Protocol between the Health Scrutiny Committee and commissioners and providers of health and wellbeing services to citizens of West Berkshire

(November 2021)

1 Introduction

1.1 This Protocol describes how the Council's Health Scrutiny Committee (HSC) will work together with the bodies that commission or provide health and wellbeing services for citizens of West Berkshire.

1.2 The Protocol defines some working principles to guide and support the relationship between the HSC and local health bodies.

1.3 It sets out the processes that will be followed when substantial variations or developments to health and wellbeing services are proposed that require formal consultation and engagement, as required by legislation. The Protocol also specifies how smaller variations and developments to health and wellbeing services will be handled.

2 Purpose of the protocol

2.1 The aim of this protocol is to provide:

- Improved engagement and communication across all parties;
- Clear standards about how all parties will work together;
- Greater confidence in the planning for service change, to secure improved outcomes for health services and citizens of West Berkshire.

3 Aims and responsibilities of health scrutiny

3.1 Guidance on health scrutiny, published by the Department of Health in June 2014, states that:

> *"the primary aim of health scrutiny is to strengthen the voice of local people, ensuring that their needs and experiences are considered as an integral part of the commissioning and delivery of health services and that those services are effective and safe."*

3.2 West Berkshire Council has delegated responsibility for scrutiny of health matters to the Health Scrutiny Committee (HSC). Its terms of reference state that it will:

> *'undertake scrutiny of the planning, development and operation of Public Health and NHS services for citizens of West Berkshire, in accordance with the National Health Service Act 2006 (as amended by the Health and Social Care Act 2012) and the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013'*

3.3 The HSC is responsible for reviewing or scrutinising services commissioned and provided by all relevant NHS bodies and health service providers. This includes GP practices and other primary care providers such as pharmacists, opticians and dentists, and any private, independent or third sector providers delivering services under arrangements made by clinical commissioning groups, NHS England or the local authority, including Public Health services. References to

'health and wellbeing commissioners or providers' in the remainder of this document is used as a term to include all public, private or voluntary organisations.

4 Understanding of the role of the scrutiny relationship

4.1 All parties recognise the role of West Berkshire HSC in reviewing or scrutinising any issues relating to the commissioning and provision of health and wellbeing services to citizens of West Berkshire.

4.2 The bodies involved acknowledge the role of scrutiny in giving the public confidence of effective oversight of their health and wellbeing services. They also recognise the challenges facing the health and wellbeing system and that no single organisation can solve these alone.

4.3 HSC provides health and wellbeing commissioners and providers with a clear governance framework, transparency and a critical friend to help develop integrated solutions.

5 Application of the Protocol:

5.1 This Protocol is an agreement between West Berkshire's HSC (which represents the interests of West Berkshire Council and its citizens), and those bodies who commission and provide health and wellbeing services for the local population.

5.2 It covers health and wellbeing commissioners and providers under the Care Quality Commission (CQC) regulation, including:

- Treatment, care and support provided by hospitals, GPs dentists, ambulances and mental health services; and
- Services for people whose rights are restricted under the Mental Health Act.

5.3 Scrutiny of activities relating to the treatment, care and support services for adults in care homes and in people's own homes (both personal and nursing care) is the responsibility of the Overview and Scrutiny Management Commission.

5.4 The Protocol is a living document so can include those commissioners or providers who may be involved, now or in the future, in the planning, provision, or operation of health and wellbeing services. It applies to the resident population of West Berkshire and therefore accordingly where commissioners and providers are serving West Berkshire residents across the district boundary.

5.5 Where necessary, joint health scrutiny committees may be formed across a different geography where a relevant body or service provider is required to consult more than one local authority's health scrutiny function about substantial reconfiguration proposals. West Berkshire has delegated powers for the scrutiny of the Integrated Care System to the Buckinghamshire, Oxfordshire and Berkshire West Joint Health Overview and Scrutiny Committee.

5.6 This Protocol applies specifically to West Berkshire HSC activities, but it could be used as a good practice example around ways of working for any other committees discharging the functions of health scrutiny.

6 Shared goals and working principles:

6.1 Table 6.1 describes the shared goals and working principles by which all organisations covered by this Protocol agree to work.

