

## **From Department of Health & Social Care Website:**

### **Purpose of this document**

In advance of the statutory guidance on the Secretary of State's new powers in relation to service reconfigurations, this document sets out the expectations of the Department of Health and Social Care (DHSC), the Local Government Association (LGA) and the Centre for Governance and Scrutiny (CfGS) on how integrated care boards (ICBs), integrated care partnerships (ICPs) and local authority health overview and scrutiny committee (HOSC) arrangements will work together to ensure that new statutory system-level bodies are locally accountable to their communities.

HOSCs, local authorities, ICBs, ICPs and other NHS bodies should use this document to ensure that scrutiny and oversight are a core part of how ICBs and ICPs operate. Leaders from across health and social care should use these principles to understand the importance of oversight and scrutiny in creating better outcomes for patients and service users and ensure that they are accountable to local communities.

Further information on the role of health scrutiny can be found in the [Local authority health scrutiny: guidance to support local authorities and their partners to deliver effective health scrutiny](#).

### **Integrated care systems**

The [Health and Care Act 2022](#) builds on the work of existing non-statutory integrated care systems (ICSs) to encourage more integrated system working, and to improve local population health outcomes through the planning and provision of services.

The act also provides for the creation of new NHS bodies, ICBs, and for each ICB and its partner local authorities to form a joint committee to be known as the ICP.

42 ICBs will be established, and the 106 existing clinical commissioning groups (CCGs) will be abolished. The ICB will take on the commissioning functions of the CCG and have a governance model that reflects the need for integration and collaboration across the system.

Each ICP will have, as a statutory minimum, a representative from the ICB and a representative from each of the partner local authorities. It may decide locally to include a broad range of representatives in its membership – including those from the independent and voluntary, community and social enterprise (VCSE) sector – concerned with improving the care, health and wellbeing of the local population. The ICP will be tasked with developing an integrated care strategy to address the health, social care and public health needs of its system. The ICB and local

authorities will have to have regard to that strategy when exercising their functions. It is important to note that ICPs, as a joint committee between the ICB and partner local authorities as well as other members agreed by the ICP locally will be within the scope of HOSCs.

There will be a continuing role for HOSCs, health and wellbeing boards (HWBs) and the local Healthwatch as their roles are protected and preserved in the new system.

HOSCs will continue to play a vital role as the body responsible for scrutinising health services for their local area. They will retain their legal duties to review and scrutinise matters relating to the planning, provision and operation of the health service in the area. As is currently the situation, some local authority areas may have separate scrutiny committees for health and for adult social care. ICBs and ICPs should develop a trusting relationship with HOSCs to enable effective scrutiny.

HWBs will continue to bring together leaders at a place level to develop joint strategic needs assessments and prepare joint local health and wellbeing strategies for their local area. HOSCs should consider these strategies when scrutinising outcomes for their local area.

Local Healthwatch organisations will retain their statutory duty to obtain the views of people about their needs and experience of local health and social care services and will need to continue working with HOSCs to make these views known.

### **The benefits of scrutiny**

Proactive and constructive scrutiny of health, care and public health services, done effectively, can build constructive relationships that deliver better outcomes for local people and communities; the people who represent them, and the commissioners and providers of health and care services. It also has other benefits including:

- providing an opportunity for local people and their elected representatives to contribute to and comment on the local priorities for improving health and care services and outcomes
- giving a voice to local people and communities on the quality, safety, accessibility and effectiveness of local health and care services
- assuring local elected members and the public that health and care services are safe and effective, address local health priorities and reduce health inequalities
- helping health and care providers and commissioners gain insight into the health needs and concerns of particular groups

- enabling health and care providers and commissioners to develop new services and care pathways to address local health priorities more effectively

While the procedures of review and scrutiny are at the discretion of the local authority, we recommend that each individual HOSC develops a framework to help them ensure that their scrutiny work is effective, focused and adds value. While this will be informed by other partners in the system, the assessment of risks, effects and impacts should be the HOSC's own. In particular, we recommend that a framework should consider:

- risks, effects and impacts to individual populations
- risks, effects and impacts to the whole local population
- support and input from local health colleagues

## **Responsibilities**

HOSCs, HWBs, local Healthwatch and NHS bodies collectively have a role to play in good governance and accountability across the health and care system.

