City of BRADFORD METROPOLITAN DISTRICT COUNCIL

# Report of the Strategic Director of Health and Wellbeing to the meeting of Bradford and Airedale Health and Wellbeing Board to be held on Tuesday 4th September 2018

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## Subject:

**A Memorandum of Understanding (MOU) for the West Yorkshire and Harrogate Health and Care Partnership**

## Summary statement:

The purpose of this paper is to seek the Health and Wellbeing Board's approval for the Memorandum of Understanding (MoU) for the West Yorkshire and Harrogate Health and Care Partnership.

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**Portfolio:**

**Healthy people and places**

**Overview & Scrutiny Area:**

**Health and Social care**

## 1. SUMMARY

The purpose of this paper is to seek the Health and Wellbeing Board's approval for the Memorandum of Understanding (MoU) for the West Yorkshire and Harrogate Health and Care Partnership.

Individual partner organisations in Bradford District and Craven, and across West Yorkshire and Harrogate as a whole, are also being asked to approve the MoU. Other local partner organisations that are anticipated to sign the MoU are;

- Airedale Wharfedale and Craven NHS CCG
- Bradford City NHS CCG
- Bradford Districts NHS CCG
- Airedale NHS Foundation Trust
- Bradford District Care NHS Foundation Trust
- Bradford Teaching Hospitals NHS Foundation Trust
- Craven District Council
- North Yorkshire County Council

## 2. BACKGROUND

West Yorkshire and Harrogate Health and Care Partnership (WY&H HCP) was formed in 2016 as one of 44 Sustainability and Transformation Partnerships (STPs), in response to the NHS Five Year Forward View. It brings together all health and care organisations in our six places: Bradford District and Craven; Calderdale, Harrogate, Kirklees, Leeds and Wakefield.

In November 2016 the STP published high level proposals to improve health, reduce care variation and manage our finances. Since then the partnership has made significant progress to build capacity and infrastructure and establish the governance arrangements and ways of working that will enable us to achieve our collective aims.

The partnership has already begun to make an impact in other important areas. Our Cancer Alliance Board has attracted £12.6m in funding to transform cancer diagnostics. In Bradford the Cancer Alliance has invested in additional support to tackle smoking and to enable more people to be screened and receive earlier diagnostic testing to improve lung cancer outcomes. We have developed a strategic case for change for stroke from prevention to after care. We have streamlined management of CCGs and established a Joint Committee of CCGs; Committee in Common for acute trusts and Mental Health Collaborative; these will strengthen working and facilitate joint decision making. We have secured £31m in transformation funding for A&E, cancer, mental health, learning disabilities and diabetes, and £38m capital from the Autumn 2017 budget for CAMHS, pathology, telemedicine, and digital imaging.

In October 2017 the System Leadership Executive Group agreed that a new MoU should be developed to formalise working arrangements and support the next stage of development of the WY&H HCP. The MoU builds on the existing partnership arrangements to establish more robust mutual accountability.

## 3. OTHER CONSIDERATIONS

### 3.1 Purpose of the MoU

3.1.1 The MoU is an agreement between the WY&H health and care partners. It sets out the details of our commitment to work together in partnership to realise our shared ambitions to improve the health of the 2.6 million people who live in our area, and to improve the quality of their health and care services.

3.1.2 The MoU does not seek to introduce a hierarchical model; rather it provides a mutual accountability framework to underpin collective ownership of delivery. It also provides the basis for a refreshed relationship between local NHS organisations and national oversight bodies.

3.1.3 The MoU is not a legal contract, but is a formal agreement between all of the partners. It is based on an ethos that the partnership is a servant of the people in WY&H and of its member organisations. It does not replace or override the legal and regulatory frameworks that apply to our statutory NHS organisations and Councils. Instead it sits alongside and complements these frameworks, creating the foundations for closer and more formal collaboration.

