

Local Authority Health Scrutiny

Date: 18th June 2024

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

Brief summary

- 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.
- This report presents 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 1.
- (c) Agree the Board's representatives to sit on the West Yorkshire Joint Health Overview and Scrutiny Committee (JHOSC) for this municipal year (2024/25).

What is this report about?

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. Following the introduction of the Health and Care Act 2022, new guidance: "[Local Authority Health Scrutiny: Guidance to support local authorities and their partners to deliver effective health scrutiny](#)" (DHSC, 2024) was published on 9th January 2024 and replaces/supersedes guidance of the same name published in June 2014.

Health and Care Act 2022

➤ *Impact on the organisation of health and care functions across England.*

3. The Health and Care Act 2022 received Royal Assent on 28th April 2022 and introduced substantial changes to the organisation of health and care functions across England. The main structural change was the abolition of Clinical Commissioning Groups (CCGs) and the development of statutory Integrated Care Systems (ICSs) which comprise of new Integrated Care Boards and Integrated Care Partnerships.
4. Integrated Care Boards (ICBs) took on the commissioning responsibilities of Clinical Commissioning Groups from 1st July 2022, as well as being tasked with leading the integration of health and care services across their area.
5. Integrated Care Partnerships (ICPs) are required to bring together a broad alliance of partners concerned with improving the care, health and wellbeing of the population and are also responsible for producing an integrated care strategy on how to meet the health and wellbeing needs of the population in their ICS area.
6. The Adults, Health and Active Lifestyles Scrutiny Board was engaged in the ongoing development of the West Yorkshire Integrated Care System. Linked to this, the new West Yorkshire Integrated Care Board had agreed to primarily discharge its duties through delegation to ICB place based committees, alongside work that is delivered at West Yorkshire level. As such, the Scrutiny Board also monitored the establishment of the Leeds Committee of the West Yorkshire ICB.

➤ *Impact on the role of health scrutiny*

7. Under the [Local Authority \(Public Health, Health and Wellbeing Boards and Health Scrutiny\) Regulations 2013](#), local authorities have the power to:
 - review and scrutinise matters relating to the planning, provision and operation of the health service in the area - this may well include scrutinising the finances of local health services.
 - require information to be provided by certain NHS bodies about the planning, provision and operation of health services that is reasonably needed to carry out health scrutiny.
 - require employees, including non-executive directors of certain NHS bodies, to attend before them to answer questions.
 - make reports and recommendations to certain NHS bodies and expect a response within 28 days.
 - where practicable, set up joint health overview and scrutiny committees with other local authorities and delegate health scrutiny functions to an overview and scrutiny committee of another local authority.
8. Regulation 28 states that local authorities may arrange for their relevant functions to be discharged by a Health Overview and Scrutiny Committee (HOSC). In Leeds, the Scrutiny

Board (Adults, Health and Active Lifestyles) has been assigned to fulfil the council's statutory health scrutiny function. This is set out in Article 6 of the constitution under special responsibilities.

Amendments made to the 2013 Regulations.

9. Part 4 of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013, and specifically regulation 23(1)(a), requires the responsible NHS body or health service provider to consult local authorities 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.
10. However, the exact meaning of "substantial" is not defined in legislation or guidance. Commissioners and providers are therefore advised to approach the local authority HOSC 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.
11. Regulation 24 of the 2013 regulations sets out exemptions from NHS commissioning bodies' and NHS providers' duty to consult the local authority HOSC. In particular, the duty to consult 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 local authority HOSC must still be notified immediately of the decision taken and the reason why no consultation has taken place.
12. The Regulations had also included provision for the local authority (through the health overview and scrutiny function) to make formal referrals to the Secretary of State where proposals are not considered to be in the interest of local health services and/or it is deemed that the consultation on the proposal has not been adequate in relation to content or time allowed.
13. However, new ministerial intervention powers introduced by the Health and Care Act 2022 have led to local authorities' powers of referral to the Secretary of State now being removed from the 2013 regulations. The '[Local Authority \(Public Health, Health and Wellbeing Boards and Health Scrutiny\) \(Amendment and Saving Provision\) Regulations 2024](#)' sets out the amendments made to the original 2013 Regulations. The new ministerial provisions came into force on 31 January 2024 with the publication of '[The National Health Service \(Notifiable Reconfigurations and Transitional Provision\) Regulations 2024](#)'. Statutory guidance was also published in terms of setting out the new process for ministerial intervention ([Reconfiguring NHS services – ministerial intervention powers](#)) (DHSC, 2024).
14. Local authorities' scrutiny responsibilities for service change (and wider scrutiny responsibilities) have not changed. NHS commissioning bodies' duties to involve and consult local authorities, primarily through their Health Overview and Scrutiny Committees (HOSCs), remain in place.

Health Service Developments Working Group

15. As referenced in paragraph 10 above, levels of service variation and/or development are not specifically defined in legislation in terms of NHS bodies or health service providers being required to consult accordingly on proposals under consideration and so it is widely acknowledged that 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.

16. 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.
17. It is therefore recommended that arrangements are put in place to re-establish the Health Service Developments Working Group for the current municipal year (2024/25), with the terms of reference attached at Appendix 1 for the Boards consideration and approval.

Joint Health Scrutiny

18. 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.
19. 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.
20. 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). While the original terms of reference for this Committee are set out in Appendix 2 for Members' information, there has been an ongoing commitment to undertake a review and refresh of the terms of reference. Members will therefore be kept informed of developments in this regard.

Working arrangements of the JHOSC

21. The JHOSC formally consists of Leeds, Bradford, Calderdale, Kirklees and Wakefield Councils, with North Yorkshire County Council appointed as a co-opted member since 2018/19.
22. 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).
23. The support resource for the JHOSC is currently with Kirklees Council for 2024/25 and the JHOSC will also appoint a Chair from its membership as part of its first meeting of the municipal year.
24. 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 and that we maximise the effective use of resource by avoiding any unnecessary duplication.

25. The Scrutiny Board is asked to note the current JHOSC arrangements and agree the Board's representatives for this municipal year (2024/25).

What impact will this proposal have?

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

How does this proposal impact the three pillars of the Best City Ambition?

- Health and Wellbeing Inclusive Growth Zero Carbon

27. 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.

What consultation and engagement has taken place?

Wards affected:

Have ward members been consulted? Yes No

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

What are the resource implications?

29. This report has no specific resource implications.

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

30. There are no risk management implications relevant to this report.

What are the legal implications?

31. 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.

Appendices

- Appendix 1 - Health Service Developments Working Group Draft Terms of Reference for the current municipal year (2024/25).
- Appendix 2 - West Yorkshire Joint Health Overview and Scrutiny Committee Terms of Reference (2015).

Background papers

- None.