The [Local Authority \(Public Health, Health and Wellbeing Boards and Health Scrutiny\) Regulations 2013](#) will continue to apply although the formal statutory route for local authorities to report to the Secretary of State will be removed when the new reconfiguration provisions in the Health and Care Act 2022 take effect.

## **Local authorities**

Local authorities will retain the power to:

- review and scrutinise matters relating to the planning, provision and operation of the health service in the area. This may well include scrutinising the finances of local health services
- require information to be provided by certain NHS bodies about the planning, provision and operation of health services that is reasonably needed to carry out health scrutiny
- require employees, including non-executive directors of certain NHS bodies, to attend before them to answer questions

- make reports and recommendations to certain NHS bodies and expect a response within 28 days
- set up joint health scrutiny and overview committees with other local authorities and delegate health scrutiny functions to an overview and scrutiny committee of another local authority
- have a mechanism in place to respond to consultations by relevant NHS bodies and relevant health service providers on substantial reconfiguration proposals
- have a mechanism in place to deal with referrals made by local Healthwatch organisations or local Healthwatch contractors
- report disputed reconfiguration proposals to the Secretary of State until the new reconfiguration provisions take effect

## **NHS bodies**

NHS bodies will retain the power to:

- provide information about the planning, provision and operation of health services as reasonably required, depending on the subject by local authorities to enable them to carry out health scrutiny
- attend before local authorities to answer questions necessary for local authorities to carry out health scrutiny
- consult on any proposed substantial developments or variations in the provision of the health service
- respond to health scrutiny reports and recommendations: NHS service commissioners and providers have a duty to respond in writing to a report or recommendation where health scrutiny requests this, within 28 days of the request. This applies to requests from individual health scrutiny committees or sub-committees, local authorities and joint health scrutiny committees or sub-committees

## **Health and wellbeing boards**

HWBs will retain the power to:

- provide assessments of the current and future health and care needs of the local population

- develop joint strategic needs assessments
- develop joint local health and wellbeing strategies at a place level

## **Local Healthwatch**

Local Healthwatch organisations will retain the power to:

- obtain the views of people about their needs and experience of local health and social care services, and to make these views known to those involved in the commissioning and scrutiny of care services
- make reports and make recommendations about how those services could or should be improved
- promote and support the involvement of people in the monitoring, commissioning and provision of local health and social care services

The design of new models of integrated care and support that are being introduced through the Health and Care Act 2022 will inevitably lead to changes in how and where services are provided.

HOSCs will have an invaluable role to play during the initial transition and implementation of ICBs and ICPs, and beyond, in scrutinising the impact and effectiveness of integration on health services and outcomes. Under this new structure, there will be a need for scrutiny of health services and outcomes at a local place-based level, as well as more strategic scrutiny of health services and system-level outcomes. Both levels of scrutiny are important; HOSCs should maintain an appropriate balance between the 2, and establish joint health overview and scrutiny committees (JHOSCs) where appropriate and necessary. Individual local authorities hold responsibility for carrying out scrutiny tests.

Scrutiny can play a valuable role in improving the evidence base for decisions about integration and in holding local authorities, NHS bodies, and health service providers to account for the level of local ambition to improve health and integrate services in ways that benefit people who use services and in the interests of taxpayers. It can also help to ensure that the views of people in an area are fully reflected in the consideration of any proposals.

## **Principles and ways of working**

The following 5 principles set out best practice for ways of working between HOSCs, ICBs, ICPs and other local system partners to ensure the benefits

of scrutiny are realised and should form the basis of ongoing discussions between these partners about how they will work together.

