

Adults and Health Committee

Supplementary Agenda

Date: Monday, 30th May, 2022
Time: 10.00 am
Venue: Committee Suite 1,2 & 3, Westfields, Middlewich Road,
Sandbach CW11 1HZ

5. **Place Partnership Board Update** (Pages 3 - 30)

To note the progress to date on the formation of the Place Partnership Board, and to agree governance arrangements and funding arrangements.

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Working for a brighter future together

Adults & Health Committee

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| Date of Meeting: | 30 May 2022 |
| Report Title: | Place Partnership Board Update |
| Report of: | Helen Charlesworth-May Executive Director Adults, Health & Integration |
| Report Reference No: | AH/01/2022-23 |
| Ward(s) Affected: | All |

1. Purpose of Report

- 1.1 The purpose of this report is for members to note the progress on the new governance arrangements for local Health and Care services, to consider and comment on the proposed joint scrutiny arrangements for Cheshire & Merseyside and approve the amended 'Protocol for the establishment of Joint Health Scrutiny Arrangements in Cheshire and Merseyside'.

2. Executive Summary

- 2.1 The government reforms of the NHS include introducing Integrated Care Systems (ICS) across the country. The geographical footprint of the local ICS covers 9 local authorities in Cheshire & Merseyside. Each of these 9 'places' will have a 'Place Partnership Board' or a similar governance forum, to allow for local decision making over health-related functions.
- 2.2 Discussions across Cheshire East are ongoing and have been very positive. There is a shared approach to tackling the wider determinants of health and to allocate resources at a 'place' level wherever possible. We need to put in place appropriate governance arrangements to facilitate local decision making and support greater integration of services for the benefit of our resident.

3. Recommendations

The Committee is asked to:

- i. Note the progress to date on the Place Partnership Board (working title)
- ii. Recommend to Council that the establishment of a Cheshire and Merseyside Integrated Care System Joint Health Scrutiny Committee be approved (Appendix A); and
- iii. Adopt the amended 'Protocol for the establishment of Joint Health Scrutiny Arrangements in Cheshire and Merseyside' (Appendix B).

4. Reasons for Recommendations

- 4.1 The Health & Care Act 2022 abolishes NHS Clinical Commissioning Groups (CCGs) from 1 July 2022 and sees the creation of the Integrated Care Systems (ICS), with finances coming centrally to an Integrated Care Board (ICB) for each area. It is then for each ICB to agree how much funding it will delegate to the local level i.e., the 'Place'.
- 4.2 A governance forum at 'Place' is necessary if there is to be any funding delegation down to a Cheshire East ('Place') level, and this is envisaged in the statutory guidance. All partners are keen to have as much delegation down to Place level as possible, as local determination of services will provide the best results for our residents.
- 4.3 Actions are required to ensure that joint health scrutiny arrangements in Cheshire and Merseyside are fit to meet the challenge of the new statutory Integrated Care System (ICS) arrangements. This is the new ICS protocol.
- 4.4 Given the incoming changes and the establishment of Integrated Care Systems in England under the Health and Care Act 2022, the opportunity has been taken to review and update the existing Joint Health Scrutiny Protocol (agreed in 2014) to ensure that the framework for the operation of joint health scrutiny committees regarding substantial developments and variations of the health service across Cheshire and Merseyside was consistent with the arrangements for the new standing committee. This is the non-ICS elements. The proposed revised protocol is attached at Appendix B.

5. Other Options Considered

- 5.1 Other options have not been considered, as the proposed changes are necessary to meet the requirements of the Health & Care Act 2022.

6. Background and Decisions to Date

- 6.1 Integrating health and care services for the benefit of our residents is a clear priority within the Cheshire East Place Partnership Plan 2019-24. All partners signed up to the Plan, which sets out our aspirations to respond to the pressures facing health and care services and the opportunities provided by the establishment of integrated care systems.

- 6.2 Our plan sets out that we will work together to improve the health and wellbeing of local communities, enabling people to live longer and healthier lives. We will do this by creating and delivering safe, integrated, and sustainable services that meet people's needs through the best use of all the assets and resources we have available to us. The proposed legislative changes provide an opportunity to move this forward and support improved outcomes for the Cheshire East population.
- 6.3 This Committee at its meeting on 28 March agreed to enter into a S75 Agreement with the Clinical Commissioning Group (CCG) in respect of the Better Care Fund. This is an integral part of our joint approach to commissioning and integration for the future.
- 6.4 The Council at its meeting on 27 April agreed to set up a Section 75 Committee to share resources and decision making between the local authority and the NHS. The Section 75 Committee will comprise the Executive Director of Adults, Health & Integration and a representative from the NHS Cheshire CCG, who will formally oversee the S75 Agreement. This will then be taken over by the ICB from 1 July as part of the transfer of the CCG functions.
- 6.5 The Corporate Policy Committee at its meeting on 14 April noted the progress to date on governance arrangements at 'Place' and agreed that the terms of reference would come before this Committee to agree. It is of course necessary that all partners reach a consensus on the terms of reference, before putting them to their respective boards/committees.

