the Health Service Development Working Group and, as appended to this report, have been informed by earlier engagement work undertaken with the Scrutiny Board.

#### **What are the resource implications?**

23. This report has no specific resource implications.

#### **What are the legal implications?**

24. The Scrutiny Board (Adults, Health and Active Lifestyles) has been allocated special responsibility to fulfil the council's statutory health scrutiny function and this report presents further information and guidance to assist the Board in undertaking this specific role.

#### **What are the key risks and how are they being managed?**

25. This report has no risk management implications.

**Does this proposal support the council's three Key Pillars?**

Inclusive Growth

Health and Wellbeing

Climate Emergency

26. Health scrutiny should be outcome focused, looking at cross-cutting issues, including general health improvement, wellbeing and how well health inequalities are being addressed, as well as specific treatment services.

**Appendices**

27. Appendix 1 - Department of Health 'Local Authority Health Scrutiny' guidance (June 2014).
28. Appendix 2 - Health Service Developments Working Group Draft Terms of Reference for the current municipal year (2022/23).
29. Appendix 3 - West Yorkshire Joint Health Overview and Scrutiny Committee Terms of Reference (2015)

**Background papers**

30. None.