Table 6.1: Shared Goals and Principles

Shared Goals
• Deliver high quality, sustainable health and wellbeing services that meet the needs of the West Berkshire population. • Improve the health and wellbeing outcomes for local people, including ensuring activity addresses health inequalities and aligns with the Berkshire West Health and Wellbeing Strategy.
Working principles
1. There is a "no surprises" approach between the organisations concerned. This builds collaboration whilst also allowing HSC to constructively challenge strategic decisions. 2. There is a climate of mutual respect and courtesy, noting one another's independence and autonomy. 3. Proposals and recommendations are based on appropriately sourced, recognised and clearly presented evidence. This includes relevant clinical evidence. 4. The views and priorities of local people should be gathered and considered in the development of proposals, in scrutiny and in decision making. 5. The overview and scrutiny approach is transparent, collaborative, constructive and non-confrontational. It is based on asking challenging questions and considering evidence. 6. There is recognition and respect for the difference which may arise around what constitutes 'best outcomes' for the local population. 7. Feedback from HSC to health and wellbeing organisations is documented and well communicated.

7 The 'no surprises' approach

7.1 In support of the first working principle, to have a 'no surprises' approach. The HSC forward plan is informed by and developed through regular dialogue with

commissioners and providers. Involving HSC in discussions about proposed changes at an early stage will allow them to plan and scope their scrutiny reviews.

8 Service variations and assessing change

8.1 In circumstances where there are planned variations or developments to health and care services, relevant organisations will undertake to work in accordance with the working principles above to assess how significant the variation is.

8.2 The threshold at which a proposed variation or development is deemed 'substantial' is not precisely defined and an element of judgement is required. The impact of the change on patients, carers and the public is the key concern. The following factors should be taken into account:

- Changes in accessibility of services.
- Changes to methods of service delivery.
- Impacts on service users and their families / carers.
- Impacts on health and social inequalities.
- Implications for service quality, deliverability and risk.
- The effects on other health services and the wider community

8.3 Table 8.1 describes and gives examples of the levels of change, variation or development which may occur in in health and wellbeing service for West Berkshire:

Table 8.1: Levels of change

Level	Category	Description	Example(s)	Action Required
1	Minor	When the proposed change would have a **minor** impact	A minor change in clinic times, the skill mix of particular teams, or small changes in operational policies.	The Committee would not routinely be notified or become involved.
2	Moderate	Where the proposed change would have a **moderate** impact, or where consultation has already taken place on a national basis	Rationalising or reconfiguring Community Health Teams. Policies that will have a direct impact on service users and carers. Changes that include the following may be considered substantial rather than moderate: • A reduction in service • A change to local access to service • Large numbers of patients being affected	The responsible commissioner notifies the Principal Policy Officer at an early stage. The Principal Policy Officer will liaise with the HSC Chairman and Vice Chairman to determine whether a fuller briefing is required in accordance with the Committee's stage one assessment process described below. The Committee will wish to ensure that the Healthwatch and other appropriate organisations are notified by the responsible commissioner or service provider concerned.
3	Substantial	Where the proposal has **substantial** impact and is likely to lead to: • A reduction or cessation of service • Relocation of service	Reconfiguration of GP Practices leading to practice closures. Centralisation of services, leading to closure of local clinics / treatment centres. Redevelopment / relocation of acute hospitals as part of HIP2 programme.	• The responsible commissioner(s) notify the Committee and formally consult the Committee. The Committee will expect to see formal consultation plans. The Local Ward Councillors concerned will be informed of the proposal. • The responsible commissioner(s) notify and discuss with the appropriate local authorities on service developments.

		• Changes in accessibility criteria • Local debate and concern		• The Committee consider the proposal formally at one of their meetings. • Officers of the responsible commissioners and service providers work closely with the Committee during the formal consultation period. • The Committee responds within the time-scale specified by the responsible commissioners. If the Committee does not support the proposals or has concerns about the adequacy of consultation it should provide reasons and evidence.

Stage One

At the earliest possible stage, the health organisation responsible for the proposed change initiates dialogue with the HSC through the Principal Policy Officer.

The HSC Chairman and Vice Chairman are briefed on the proposed change.

The Chairman and Vice Chairman assess and determine the level of change using information gathered at the briefing and advice from officers. A recommendation and rationale is reported alongside the content of the briefing at the next formal HSC meeting for decision.

Stage Two

The organisation responsible completes the substantial variation assessment **(see Appendix A)**, gathering and presenting the relevant evidence.