7. Partnership Board Update

- 7.1 Cheshire East established a Place Executive Group, led by the Council's Chief Executive, with senior membership from the CCG, local NHS, Healthwatch and VCFSE sector. This Group is working together with the current Place Partnership Board to consider the proposed Terms of Reference for the future Place arrangements. It is anticipated that these will come to the next meeting of the Committee, on 18 July 2022.
- 7.2 The emerging scope and functions of the new Partnership Board are still to be determined, as we await further details from the ICB as to what functions they intend to delegate to Place, and how these will be discharged. The ICB has appointed a Place Director for each of the nine regions, and the Place Director for Cheshire East (Mark Wilkinson) will commence his role on 15 June. It is likely that the scope and functions will change over time, as the Partnership Board becomes more established, and when more delegated decision making over funding is provided by the ICB at 'Place' level.

8. Establishment of a Cheshire and Merseyside Integrated Care System Joint Health Scrutiny Committee

- 8.1 In response to the proposed establishment of Integrated Care Systems, the Chief Executives of the nine Merseyside and Cheshire local authorities agreed several actions to ensure that joint health scrutiny arrangements in Cheshire and Merseyside are fit to meet the challenge of the new statutory arrangements. It is considered appropriate to establish a standing joint health scrutiny committee which will have the opportunity to take on the Authorities' collective statutory responsibility to oversee and scrutinise the operation of the ICS at Cheshire and Merseyside level.
- 8.2 The overarching role of the Joint Committee is to scrutinise the work of the ICS in the discharge of its statutory responsibilities and functions at Cheshire and Merseyside level in order to support their effective exercise and, where appropriate, to make reports or recommendations to the ICS. Appendix A sets the proposed standing joint committee arrangements.
- 8.3 The main features of the document are as follows:
- Membership – each authority should nominate 2 representatives to serve on Committee.
 - Political balance –membership has to reflect the aggregate political balance across the nine authorities, and this would be subject to annual calculation.
 - Joint Committee remit – this would cover the ICS responsibilities exercised at Cheshire and Merseyside level, plus any proposals for changes in health services that not only impact all nine local authority areas but are also considered to be a substantial change by each of the nine.
- 8.4 The Scrutiny Committee has indicated that it is supportive of the proposal for joint scrutiny arrangements, and it is intended to take the protocol to the Scrutiny Committee at its meeting on 14 June for their comments, prior to presenting the proposal to full Council at its meeting on 20 July 2022.

9. Legal Implications

- 9.1 Many areas already have long established arrangements that enable decisions on key priorities to be made together in an agreed local collaborative forum. Decisions undertaken at these collaborative forums are possible due to the authority delegated to the relevant representative at that forum by their respective organisation and not by the forum itself. There are limited circumstances in which joint decision-making arrangements can be used, and this is recognised as a

weakness of the current system. The Health & Care Act 2022 provides that joint committees can be set up between the ICB and other partners for the future.

- 9.2 For the purposes of the proposed arrangements, the relevant joint committee powers are under Section 75 of the National Health Service Act 2006 and NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000. There is only power for a local authority to form a joint committee with the NHS where there is an agreement under Section 75 of the National Health Service Act 2006.
- 9.3 Post-July 2022 and the establishment of the ICS, local authorities will still have a statutory obligation to undertake health scrutiny at a “place” level. Individual local authority Health Scrutiny Committees will need to continue to meet to consider matters directly relating to their areas and to consider any potential substantial variations in health service provision that only impact on their respective local authority area. Each local authority will be responsible for determining these work plans and managing their relationships with NHS colleagues to ensure Health Scrutiny at this level (i.e. Place) meets its obligations and provides the necessary political oversight, transparency and challenge.
- 9.4 Joint committees must be politically balanced under the proportionality rules set out in the Local Government and Housing Act 1985. This means the joint scrutiny committee as a whole must be politically balanced across all nine local authorities.

10. Financial Implications

- 10.1 There are no direct financial implications as a result of the new Place Partnership Board and governance arrangements, although they will require administration and support. This is assumed to be provided by the ICB, although this is to be confirmed.
- 10.2 Temporary funding (£90k across all nine Local Authorities affected) has been requested to support the Joint Health Scrutiny Committee for an initial period of 18 months will be required. Each authority will be asked to contribute a total of £10,000 over the initial 18 months. This will be met from existing budgets.

11. Policy Implications

This report and its recommendations are within the Council’s existing policy framework, and it supports the priorities set out in the Cheshire East Place Partnership Plan 2019-2024.

12. Equality

There are no direct equality implications as a result of this report.

13. Human Resources

There are no direct human resources implications as a result of this report. However, the change from the CCG to the ICB will have HR implications, albeit they will be indirect for the Council.

14. Risk Management

- 14.1 There is a risk that not all partners agree to the proposed terms of reference as set out in this report. However, this is considered very low risk as senior officers and members of the Place Partnership Board have been working together to collaboratively develop the integrated partnership arrangements. All relevant boards/committees within each partner organisation will be consulted in the same timeframe to ensure all organisations agree the current proposals.
- 14.2 It is assumed that partners can reach a consensus over decision making. However, in the event that a dispute arises between the partners over anything contained within the S75 Agreement, then the dispute mechanism in the S75 Agreement takes precedence. Similarly if any dispute arises over the allocation of ICB funding or priorities at Place, then this would be referred to the C&M ICB Chair for decision.

15. Rural Communities

There are no direct implications for rural communities as a result of this report, as the Place Partnership Board's will deliver to the agreed objectives in the Cheshire East Place Plan.