The 5 principles are:

- outcome focused
- balanced
- inclusive
- collaborative
- evidence informed

## **1. Outcome focused**

Outcome-focused scrutiny can provide a valuable and relevant platform for looking at cross-cutting issues, including:

- general health improvement
- wellbeing
- specific treatment services and care pathways
- patient safety and experience
- overall value for money

Health scrutiny also has a strategic role in taking an overview of how well integration of health, public health and social care is working and in making recommendations on how it could be improved locally.

By focusing on outcomes, ICPs, ICBs, local political leaders, professionals and communities can explore and consider the complexities of health and wellbeing and help to evaluate the planning, delivery and reconfiguration of health and care services. A strategic approach should be taken to consider how best to apply scrutiny to evaluating key strategies and outcomes of the ICB and ICP, including the integrated care strategy and the ICB joint 5-year forward plan.

Within the wider ICB area, HOSCs will have a valuable role to play in scrutinising and evaluating place-based outcomes at local authority level. HWBs will continue to develop joint strategic needs assessments and establish joint local health and wellbeing strategies; HOSCs will continue to scrutinise place-based health services in relation to these.

However, HOSCs will also play a valuable role in scrutinising the health services of the wider ICB area and should work with other local authority areas, forming JHOSCs where appropriate, to scrutinise outcomes against the joint 5-year forward plan and the integrated care strategy.

## **2. Balanced**

Good scrutiny needs to maintain balance between being future focused and responsive. When scrutiny is future focused it can help system partners to understand how local needs are changing, as well as understand the issues that communities face and suggest and test solutions. Future-focused scrutiny can also add value to integration planning and implementation by improving the evidence base for holding local decision makers to account for the level of local ambition to integrate services and improve population health.

ICBs and ICPs should take an inclusive and future-focused approach to agreeing a clear set of arrangements for scrutiny to be built into the whole cycle of planning, commissioning, delivery and evaluation. Leaders from across health and social care should work with openness and candour to establish a clear shared set of priorities and a future work programme to improve health and social care outcomes.

Scrutiny also needs to be reactive and responsive to issues of concern to local communities, including service performance and proposed NHS reconfigurations, local authorities, and other system partners, should ensure that HOSCs have the capacity to respond reactively to public concerns and reconfigurations. ICBs can assist with this by working with HOSCs to shape their forward plans. ICBs should take a proactive approach to sharing at an early stage any proposals on reconfigurations, drawing a distinction between informal discussions and formal consultations. ICBs should also take a proactive approach to involving relevant bodies on any other matters which system partners expect to be contentious, to help navigate complex or politically challenging changes to local services.

With regard to concerns about service performance, ICBs should be open and transparent with HOSCs, bearing in mind that in some cases there may be legal or assurance proceedings. Equally, HOSCs must appreciate the need for regulatory and legal processes to run their course, but ICBs should update HOSCs on the progress of these processes.

## **3. Inclusive**

The primary aims of health scrutiny are to strengthen the voice of local people and provide local accountability. They should ensure that local people's 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. Effective scrutiny allows for more inclusive public conversation than might be delivered as part of a formal consultation exercise. As such, it is important for scrutiny to engage the community, involving the right people at the right time in the right place.

HOSCs are a fundamental way for democratically elected local councillors to voice the views of their constituents, hold the whole system and relevant NHS bodies and relevant health service providers to account and ensure that NHS priorities are

focused on the greatest local health concerns and challenges. Flexible and accessible arrangements to scrutinise integration issues provide the best opportunities for councillors to hear from people and groups with whom they may not have previously had much contact, for example primary care practitioners or people who use services. HOSCs, subject to time and resource constraints, may be well placed to engage with members of the public directly.

Systems and NHS bodies should form trusting working relationships with HOSCs, and work together to ensure that this important community intelligence is fed directly into system-wide decision making. Engaging with scrutiny is a way for ICBs and ICPs to add richness to their understanding of local need, and a way to connect strategic planning at system level to the nuances of local pressures and requirements.