The organisation responsible contacts the Principal Policy Officer to arrange an informal briefing with the HSC.

All HSC members should be sent detailed information regarding the proposals, including the completed 'substantial variation assessment'.

The organisation responsible should go through the assessment with HSC at the meeting and discuss whether they believe the proposed service variation or development is 'substantial'. A recommendation and rationale will be reported alongside the content of the briefing at the next HSC meeting for decision.

All HSC members and the health organisation responsible should be informed of the outcome of the meeting and given a record of the meeting.

Final Say

8.6 Should there still be disagreement over whether a service change or variation is substantial at the end of a stage two assessment; it is the view of HSC which prevails. The HSC view therefore determines whether a service variation is substantial and requires commissioners to consult.

Exemptions

8.7 The following are circumstances where the HSC will not need to be consulted:

- Proposals to establish or dissolve an NHS trust or CCG if this does not represent a substantial development or variation to the provision of health services.

- Proposals for pilot schemes within the meaning of section 4 of the NHS (Primary Care) Act 1997, as these are the subject of separate legislation.

- Where a decision has to be taken immediately because of a risk to the safety or welfare of patients or staff. These circumstances should be anticipated and reported in advance, making unanticipated situations the absolute exception. The Committee will be notified immediately of the decision taken and the reason why no consultation has taken place. The notification will include information about how patients and carers have been informed about the change and what alternative arrangements have been put in place to meet the needs of patients and carers.

9. Consulting with the Committee

9.1 As identified in the table above, where a 'Level 3' or substantial service variation is identified, the responsible commissioner(s) will notify the Committee and formally consult the HSC. This is in addition to discussions between the responsible commissioner(s) and the appropriate local authorities or Health and Wellbeing Boards on service developments. It is also additional to the NHS duty to consult patients and the public.

9.2 The HSC has the responsibility to consider and comment on:

- Whether as a statutory body the HSC has been properly consulted (in addition to the public consultation process).

- The adequacy of the consultation undertaken with patients and the public.

- Whether the proposal is in the interests of health services in the area.

9.3 The HSC may refer proposals for substantial service developments or variations to the Secretary of State where it is not satisfied that:

- Consultation on any proposal for a substantial change or development has been adequate in relation to content or time allowed.

- The proposal would be in the interests of the health service in West Berkshire.

- A decision has been taken without consultation and it is not satisfied that the reasons given for not carrying out consultation are adequate.

Appendix A:
Substantial Change Assessment Form

NAME OF RESPONSIBLE BODY:

CONTACT INFORMATION:	
Name: **Job Title:** **Address:** **Email:** **Telephone**:	

SECTION A: BACKGROUND INFORMATION
Proposed service change: Brief description of the proposal, including whether it involves: an increase / decrease / introduction / withdrawal of service; changes to hours of operation; relocation; changes to methods of service delivery. Also indicate if the proposed change will be permanent or temporary.
Rationale for the proposed change: All key drivers for the proposal.
Strategic fit of proposal: Consider this at national, system and place level.
Date by which final decision is expected to be taken:

SECTION B: CONSULTATION / STAKEHOLDER ENGAGEMENT
Legal Obligations: Have the legal obligations set out under Section 242 of the consolidated NHS Act 2006 to 'involve and consult' been fully complied with?
Yes / No (delete as applicable) **Commentary:**
Stakeholder Engagement: Have initial responses from service users, their carers / families / advocates, and from Healthwatch indicated whether the impact of the proposed change is substantial?
Yes / No (delete as applicable) **Commentary:**
Stakeholder Support: Is there any aspect of the proposal that is contested by key stakeholders? If so what action has been taken to resolve this?
Yes / No (delete as applicable) **Commentary:**
Staff Engagement: Have staff delivering the service been fully involved and consulted during preparations of the proposals? If so how?
Yes / No (delete as applicable) **Commentary:**
Staff Support: Is there any aspect of the proposal that is contested by the clinicians / other staff? If so what action has been taken to resolve this?
Yes / No (delete as applicable) **Commentary:**