16. Children and Young People/Cared for Children.

There are no direct implications for Children and Young People/Cared for Children as a result of this report, as the Place Partnership Board's responsibility is to deliver the agreed objectives and priorities in the Cheshire East Place Plan, including those agreed for children and young people. The Director of Children's Services is a member of the Partnership Board and this will ensure that appropriate emphasis is given to those services which affect children and young people.

17. Public Health

A key purpose of the Integrated Care System is to ensure that all areas consider the wider determinants of health and health inequalities and tackling these is key part of the Health & Care Bill, which the Partnership Board will need to consider. The Director of Public Health is to be a member of the Partnership Board and this will ensure the appropriate emphasis is given to these areas.

18.Climate Change

There are no direct implications for climate change as a result of this report.

| Access to Information | |
|------------------------------|---|
| Contact Officer: | Deborah Upton, Legal Services deborah.upton@cheshireeast.gov.uk |
| Appendices: | Appendix A Draft Cheshire and Merseyside Integrated Care System Joint Health Scrutiny Committee – Joint Committee Arrangements Document Appendix B Draft revised Protocol for the Establishment of Joint Health Scrutiny Arrangements in Cheshire and Merseyside |
| Background Papers: | Health & Care Bill 2020 Report to Adults & Health Committee on 28 March 2022 entitled ' <i>Better Care Fund S75 Agreement</i> ' Report to Corporate Policy Committee on 14 April 2022 entitled 'Governance Progress Report' Report to Council on 27 April 2022 entitled 'Recommendations from Corporate Policy Committee: Progress on Governance for the Integrated Care System' |

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**CHESHIRE AND MERSEYSIDE INTEGRATED CARE SYSTEM JOINT HEALTH
SCRUTINY COMMITTEE**

JOINT COMMITTEE ARRANGEMENTS DOCUMENT

Interpretation

In this document the following expressions shall have the following meanings:

- the following local authorities are referred to singularly as ‘Authority’ and together as ‘the Authorities’
 - a) Cheshire East Council;
 - b) Cheshire West and Chester Council
 - c) Halton Borough Council
 - d) Knowsley Borough Council;
 - e) Liverpool City Council;
 - f) St. Helens Borough Council;
 - g) Sefton Borough Council;
 - h) Warrington Borough Council;
 - i) Wirral Borough Council;
- the “Cheshire and Merseyside (ICS) Joint Health Scrutiny Committee” means the Joint Health Scrutiny Committee established by the Authorities to hold to account and scrutinise the work of the Integrated Care System at Cheshire and Merseyside level;
- the “Secretariat” means the financial, administrative, scrutiny and other officer support to the Joint Committee;
- the “Host Authority” means the council which hosts the Secretariat at the relevant time;
- the “Joint Committee Arrangements Document” means this document, as amended from time-to-time;
- the “Rules of Procedure” means the rules of procedure as agreed by the Joint Committee from time to time;
- “the Act” means the National Health Service Act 2006
- the “2013 Regulations” means the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013.

The conduct of the Joint Committee and the content of this document shall be subject to the relevant legislative provisions, in particular Sections 244 and 245 of the Act (as amended) as well as the 2013 regulations, and in the event of any conflict between

the relevant legislative provisions/ regulations and this Joint Committee Arrangements Document, the requirements of the legislation/ regulations will prevail.

1. Background

- 1.1 The Health and Care Act 2022 confirms new structural arrangements for health governance through the formal establishment of Integrated Care Systems (ICSs) for specific geographical areas. ICSs will comprise:
 - 1.1.1 an Integrated Care Board (ICB) in which will be vested statutory responsibilities and duties related to arranging for the provision of relevant hospital and health services for its area; and
 - 1.1.2 an Integrated Care Partnership (ICP) which is a joint committee established by the ICB and the Authorities within the ICS area. The ICP is primarily charged with setting the strategic framework (an Integrated Care Strategy) for its area within which the ICB, NHS England and the Authorities, will be expected to exercise their respective functions to meet the area's assessed needs.
- 1.2 In Cheshire and Merseyside:
 - 1.2.1 The ICS is known collectively as NHS Cheshire and Merseyside ICS.
 - 1.2.2 The ICB is known as NHS Cheshire and Merseyside ICB
 - 1.2.3 The ICP is known as the Cheshire and Merseyside Health and Care Partnership.
- 1.3 Under Section 245 of the Act and Regulation 30 of the 2013 Regulations, two or more Authorities may form a joint health scrutiny committee and arrange for relevant health scrutiny functions to be exercised by that joint committee.
- 1.4 In 2014, all nine Cheshire and Merseyside Authorities gave their approval to a "Protocol for Establishment of Joint Health Scrutiny Arrangements for Cheshire and Merseyside". This protocol was developed in accordance with the Act and the 2013 Regulations. Substantively it provides a framework for the mandatory establishment of ad hoc joint committees where 2 or more of the authorities deem a service change proposal to be a substantial variation in those services. Nevertheless, the protocol, in accordance with legislation, provides for the establishment of discretionary joint health scrutiny arrangements, where deemed appropriate, with the scope to review and scrutinise any matter relating to the planning, provision and operation of the health service.
- 1.5 In the context of the establishment of the statutory ICS arrangements for Cheshire and Merseyside, it has been deemed appropriate to establish a standing joint health scrutiny committee which will have the opportunity to take

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on the Authorities' collective statutory responsibility to oversee and scrutinise the operation of the ICS at Cheshire and Merseyside Level:

- 1.6 The Authorities by being parties to this Joint Committee Arrangements Document signify their agreement to its terms. Each Authority and each Member of the Joint Committee established under the terms of this document must therefore comply with its provisions.
- 1.7 The Joint Committee must have regard to the relevant legislation, including the Local Government Act 1972, regulations related to health scrutiny and to any statutory guidance issued in this respect.

