

Memorandum of Understanding between West Yorkshire Joint Health Overview and Scrutiny Committee and NHS West Yorkshire Integrated Care Board

Introduction and Scope

1. This Memorandum of Understanding (MoU) provides guidance and a common understanding on how the West Yorkshire Joint Health Overview and Scrutiny Committee (WY JHOSC) and the NHS West Yorkshire Integrated Care Board (WY ICB) will work in partnership.
2. WY JHOSC has a legitimate role in proactively seeking information about the performance of local health services and institutions, in challenging the information provided to it by the WY ICB and in testing this information by drawing on different sources of intelligence.
3. As outlined in paragraph 25 of this MoU, the WY JHOSC is a discretionary arrangement, however it is expected that where the WY ICB has under consideration any proposal for a substantial development of the health service across the WY footprint or for a substantial variation in the provision of such service, it will pay due regard to the legislation which may require any member or employee of the WY ICB to attend before the WY JHOSC to answer questions.
4. In recognising the roles of the JHOSC and ICB ([*as set out in Statutory guidance: Overview and scrutiny: statutory guidance for councils, combined authorities and combined county authorities*](#) and [Local authority health scrutiny - GOV.UK \(www.gov.uk\)](http://www.gov.uk)) this MoU provides a framework and principles that both parties aim to adhere to. This will ensure that the process followed between WY JHOSC and WY ICB remains positive, collaborative, and ambitious, with the aim of driving the best outcomes for WY residents. In so doing the aim for all parties is to help ensure that the partnership and process followed between the WY JHOSC and WY ICB remains a positive and constructive experience whilst recognising the WY JHOSC's role as a 'critical friend'.
5. The MoU will outline how the WY JHOSC and WY ICB will work together to the strategic planning, provision, and operation of the health service in its area and determine to refer back to its constituent local authority when the matter requires a statutory JHOSC establishing. The WYJHOSC may make reports and recommendations to the WY ICB where appropriate for it to do so and expect a response from the WY ICB within 28 days.
6. This MoU reflects legislative changes effective from 31 January 2024 which include:
 - a) The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) (Amendment and Saving

Provisions) Regulations 2024 removes the Committee's power to make referrals to the Secretary of State, when the local NHS is considering a substantial change in service provision.

- b) A new Schedule 10A to the National Health Service Act 2006 places a duty on any commissioner of NHS services to notify the Secretary of State when they propose a 'notifiable' reconfiguration of local services and give powers to the Secretary of State to intervene and make decisions on NHS service configurations.

- 7. Both (a) and (b) above are supported by guidance and statutory guidance, including Reconfiguring NHS Services – Ministerial Intervention Powers, which also came into force on 31 January 2024.
- 8. This MoU complements each WY local authority area's Health and Scrutiny Committees and does not replace scrutiny undertaken at place level. The WY JHOSC considers and scrutinises the provision and commissioning of health services to ensure they meet the needs of the people of WY. It sits alongside the existing Terms of Reference (ToR) for local Health Overview and Scrutiny Committees (HOSC) and JHOSC's within WY.
- 9. This MoU does not replace any local statutory arrangements at place.

Leadership

- 10. Consistent with recently published [Overview and scrutiny: statutory guidance for councils](#), culture and effective leadership are key to the success of the scrutiny function. Both WY JHOSC and WY ICB play a role in creating an environment conducive to effective scrutiny, adding value by improving policy, and delivery of services. The environment is expected to be:
 - a) **Ambitious.** Be courageous in our thinking for the people of West Yorkshire. Look at cross-cutting issues alongside solutions.
 - b) **With integrity.** Take a neutral and apolitical approach, rather than an organisational or sector approach and act solely in terms of the public interest.
 - c) **Respectful and courteous.** All partners have value and are valued, and every effort will be made to avoid defamation of an organisation or person.
 - d) **Conducive to effective overview and scrutiny.** It is everyone's responsibility to promote respect, compassion and maintain a culture that is supportive of overview and scrutiny and its reputation.

Principles

- 11. Both WY JHOSC and WY ICB will ensure that work areas explored through the WY JHOSC are:

- a) **Driven by evidence.** Evidence, data, and performance, balanced with views of constituents will be agreed and shared positively and constructively before taking action without discrimination or bias, working within the Equality, Diversity and Inclusion Strategies and Policies of each participant LA and the WY ICB.
- b) **Collaborative.** The joint working between the WY JHOSC and WY ICB is crucial to ensure strategic issues of importance are identified and acted on collaboratively, which may include the establishment of a statutory JHOSC, as outlined in paragraph 32 of this MoU or requesting the secretary of state to call in.
- c) **Concise and clear.** Understand the purpose and essential role of WY JHOSC to help promote clarity and navigate complex, contentious, or politically challenging changes to services. Guidance is outlined in *Appendix A* to support this.
- d) **Proactive.** Take a proactive approach to sharing at an early stage any proposals, reconfigurations and matters of interest. Consider how items are defined and draw a distinction between informal discussions and statutory consultations.