SECTION C: PATIENT IMPACT
Improvement: How will the proposed change deliver improved clinical and social outcomes for patients and improved patient experiences?
Commentary:
Service Users: How many people are likely to be affected by the proposal and which areas are the affected people from?
Commentary:
Inequalities: Does the proposed change of service have a differential impact that could create new / widen existing inequalities (geographical, health, social, etc)?
Yes / No (delete as applicable) **Commentary:**
Patient Access: Will the proposed change affect patient access in terms of location, transport access (public and private), travel time, etc?
Yes / No (delete as applicable) **Commentary:**
Incremental Impact: Does the proposal appear as one of a series of small, incremental changes that when viewed cumulatively could be regarded as substantial?
Yes / No (delete as applicable) **Commentary:**

SECTION D: SERVICE QUALITY, DELIVERABILITY AND RISK
Proven Practice: What is the strength of evidence about the clinical performance of the proposed change?
Commentary:
Service Capacity: Will the proposal result in sufficient capacity to meet demand, taking account of aspects such as demographic changes, changes in morbidity / incidence of relevant conditions, or reductions in care needs due to improved screening?
Yes / No (delete as applicable) **Commentary:**
Workforce implications: Have the workforce implications associated with the proposal been assessed?
Yes / No (delete as applicable) **Commentary:**
Financial Implications: Have the financial implications of the change been assessed in terms of capital and revenue and overall financial sustainability?
Yes / No (delete as applicable) **Commentary:**
Risk: What are the key risks associated with the proposal and how will these be managed?
Commentary:

SECTION E: WIDER IMPACTS
Community Impacts: What are the wider impacts on affected communities (e.g. environmental, transport, housing, employment, etc)?
Commentary:
Service Impacts: Will the proposed changes affect: a) services elsewhere in the NHS; b) services provided by local authorities; c) services provided by the voluntary sector?
Yes / No (delete as applicable) **Commentary:**

OUTCOME / DECISION
Is this considered to be a substantial service change or development by the commissioner / provider?
Yes / No (delete as applicable) **Commentary:**
Is this considered to be a substantial service change or development by the Health Scrutiny Committee?
Yes / No (delete as applicable) **Commentary:**

Possible Outcomes

Consultation is required

- If the health organisation and the Health Scrutiny Committee representatives agree that the proposal does represent a substantial service change or development, the formal consultation with the Health Scrutiny Committee will commence.
- The Health Scrutiny Committee must be provided with:
    - The date by which the responsible organisation intends to decide whether to take the proposal forward.
    - The date by which the responsible organisation requires the Health Scrutiny Committee to provide any comments. (It is expected that any formal consultation would be undertaken by the commissioner of the service.)

Consultation is not required:

- If the health organisation and the Health Scrutiny Committee representatives agree that the proposal does not represent a substantial service change or development, then formal consultation with the Health Scrutiny Committee is not required.
- Best practice is that the health organisation should continue to engage scrutiny and the public in the development of the proposal and onwards to public consultation in accordance with Section 242 requirements.

Agreement cannot be reached:

- If agreement cannot be reached between the health organisation and the Health Scrutiny Committee representatives, then all reasonable, practicable steps should be taken towards local resolution.
- Further meetings may be conducted with the wider Health Scrutiny Committee members and other stakeholders such as Healthwatch, carer/user groups, and the voluntary sector.
- If it continues to be impossible to reach agreement, both sides may jointly or independently pursue the options open to them under their respective statutory instruments, such as escalation to the Secretary of State or to the provider's Board.

NB: Health Scrutiny Committee representatives may prefer not to make a final decision about whether formal consultation is required at the meeting and choose to notify the organisations involved once a decision is made.

Note on Consultation Processes

The Department of Health's (DH) Local Authority Scrutiny Guidance (2014) states the following in relation to consultation processes:

> *"The duty on relevant NHS bodies and health service providers to consult health scrutiny bodies on substantial reconfiguration proposals should be seen in the context of NHS duties to involve and consult the public. Focusing solely on consultation with health scrutiny bodies will not be sufficient to meet the NHS's public involvement and consultation duties as these are separate. The NHS*

should therefore ensure that there is meaningful and on-going engagement with service users in developing the case for change and in planning and developing proposals. There should be engagement with the local community from an early stage on the options that are developed."

It is therefore understood that the process of assessing substantial change should take place as part of broader meaningful engagement with local communities.

The relevant health organisation is responsible for engaging and consulting all relevant local people. It is expected that this will include locally elected representatives where the service change will have an impact (parish / town council, district council and MPs).