2. Functions of the Joint Committee

- 2.1 The functions of the Joint Committee — to be known as the “Cheshire and Merseyside Integrated Care System Joint Health Scrutiny Committee”— are to be exercised with a view to supporting the effective planning, provision, and operation of health services at Cheshire and Merseyside level. This will include promoting transparency in how the ICS fulfils its responsibilities within Cheshire and Merseyside.
- 2.2 The overarching role of the Joint Committee is to scrutinise the work of the ICS in the discharge of its statutory responsibilities and functions at Cheshire and Merseyside level in order to support their effective exercise and, where appropriate to make reports or recommendations to the ICS.
- 2.3 In specific terms the Joint Committee's role will include the duties/ functions set out below:
 - To be consulted and provide feedback on the development of an integrated care strategy for Cheshire and Merseyside;
 - To review and scrutinise any matter relating to the planning, provision and operation of the health service at Cheshire and Merseyside level only;
 - To be consulted by a relevant NHS body (e.g. NHS Cheshire and Merseyside Integrated Care Board) on any service change proposals that has previously been deemed by all nine authorities to constitute a substantial variation in services.
 - To consider the merits of any service change proposals that have been deemed to be a substantial variation in services by all nine authorities and to exercise the collective statutory responsibilities of the authorities in relation to responding to such consultation by the proposer.

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3. Operating Arrangements

- 3.1 Knowsley Borough Council shall act as the Host Authority and arrange for the necessary officer support in doing so. In this respect Knowsley Borough Council will be provide the Secretariat.
- 3.2 The Joint Committee initially shall be made up of 18 elected members in accordance with the provisions of the current Joint Health Scrutiny Protocol.

4. Council Membership

- 4.1 All elected members in the authorities will be entitled to serve on the joint committee other than executive members and those elected members appointed to serve on ICS bodies (e.g. on the Cheshire and Merseyside Health and Care Partnership)
- 4.2 Each of the authorities nominating representatives to serve on the Joint Committee will be expected to do so in accordance with the political balance that applies in their respective authorities, adjusted to take account of the overall political balance across the nine authorities.
- 4.3 The allocation of seats by both area and party for 2022/ 2023 based on two members per authority is therefore as follows in order to secure overall political balance within Cheshire and Merseyside:

| Authority | Labour | Liberal Democrat | Conservative | Green | Ind | Total |
|---------------------------|--------|------------------|--------------|-------|-----|-----------|
| Cheshire East | | | | | | 2 |
| Cheshire West and Chester | | | | | | 2 |
| Halton | | | | | | 2 |
| Knowsley | | | | | | 2 |
| Liverpool | | | | | | 2 |
| St. Helens | | | | | | 2 |
| Sefton | | | | | | 2 |
| Warrington | | | | | | 2 |
| Wirral | | | | | | 2 |
| Total | | | | | | 18 |

Allocation of seats to be confirmed following further consultation between the 9 authorities.

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- 4.4 The allocation of elected member places on the Joint Committee will be reviewed on an annual basis, ordinarily in the period following the date of the municipal elections. In years where municipal elections do not take place, the review will need to have taken place by 15 May in that year.
- 4.5 Taking into account the outcome of such a review, Elected Members will be appointed by their respective Authorities in accordance with the constitutional procedures applicable in those Authorities. In any event, each Authority will ordinarily be expected to appoint their representatives no later than 31 May in each year.
- 4.6 The term of office of each Authority representative appointed shall be a period of 1 year or until 31 May of the following year, whichever is the earlier. This term of office is however subject to the appointed Member remaining as an Elected Member during the term of office. In the event of a Joint Committee Member ceasing to be an elected member during the course of their term of office as a Joint Committee Member, their entitlement to serve on the Joint Committee will also cease at that point.
- 4.7 Each appointment may be renewable on an annual basis, subject to the decision of the respective Authority and the continuing entitlement of the appointee to serve on the Joint Committee.

5. Elected Members – Resignation or Removal from the Joint Committee

- 5.1 An Authority may decide, in accordance with its procedures, to remove one of its Members from the Joint Committee at any time prior to conclusion of that Member's term of office, and upon doing so shall give written notice to the Secretariat of the change in its Member.
- 5.2 An Elected Member representative may resign from the Joint Committee at any time by giving notice to his or her appointing council who will inform the Secretariat.
- 5.3 In the event that any Elected Member resigns from the Joint Committee, or is removed from the Joint Committee by his or her Authority, the Authority shall immediately take the appropriate constitutional steps to nominate and appoint an alternative Member to the Joint Committee, in accordance with the agreed Joint Committee arrangements.
- 5.4 Where an Elected Member fails to attend meetings of the Joint Committee over a six-month period or for 3 consecutive meetings then the Secretariat shall recommend to the relevant Authority that due consideration is given to removing the member from the appointment to the Joint Committee and the appointment of a replacement member from that Authority.