#### **4. Collaborative**

Work plans that detail the future decisions and issues to be scrutinised by HOSCs should be informed by communities, providers and planners of health and care services to ensure that scrutiny is focused on achieving the most value for its population. Effective health scrutiny requires clarity at a local level about respective roles between the health overview and scrutiny committees, ICBs, ICPs, the NHS, local authorities, HWBs and local Healthwatch.

Service change and integration are typically not challenges that are confined to one local authority's area; these are issues that can straddle one or more local authority population. Under the new system-level structures, health scrutiny may increasingly need to cover issues that cut across local authority boundaries. Therefore, local authorities on ICB boundaries, and neighbouring councils within an ICB area should take a collaborative approach in order to identify any strategic issues that would benefit from joint scrutiny. Under Regulation 30 of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013, local authorities must appoint a joint health overview and scrutiny committee where a relevant NHS body or health service provider consults more than one local authority health scrutiny function about substantial reconfiguration proposals; however local authorities also have the discretion to set up joint committees in other circumstances.

The role of JHOSCs is particularly important in assessing strategic issues that cover 2 or more local authority areas, and will be even more important under the new arrangements as ICB areas will span more than one local authority area in most cases. In particular, JHOSCs will have a strategic role to play in scrutinising the delivery and outcomes of the integrated care strategy.

It is important for ICBs, councils and scrutiny committees to develop joint protocols in advance of the need for any joint scrutiny arrangements, whether these arise under legislation or are optional arrangements. This includes having a clear view about how councils should work together, the structure of joint arrangements, and the time



needed to establish these arrangements. JHOSCs will also need to recognise and take into account the potential difficulties of working together, particularly around the political balance between different local areas, as well as resourcing. Developing this shared understanding helps build the foundations for effective joint working. ICBs should have an active role in providing support in these situations and should recognise the complexity and time involved in establishing formal JHOSCs.

## **5. Evidence informed**

Scrutiny informed by evidence can help make the case for better integration of services, better joint working around service improvements and better approaches to major service reconfigurations. Scrutiny adds value to decision making by ensuring that evidence is sound and based on the right insight, so that no voice is unheard or evidence overlooked. The types of evidence that aid effective scrutiny include evidence on quality and safety of services and evidence on population health needs. Qualitative evidence from those with lived experience – including patients, the public and those who are most likely to be excluded from services – are particularly valuable forms of evidence for aiding scrutiny.

Health scrutiny has a role in proactively seeking information about the performance of local health services and institutions; in challenging the information provided to it by commissioners and providers of services for the health service locally and in testing this information by drawing on different sources of intelligence. Local Healthwatch are an important source of evidence and should work with HOSCs to pass on the views of people about their needs and experience of local health and social care services.

HOSCs can request evidence from systems and NHS bodies, and should ensure that their requests for evidence are reasonable, proportionate and relevant.

The health system has a responsibility to provide information needed for health scrutiny. Health and care providers and commissioners should respond positively and constructively to the requests for information from HOSCs. Where an NHS body cannot provide a response to a request for information, it should work with the HOSC to attempt to provide information and support where possible. ICBs should have plans and protocols in place for sharing information for the purpose of scrutiny, as this will avoid the need for continual ad-hoc decision-making when information is requested.

## **Next steps**

The Health and Care Act 2022 introduces a power for the Secretary of State to call in and take decisions on or connected to reconfiguration proposals at any stage in the

proposal's process. This does not change local authorities' scrutiny responsibilities for service change. To support this intervention power, the local authority referral power, which is set out in regulations, will be amended to reflect the new process.

DHSC will also issue statutory guidance on the new powers outlining how the Secretary of State proposes to exercise their functions during this new process, including the new Secretary of State call in power. This guidance will also include information for NHS commissioning bodies, NHS trusts and NHS foundation trusts about how they should be exercising their functions under the new reconfigurations process. We expect that these principles will complement the new guidance to help ensure that scrutiny is embedded across the new statutory system-level bodies.

Exact timelines are still to be determined; however, any changes to the reconfiguration process introduced through the Health and Care Act 2022 will not be implemented immediately following Royal Assent. We will work with the system to help prepare for any proposed changes and to develop the new statutory guidance.