NHS West Yorkshire Integrated Care Board

- 12. The WY ICB is a statutory body that became legally established when Clinical Commissioning Groups (CCGs) were dissolved through the Health and Care Act 2022. There are two elements, an integrated care partnership (ICP) and integrated care board (ICB) that span five local authority (LA) areas.
- 13. Governed by partners and focused on collaboration as a means of driving improved outcomes for people in WY, the WY ICB has four aims:
 - a) To reduce health inequalities
 - b) To manage unwarranted variations in care
 - c) Secure the wider benefits of investing in health and care
 - d) Use our collective resources wisely.
- 14. WY ICB delegates match decision making authority and resources to the five places (Bradford District and Craven, Calderdale, Kirklees, Leeds, Wakefield).
- 15. When there is benefit in working together across a wider footprint, and local plans need to be complemented with a common vision and shared plan for WY, three tests are applied to determine when to work at this level:
 - a) To achieve a critical mass beyond local population level to achieve the best outcomes
 - b) To share best practice and reduce variation; and
 - c) To achieve better outcomes for people and communities overall by tackling 'wicked issues' (i.e., complex, intractable problems).

16. A general approach of subsidiarity whereby work is delivered at the lowest level possible, closest to where the impact is felt is also considered.

Health Overview and Scrutiny Committees

17. Local Authorities (LAs) in the WY area include Kirklees Council, Calderdale Council, Leeds City Council, Wakefield Council and Bradford Council (which includes part of Craven District Council). North Yorkshire join the WY JHOSC as an interested party.
18. Health Overview and Scrutiny Committees (HOSC) are fundamental ways for democratically elected local members to voice the views of their constituents and ensure that NHS priorities focus on the greatest local health concerns and challenges on issues that affect the local area. HOSC's review and scrutinise matters relating to the planning, provision and operation of the health service in the area, including the finances of local health services.
19. The primary aim of a HOSC is to strengthen the voice of local people and communities, ensuring that their needs and experiences are considered an integral part of the commissioning and delivery of health services and that those services are effective and safe.
20. HOSCs also have a strategic role in taking an overview of how well integration of health, public health and social care is working and can seek information about the performance of local health services and institutions.
21. HOSCs are part of the accountability of the whole system and may be involved in any part of the health and social care system.
22. Local Healthwatch organisations and their contractors carry out certain statutory activities including that of making reports and recommendations concerning service improvements to scrutiny bodies. This would cover the provision of information and the referral of matters relating to the planning, provision and operation of health services in their area (which could potentially include concerns about local health services or commissioners and providers) to local authority health scrutiny bodies.

West Yorkshire Joint Health Overview and Scrutiny Committee Discretionary role

23. LAs in the WY area established a discretionary JHOSC to consider health issues with cross boundary implications where the local authority and former CCG areas did not align, and where any specific health issues affected the whole of the WY area.
24. Following the Health and Care Act 2022, the arrangements for the JHOSC remained in WY and it continues to play a vital role as a body overseeing and

scrutinising health services, along with social care services, in order to view the whole system, within the area.

25. Whilst the JHOSC does not fall within the 2013 regulations regarding joint committees, it has worked effectively to date as a discussion mechanism to consider emerging health issues and remains a critical part of the overall governance arrangements for WY ICB; an opportunity to align strategic planning, investment and performance where it makes sense to do so focussing on the key priorities for the ICB. These are determined and set out in a workplan agreed between the chairs of the JHOSC and the ICB Director of Strategy and Partnerships.
26. These discretionary working arrangements can be stepped up into statutory arrangements as required. However, it is intended that the discretionary committee be the first 'port of call' and mechanism to brief all WY LAs regarding proposals when considering any future arrangements. The sections below relate specifically to the formal role of JHOSC.

West Yorkshire Joint Health Overview and Scrutiny Committee discretionary arrangements

Pre decision scrutiny

27. Pre-decision scrutiny refers to when an authority's overview and scrutiny function consider a planned decision before it is made by the executive. In terms of health scrutiny, pre-decision scrutiny is not only important but also a requirement under the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013. Looking at decisions before they are made allows members to both influence and improve those decisions as well as challenge any pre-conceived notions and ideas

Substantial Variation and Substantial Development

28. The WY JHOSC and WY ICB note that the exact meaning of "substantial" has not been defined in legislation or guidance. However, a substantial variation may be one that affects a large number of people in a locality – such as the closure or downgrading of a specialist or community services, or of a general service such as an Emergency Department. It may be one that affects a small number of people, but which is nevertheless substantial because of the impact on a specific group. The key feature of a substantial development or variation is that there is a major impact(s) experienced by service users, carers and/or the public.
29. To consider whether a proposal constitutes a 'substantial' variation or development in the first instance, the WY ICB will meet with the Chair and

Deputy Chair of the WY JHOSC to consider how the proposal is defined to avoid differences of view at a later stage. The Chair and Deputy Chair will report all discussion to the WY JHOSC.