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- 5.5 Where it becomes clear that an Elected Member has ceased to represent the political group for which they were nominated by their respective Authority, either through withdrawal of the whip, suspension, or expulsion from the relevant group, that Member shall be immediately removed from the Joint Committee's Membership. In these circumstances, the relevant Nominating Authority will be obliged to take the appropriate steps, including liaison with the relevant political group, to nominate, at the earliest opportunity an alternative Member to the Joint Committee, in accordance with the allocation of seats at paragraph 4.3 above, so as to ensure the Joint Committee appropriate political balance is maintained.

6. Financial Arrangements

- 6.1 The funding provided by the authorities collectively to support the work of the Joint Committee will be received by the Host Authority.
- 6.2 Each Authority will pay directly any expenses claimed by its own nominated representatives in the course of their duties on the Joint Committee.
- 6.3 The Host Authority will establish an independent remuneration panel to consider whether a Special Responsibility Allowance (SRA) should be paid to the Chairperson of the Joint Committee or any other Joint Committee Member, and if so, what the level of that SRA should be. If the Authorities subsequently decide, based on the recommendations of the independent remuneration panel that an SRA will be paid, the Authorities will be required to reach agreement on how the costs of the SRA will be apportioned between them.
- 6.4 The financial arrangements for the Joint Committee will be reviewed each year by the Authorities. If in subsequent years, the Joint Committee considers that the funding available to support its activities is insufficient to support it in carrying out its functions, it may make a request to the Authorities to approve additional funding. If additional funding is approved, the Authorities will decide how, the additional costs will be apportioned between them.

7. Promotion and Support of the Joint Committee

- 7.1 The Joint Committee shall be promoted and supported by the Host Authority and the Secretariat through:
- (a) The inclusion of dedicated webpages on the work of the Joint Committee, with the publication of meeting agendas; minutes; and papers where those papers are public, in line with the rules of procedure and legal obligations under the Local Government Act 1972. All reports and recommendations made, with responses from the ICS will be published. Information on member attendance and other publications will be included, as required on the webpages;

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- (b) Other relevant administrative, financial, legal, communications and scrutiny officer support as appropriate.
- 7.2 The costs of any additional promotion work identified above will be identified as part of financial arrangements to be agreed by the Authorities as set out in section 6 above.
- 7.3 The Joint Committee shall be promoted and supported by each Authority including:
 - (a) Ensuring that briefings take place on the work of the Joint Committee for members and officers at Authority level to ensure they are fully informed about relevant matters.
 - (b) Information on each respective website about the work of the Joint Committee and links to the main webpages.
 - (c) Sharing of information on the work of their respective designated statutory Health Scrutiny Committee in order to ensure that the work programme of the Joint Committee complements local scrutiny work and vice-versa.
 - (d) Co-operating to ensure that the Joint Committee, where appropriate, is provided with additional officer support for research, training and development or other areas of expertise.
- 7.4 The elected members on the Joint Committee will provide a communication channel between the Joint Committee and their respective appointing Authorities. They will report back to their Authority on the work of the Joint Committee as appropriate and provide support and guidance to their member colleagues and officers of their Authority.

8. Validity of Proceedings

- 8.1 The validity of the proceedings of the Joint Committee shall not be affected by a vacancy in the membership of the Joint Committee or a defect in appointment.
- 8.2 All Joint Committee members (including co-opted members) must observe their own authority's Members Code of Conduct and any related Protocols as agreed by the Joint Committee.

9. Review and Amendment of Joint Committee Arrangements

- 9.1 This Joint Committee Arrangements Document will normally be reviewed on an annual basis by all Authorities jointly.

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- 9.2 Proposed changes to the Joint Committee Arrangements Document can only be made with the collective approval of all the Authorities in the ICS area.
- 9.3 The Joint Committee may propose amendments to the Joint Committee Arrangements document and any such proposals will be referred to the Authorities and will only be implemented if they are approved by all the Authorities.

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**PROTOCOL FOR THE ESTABLISHMENT OF JOINT HEALTH SCRUTINY
ARRANGEMENTS IN CHESHIRE AND MERSEYSIDE**

1. INTRODUCTION

- 1.1 This protocol has been developed as a framework for the operation of joint health scrutiny arrangements across the local authorities of Cheshire and Merseyside. It allows for:
- scrutiny of substantial developments and variations of the health service; and,
 - discretionary scrutiny of local health services.
- 1.2 The protocol provides a framework for health scrutiny arrangements which operate on a joint basis only. Each constituent local authority should have its own local arrangements in place for carrying out health scrutiny activity individually.

2. BACKGROUND

- 2.1 The relevant legislation regarding health scrutiny is:
- Health and Social Care Act 2012,
 - The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013; and
 - *The Health and Care Act 2022 (subject to parliamentary approval)*
- 2.2 In summary, the statutory framework authorises local authorities to:
- review and scrutinise any matter relating to the planning, provision and operation of the health service; and,
 - consider consultations by a relevant NHS commissioning body or provider of NHS-funded services on any proposal for a substantial development or variation to the health service in the local authority's area.
- 2.3 Ultimately the regulations place a requirement on relevant scrutiny arrangements to reach a view on whether they are satisfied that any proposal that is deemed to be a substantial development or variation is in the interests of the health service in that area, or instead, that the proposal should be referred to the Secretary of State for Health and Social Care. In instances where a proposal impacts on the residents of one local authority area exclusively, this responsibility lays with that authority's health scrutiny arrangements alone.
- 2.4 Where such proposals impact on more than one local authority area, each authority's health scrutiny arrangements must consider whether the proposals constitute a substantial development or variation or not.

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The regulations place a requirement on those local authorities that agree that a proposal is substantial to establish, in each instance, a joint overview and scrutiny committee for the purposes of considering it. This protocol deals with the proposed operation of such arrangements for the local authorities of Cheshire and Merseyside.

3. PURPOSE OF THE PROTOCOL

3.1 This protocol sets out the framework for the operation of joint scrutiny arrangements where:

- a) an NHS commissioning body or health service provider consults with more than one local authority on any proposal it has under consideration, for a substantial development/variation of the health service;
- b) joint scrutiny activity is being carried out on a discretionary basis into the planning, provision and operation of the health service.

3.2 The protocol covers the local authorities of Cheshire and Merseyside including:

- Cheshire East Council
- Cheshire West and Chester Council
- Halton Borough Council
- Knowsley Council
- Liverpool City Council
- St. Helens Metropolitan Borough Council
- Sefton Council
- Warrington Borough Council
- Wirral Borough Council

3.3 Whilst this protocol deals with arrangements within the boundaries of Cheshire and Merseyside, it is recognised that there may be occasions when consultations/discretionary activity may affect adjoining regions/areas. Arrangements to deal with such circumstances would have to be determined and agreed separately, as and when appropriate.

4. PRINCIPLES FOR JOINT HEALTH SCRUTINY

4.1 The fundamental principle underpinning joint health scrutiny will be co-operation and partnership with a mutual understanding of the following aims:

- To improve the health of local people and to tackle health inequalities;

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- To represent the views of local people and ensure that these views are identified and integrated into local health service plans, services and commissioning;
- To scrutinise whether all parts of the community are able to access health services and whether the outcomes of health services are equally good for all sections of the community; and,
- To work with NHS bodies and local health providers to ensure that their health services are planned and provided in the best interests of the communities they serve, taking into account any potential impact on health service staff.

5. SUBSTANTIAL DEVELOPMENT/VARIATION TO SERVICES

5.1 Requirements to consult

- 5.1.1 All relevant NHS bodies and providers of NHS-funded services¹ are required to consult local authorities when they have a proposal for a substantial development or substantial variation to the health service.
- 5.1.2 A substantial development or variation is not defined in legislation. Guidance has suggested that the key feature is that it should involve a major impact on the services experienced by patients and/or future patients.
- 5.1.3 Where a substantial development or variation impacts on the residents within one local authority area boundary, only the relevant local authority health scrutiny function shall be consulted on the proposal.
- 5.1.4 Where a proposal impacts on residents across more than one local authority boundary, the NHS body/health service provider is obliged to consult all those authorities whose residents are affected by the proposals in order to determine whether the proposal represents a substantial development or variation.
- 5.1.5 Those authorities that agree that any such proposal does constitute a substantial development or variation are obliged to form a joint health overview and scrutiny committee for the purpose of formal consultation by the proposer of the development or variation.
- 5.1.6 Whilst each local authority must decide individually whether a proposal represents a substantial development/variation, it is only the statutory joint health scrutiny committee which can formally comment on the

¹ This includes NHS E&I and any body commissioning services to the residents of Cheshire and Merseyside, plus providers such as NHS Trusts, NHS Foundation Trust and any other relevant provider of NHS funded services which provides health services to those residents, including public health.

proposals if more than one authority agrees that the proposed change is “substantial”.

- 5.1.7 Determining that a proposal is not a substantial development/variation removes the ability of an individual local authority to comment formally on the proposal and exercise other powers, such as the power to refer to the Secretary of State. Once such decisions are made, the ongoing obligation on the proposer to consult formally on a proposal relates only to those authorities that have deemed the proposed change to be “substantial” and this must be done through the vehicle of the joint committee. Furthermore the proposer will not be obliged to provide updates or report back on proposals to individual authorities that have not deemed them to be “substantial”.
- 5.1.8 For the avoidance of doubt, if only one authority amongst a number being consulted on a proposal deem it to be a substantial change, the ongoing process of consultation on the proposal between the proposer and the remaining authority falls outside the provisions of this protocol.

5.2 Process for considering proposals for a substantial development/variation

- 5.2.1 In consulting with the local authority in the first instance to determine whether the change is considered substantial, the relevant NHS commissioning body / provider of NHS-funded services is required to:
- Provide the proposed date by which it requires comments on the proposals
 - Provide the proposed date by which it intends to make a final decision as to whether to implement the proposal
 - Publish the dates specified above
 - Inform the local authority if the dates change²
- 5.2.2 NHS commissioning bodies and local health service providers are not required to consult with local authorities where certain ‘emergency’ decisions have been taken. All exemptions to consult are set out within regulations.³
- 5.2.3 In considering whether a proposal is substantial, all local authorities are encouraged to consider the following criteria:
- *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.

² Section 23 of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013

³ Section 24 *ibid*

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- *Impact on the wider community and other services:* This could include economic impact, transport, regeneration issues.
- *Patients affected:* changes may affect the whole population, or a small group. If changes affect a small group, the proposal may still be regarded as substantial, particularly if patients need to continue accessing that service for many years.
- *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.
- *Potential level of public interest:* proposals that are likely to generate a significant level of public interest in view of their likely impact.

5.2.4 These criteria will assist in ensuring that there is a consistent approach applied by each authority in making their respective decisions on whether a proposal is “substantial” or not. In making the decision, each authority will focus on how the proposals impacts on its own area/ residents.