30. When the WY ICB are considering proposals to vary or develop health services, the LAs whose residents are affected must be given the chance to decide whether they consider the proposals to be substantial to local people and their communities. Those authorities that do consider the proposals to be substantial, must be consulted as per legislation and must form a separate JHOSC to respond to the consultation (The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 No.218 Part 4, Regulation 30).
31. More information on ministerial intervention powers can be found at [Reconfiguring NHS services - ministerial intervention powers - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/reconfiguring-nhs-services-ministerial-intervention-powers).
32. The decision about whether proposals are substantial (and therefore whether to participate in a statutory JHOSC) must be taken by the HOSC of the local authorities that are likely to be affected.
33. The primary focus for identifying whether a change should be considered substantial is the impact upon patients, carers and the public who use or have the potential to use a service. This would include but is not limited to:
 - a) **Changes in accessibility of services:** any proposal which involves the withdrawal or change of patient or diagnostic facilities for one or more speciality from the same location (other than to any part of the same operational site).
 - b) **Impact of proposal on the wider community and other services:** including economic impact, transport, regeneration (e.g. where reprovision of a hospital could involve a new road or substantial house building).
 - c) **People and communities affected:** changes may affect the whole population (such as changes to A&E), or a small group (patients accessing a specialised service). If changes affect a small group, it may still be regarded as substantial, particularly if patients need to continue accessing that service for many years (for example renal services).
 - d) **Methods of service delivery:** altering the way a service is delivered may be a substantial change, for example moving a particular service into community settings rather than being entirely hospital based.
 - e) **Issues likely to be considered as controversial to local people:** (e.g. where historically services have been provided in a particular way or at a particular location.)
 - f) **Changes to governance:** which affect the ICB's relationship with the public or local authority Overview and Scrutiny Committees.

Timeline

34. It is important that early notice is given by the WY ICB to the WY JHOSC of any proposal under consideration so that any initial planning for future statutory consultation can be considered by the WY JHOSC.
35. The term 'under consideration' is not defined, but a development or variation is unlikely to be held to be 'under consideration' until a proposal has been developed, but whilst still at a formative stage.

Collaborative Resolution

36. WY JHOSC may collectively consider whether a specific proposal is only relevant for one authority and therefore should be referred to that authority's HOSC for scrutiny. Two or more LAs may decide that due to the specific impact on their LA areas, and not the full WY footprint, a separate JHOSC should be formed.
37. Alternatively, the WY JHOSC may ask that a matter be considered at place in addition, enabling the place-based Panels to provide a view on a matter.
38. Each participating LA may also wish to consider a discretionary matter itself in addition to it being considered by the WY JHOSC and can give notice to the other participating councils and the joint committee.
39. When consideration is being given by the WY ICB as to whether to notify the Department for Health and Social Care, the WY ICB should consider the individual Local authority and if appropriate, the WY JHOSC's views on the proposal.
40. The WY ICB will make it clear to the Secretary of State for Health and Social Care, the WY JHOSC's view, if one has been taken, on whether they believe the variation or development to be notifiable.

Secretary of State for Health and Social Care

41. Call-in is a safety mechanism to delay and interrogate important decisions made by the WY ICB. It provides a way for councillors to ask that particular decisions are considered by the Secretary of State for Health and Social Care.
42. Anyone locally, including the WY JHOSC may make a request to the Secretary of State for Health and Social Care that a proposal be "called in," whether that proposal is substantial or not. It is envisaged that a proposal will be called in only under "exceptional" circumstances.
43. The Secretary for State for Health and Social Care will use certain criteria to determine whether the proposal will be called in:
 - Attempts have been made to resolve concerns through the local NHS commissioning body, or through raising concerns with their local authority/WY JHOSC.

- Whether WY ICB and local authorities/WY JHOSC has taken steps to resolve issues themselves.
- There are concerns with the process that has been followed by the ICB or the provider (e.g., options appraisal, the consultation process).
- A decision has been made (i.e. a Decision-Making Business Case has been approved) and there are concerns that a proposal is not in the best interests of the health service in the area.

44. The WY JHOSC should not be seen as a gatekeeper to any request for an issue to be called in. Although local attempts at resolution should be attempted, the WY JHOSC's involvement is not a requirement for a successful call-in.

45. The WY JHOSC should be seen as a space for making local attempts at resolution, and that this public forum can be seen as the focus for campaigners and patient advocates.