6. OPERATION OF A STATUTORY JOINT HEALTH OVERVIEW AND SCRUTINY COMMITTEE

6.1 General

6.1.1 A joint health overview and scrutiny committee will be made up of each of the constituent local authorities that deem a proposal to be a substantial development or variation. This joint committee will be formally consulted on the proposal and have the opportunity to comment. It will also be able to refer to the Secretary of State for Health and Social Care if any such proposal is not considered to be in the interests of the health service.

6.1.2 A decision as to whether the proposal is deemed substantial shall be taken within a reasonable timeframe and in accordance with any deadline set by the lead local authority (see section 6.6), following consultation with the other participating authorities.

6.2 Powers

6.2.1 In dealing with substantial development/variations, any statutory joint health overview and scrutiny committee that is established can:

- require relevant NHS bodies and health service providers to provide information to and attend before meetings of the committee to answer questions

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- make comments on the subject proposal by a date provided by the NHS body/local health service provider
- make reports and recommendations to relevant NHS bodies/local health providers
- require relevant NHS bodies/local health service providers to respond within a fixed timescale to reports or recommendations
- carry out further negotiations with the relevant NHS body where it is proposing not to agree to a substantial variation proposal; and
- where agreement cannot be reached, to notify the NHS body of the date by which it intends to make the formal referral to the Secretary of State.

6.2.2 A joint health overview and scrutiny committee has the power to refer a proposal to the Secretary of State if:

- the committee is not satisfied that consultation with the relevant health scrutiny arrangements on any proposal has been adequate
- it is not satisfied that reasons for an 'emergency' decision that removes the need for formal consultation with health scrutiny are adequate
- it does not consider that the proposal would be in the interests of the health service in its area.

6.2.3 Where a committee has made a recommendation to a NHS commissioning body/local health service provider regarding a proposal and the NHS body/provider disagrees with the recommendation, the local health service provider/NHS body is required to inform the joint committee and attempt to enter into negotiation to try and reach an agreement. In this circumstance, a joint committee has the power to report to the Secretary of State if:

- relevant steps have been taken to try to reach agreement in relation to the subject of the recommendation, but agreement has not been reached within a reasonable period of time; or,
- there has been no attempt to reach agreement within a reasonable timeframe.

6.2.4 Where a committee disagrees with a substantial variation and has either made comments (without recommendations) or chosen not to provide any comments, it can report to the Secretary of State only if it has:

- Informed the NHS commissioning body/local health service provider of its decision to disagree with the substantial variation and report to the Secretary of State; or,
- Provided indication to the NHS commissioning body/local health service provider of the date by which it intends to make a referral.

6.2.5 In any circumstance where a committee disagrees with a proposal for a substantial variation, there will be an expectation that negotiations will

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be entered into with the NHS commissioning body/local health service provider in order to attempt to reach agreement.

- 6.2.6 Where local authorities have agreed that the proposals represent substantial developments or variations to services and agreed to enter into joint arrangements, it is only the joint health overview and scrutiny committee which may exercise these powers.
- 6.2.7 A statutory joint health overview and scrutiny committee established under the terms of this protocol may only exercise the powers set out in 6.2.1 to 6.2.4 above in relation to the statutory consultation for which it was originally established. Its existence is time-limited to the course of the specified consultation and it may not otherwise carry out any other activity.

6.3 Membership

- 6.3.1 The participating local authorities must ensure that those Councillors nominated to a joint health overview and scrutiny committee produce a membership that reflects the overall political balance across the participating local authorities. However, political balance requirements for each joint committee established may be waived with the agreement of all participating local authorities, should time and respective approval processes permit.
- 6.3.2 A joint committee will be composed of Councillors from each of the participating authorities within Cheshire and Merseyside in the following ways:
- where 4 or more local authorities deem the proposed change to be substantial, each authority will nominate 2 elected members
 - where 3 or less local authorities deem the proposed change to be substantial, then each participating authority will nominate 3 elected members.

(Note: In making their nominations, each participating authority will be asked to ensure that their representatives have the experience and expertise to contribute effectively to a health scrutiny process)

| Local authorities who consider change to be 'substantial' | No' of elected members to be nominated from each authority |
|--|---|
| 4 or more | 2 members |
| 3 or less | 3 members |

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6.3.3 Each local authority will be obliged to nominate elected members through their own relevant internal processes and provide notification of those members to the lead local administrative authority at the earliest opportunity.

6.3.4 To avoid inordinate delays in the establishment of a relevant joint committee, it is suggested that constituent authorities either arrange for delegated decision-making arrangements to be put in place to deal with such nominations at the earliest opportunity, or to nominate potential representatives annually as part of annual meeting processes to cover all potential seat allocations.

6.5 Quorum

6.5.1 The quorum of the meetings of a joint committee shall be one third of the full membership of any Joint Committee, subject to the quorum being, in each instance, no less than 3.

6.5.2 There will be an expectation for there to be representation from each authority at a meeting of any joint committee established. The lead local authority will attempt to ensure that this representation is achieved.

6.6 Identifying a lead local authority

6.6.1 A lead local authority should be identified from one of the participating authorities to take the lead in terms of administering and organising a joint committee in relation to a specific proposal.

6.6.2 Selection of a lead authority should, where possible, be chosen by mutual agreement by the participating authorities and take into account both capacity to service a joint health scrutiny committee and available resources. The application of the following criteria should also guide determination of the lead authority:

- The local authority within whose area the service being changed is based; or
- The local authority within whose area the lead commissioner or provider leading the consultation is based.

6.6.3 Lead local authority support should include a specific contact point for communication regarding the administration of the joint committee. There will be an obligation on the key lead authority officer to liaise appropriately with officers from each participating authority to ensure the smooth running of the joint committee.

6.6.4 Each participating local authority will have the discretion to provide whatever support it may deem appropriate to their own representative(s) to allow them to make a full contribution to the work of a joint committee.

6.7 Nomination of Chair/ Vice-Chair

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The chair/ vice-chair of the joint health overview and scrutiny committee will be nominated and agreed at the committee's first meeting.

6.8 Meetings of a Joint Committee

6.8.1 At the first meeting of any joint committee established to consider a proposal for a substantial development or variation, the committee will also consider and agree:

- The joint committee's terms of reference;
- The procedural rules for the operation of the joint committee;
- The process/ timeline for dealing formally with the consultation, including:
 - the number of sessions required to consider the proposal; and,
 - the date by which the joint committee will make a decision as to whether to refer the proposal to the Secretary of State for Health and Social Care – which should be in advance of the proposed date by which the NHS commissioning body/service provider intends to make the decision.

6.8.2 All other meetings of the joint committee will be determined in line with the proposed approach for dealing with the consultation. Different approaches may be taken for each consultation and could include gathering evidence from:

- NHS commissioning bodies and local service providers;
- patients and the public;
- voluntary sector and community organisations; and
- NHS regulatory bodies.

6.9 Reports of a Joint Committee

6.9.1 A joint committee is entitled to produce a written report which may include recommendations. As a minimum, the report will include:

- An explanation of why the matter was reviewed or scrutinised.
- A summary of the evidence considered.
- A list of the participants involved in the review.
- An explanation of any recommendations on the matter reviewed or scrutinised.

The lead authority will be responsible for the drafting of a report for consideration by the joint committee.

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- 6.9.2 Reports shall be agreed by the majority of members of a joint committee and submitted to the relevant NHS commissioning body/health service provider or the Secretary of State as applicable.
- 6.9.3 Where a member of a joint health scrutiny committee does not agree with the content of the committee's report, they may produce a report setting out their findings and recommendations which will be attached as an appendix to the joint health scrutiny committee's main report.

7. DISCRETIONARY HEALTH SCRUTINY

- 7.1 More generally, the Health and Social Care Act 2012 and the 2013 Health Scrutiny Regulations provide for local authority health scrutiny arrangements to scrutinise the planning, provision and operation of health services.
- 7.2 In this respect, two or more local authorities may appoint a joint committee for the purposes of scrutinising the planning, provision and operation of health services which impact on a wider footprint than that of an individual authority's area.
- 7.3 Any such committee will have the power to:
- require relevant NHS commissioning bodies and health service providers to provide information to and attend before meetings of the committee to answer questions.
 - make reports and recommendations to relevant NHS commissioning bodies/local health providers.
 - require relevant NHS commissioning bodies/local health service providers to respond within a fixed timescale to reports or recommendations.
- 7.4 Ordinarily, a discretionary joint committee will not have the power to refer an issue to the Secretary of State for Health and Social Care. However, please note section 8.3 below.
- 7.5 In establishing a joint committee for the purposes of discretionary joint scrutiny activity, the constituent local authorities should determine the committee's role and remit. This should include consideration as to whether the committee operates as a standing arrangement for the purposes of considering all of the planning, provision and operation of health services within a particular area or whether it is being established for the purposes of considering the operation of one particular health service with a view to making recommendations for its improvement. In the case of the latter, the committee must disband once its specific scrutiny activity is complete.

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- 7.6 In administering any such committee, the proposed approach identified in sections 6.3 – 6.9 (disregarding any power to refer to the Secretary of State) of this protocol should be followed, as appropriate.

8. SCRUTINY OF CHESHIRE AND MERSEYSIDE INTEGRATED CARE SYSTEM

- 8.1 Further to this protocol and in particular section 7 above, the nine local authorities have agreed to establish a discretionary standing joint health scrutiny committee in response to the establishment of the Cheshire and Merseyside Integrated Care System.
- 8.2 A separate Joint Scrutiny Committee Arrangements document has been produced in line with the provisions of this protocol to outline how the standing joint committee will operate.
- 8.3 In summary, the “Cheshire and Merseyside Integrated Care System Joint Health Scrutiny Committee” has the following responsibilities:
- To scrutinise the work of the Integrated Care System in relation to any matter regarding the planning, provision and operation of the health service at footprint level only; and
 - To consider the merits of any service change proposals that have been deemed to be a substantial variation in services by all nine authorities.

9. CONCLUSION

- 9.1 The local authorities of Cheshire and Merseyside have adopted this protocol as a means of governing the operation of joint health scrutiny arrangements both mandatory and discretionary. The protocol is intended to support effective consultation with NHS commissioning bodies or local health service providers on any proposal for a substantial development of or variation in health services. The protocol also supports the establishment of a joint health overview and scrutiny committee where discretionary health scrutiny activity is deemed appropriate.
- 9.2 The protocol will be reviewed regularly, and at least on an annual basis to ensure that it complies with all current legislation and any guidance published by the Department of Health and Social Care.