Summary and review

46. In summary, this MoU serves as a valuable tool for fostering collaboration and cooperation and will be subject to a 12 month review.

Appendix A.

Guidance

In advance of the West Yorkshire Joint Health Overview and Scrutiny Committee (WY JHOSC), please consider the following:

- **WY JHOSC meetings are in public.** Meetings will be recorded and published online (previous recordings can be found [Browse meetings - WY Joint Health Overview and Scrutiny Committee | Kirklees Council](#)).
- **Meetings can be held on an informal basis if the circumstances are right.** Some agenda items may not be ready for publication however they may require input from members before a consultation is launched. Please speak to the Local Authority Officer in the first instance who will provide guidance and arrange for a briefing with either the Chair and Deputy Chair, or with the full WY JHOSC if appropriate.
- **A statutory HOSC and JHOSC has statutory powers.** Committees have statutory powers to provide overview and scrutinise decisions, plans and implementations and the power to access information. To find out more about the statutory role of committees, please visit [Advice to local authorities on scrutinising health services - GOV.UK \(www.gov.uk\)](#).
- **JHOSC offers the opportunity to highlight issues that matter to local people and the local community.** Members are elected to represent people in a geographical area and have regular contact with the public through ward meetings, telephone calls or surgeries to understand the needs of their community and bring issues that matter to local people into decision making. Engaging early with members may help to anticipate and mitigate any potential issues before the formal meeting.
- **JHOSC is a critical part of governance, the process can add significant value.** JHOSC is beyond transactional governance. It is important to consider the role and purpose of JHOSC and tailor reports, papers, and presentations accordingly. Actively listening to JHOSC members and officers that support them is an important part of this.

The following information may help with the content of the report and usual areas of questioning:

- Try not to use reports that have been considered at other Committees including ICB Board meetings. It can be helpful to link to previous reports or add as an appendix, but the main body of the update needs to focus on the audience of the WY JHOSC.
- Members of the WY JHOSC expect a high level of detail to be included within the report. Links to further information, guidance or background etc is encouraged.

- If you are unsure about the focus of the WY JHOSC and the brief that you have been given, please contact the instructing local authority officer who will be able to provide further guidance.
- Ensure timeframes for each step of service change or consultation are included within the report.
- Avoid 'jargon' or too many acronyms. Where it is necessary for acronyms to be used, explain what these stand for in the first instance. Similarly, try not to use 'shorthand' to avoid confusion e.g., referring as Calderdale and Huddersfield Foundation Trust simply as Calderdale.
- When referring to different Local Authorities, make sure correct names are used, e.g., Kirklees not Huddersfield, Calderdale not Halifax.
- Previous discussions at the WY JHOSC have highlighted the following areas of interest to Committee Members. We recommend including information of these within the report, or being prepared with answers if questions are raised:
 - Engagement with Ward Councillors – When a proposed service change or reconfiguration will have a particular impact on a specific area or areas, ward Cllrs should be kept informed. All information on who represents each Ward can be found on the relevant Authorities website.
 - Engagement with Place Scrutiny Leads – If one Local Authority is impacted more than another, have you spoken with the lead for the Place-Based Health and Overview Committees?
 - Consultation – Can you include a link to any current consultation so Members can see what has been asked, or if not yet started, can you include in your report what you intend to ask? Are you sure that you have considered the digitally excluded, and other under-represented groups – can you evidence that?
 - Transport/Travel – As more services are centralised, has consideration been given to how patients will travel to receive treatment?
 - National Popular Topics – Consider whether any of the current affairs in health news relate to your item e.g., Physician Associates, GP telephone appointments or ambulance waiting times.
 - Workforce and Recruitment – How would any change impact the ability to recruit? Have you considered the future proofing of services with ongoing training?
 - Data, Target Information – provide information regarding adequate data and targets that the ICB have set, so that the WY JHOSC Members can analyse and monitor.

- Forward Plan of Priorities – show how the proposal links with the forward plan and what the ICB is hoping to achieve.
- Timescales - Constructive dialogue is required when communicating with the WY JHOSC on timescales for comments in relation to substantial developments or variations, as this should help ensure that timescales are realistic and achievable.
- Benchmarking – Consider adding statistical comparisons from neighbouring areas, or in the instance of a specialist service, compare this with a similar service in another area of the country.
- Delivery of Specialist Services – Consider whether WY JHOSC should be briefed on a service that is delivered in one place, but affects patients in the whole or larger part of the WY area.

Centre for Governance and Scrutiny have published a Scrutiny Practitioners Guide. It helpfully sets out an introduction to scrutiny, challenges and solutions and key skills. It is available [online] [Scrutineers-guide-final.pdf \(cfgs.org.uk\)](https://www.cfgs.org.uk/scrutineers-guide-final.pdf) [15.07.2024]