3.1.4 The draft MoU should be read in conjunction with the STP Plan, published in November 2016, the Next Steps (February 2018) and the local plans for Bradford and Airedale, Wharfedale and Craven. – 'Happy Healthy at Home', which was refreshed and approved by the Health and Wellbeing Board in December 2017.

3.1.5 The MoU provides a platform for:

a. a refresh of the governance arrangements for the partnership, including across WY&H, and the relationship with individual Places and (e.g. Bradford District and Craven) statutory bodies;

b. the delivery of a mutual accountability framework that ensures we have collective ownership of delivery, rather than a hierarchical approach

c. a new approach to the NHS commissioning, and maturing provider networks that collaborate to deliver services in place and at WY&H level;

d. clinical and managerial leadership of change in major transformation programmes;

e. a transparent and inclusive approach to citizen engagement in development, delivery and assurance;

f. better political ownership of, and engagement in the agenda, underpinned by regular opportunities for challenge and scrutiny; and

g. a new assurance and accountability relationship with the NHS regulatory and oversight bodies that provides new flexibilities for WY&H to assert greater control over health and care system performance and delivery and the use of transformation and capital funds; and (e.g. from NHS England)

h. the agreement an effective system of risk management and reward for NHS

bodies.

3.1.6 The text of the MoU sets out details of:

- The context for our partnership;
- The partner organisations;
- How we work together in WY&H, including our principles, values and behaviours;
- The objectives of the partnership, and how our joint priority programmes and enabling workstreams will improve service delivery and outcomes across WY&H;
- Our mutual accountability and governance arrangements, including how we will move towards a new approach to assurance, regulation and accountability with the NHS national bodies;
- Our joint financial framework;
- The support that will be provided to the Partnership by the national and regional teams of NHSE and NHSI;
- Which aspects of the agreement apply to particular types of organisation. (see Annex 1 of the MoU). In relation to the local organisations in Bradford District the following elements of the MoU apply;
    - CCGs – all elements apply
    - NHS providers – all elements apply
    - Local authorities – all elements apply except shared financial risk management
    - Healthwatch and other partners – the following elements apply
        - vision, principles, values and behaviour
        - partnership objectives
        - governance
        - decision making and dispute resolution

## 3.2 Becoming and Integrated Care System

3.2.1 In May 2018 NHS England and NHS Improvement announced that WY&H HCP would be one of four health and care systems to join the Integrated Care System (ICS) Development Programme. This demonstrated national recognition for the way our WY&H partnership works and for the progress we have made. It means we can join the leading edge of health and care systems, gaining more influence and more control over the way we deliver services and support for the 2.6 million people living in our area.

3.2.2 The importance of joining up services for people at a local level in Bradford District and Craven; Calderdale; Harrogate and Rural District; Kirklees; Leeds; and Wakefield is at the heart of our local plans and our WY&H programmes. All decisions on services are made as locally and as close to people as possible. Our move to becoming an ICS is predicated on this continuing to be the case.

3.2.3 This integrated approach to health and care will continue to support much closer

working between our organisations. The MoU will provide a firm foundation for this. It reflects and builds on the current ways of working and agreed principles for the partnership and maintains an ethos of the primacy of local Place.

3.2.4 It is important to note that our name won't change as a result. We are proud to remain the West Yorkshire and Harrogate Health and Care Partnership.

**3.3 Progress to date**

3.3.1 Over recent months drafts of the MoU have been discussed in development sessions by members of the Boards and Governing Bodies of partner organisations and by members of Health and Wellbeing Boards and the WY&H Joint Overview and Scrutiny Committee.

3.3.2 Feedback from these discussions has directly influenced the development of the final draft, which has now been agreed by the WY&H HCP System Leadership Executive Group.

3.3.3 This item has been discussed at the Health and Wellbeing Board development session and is due to seek approval at the Bradford and Airedale Health and Wellbeing Board on Tuesday 4th September.

**3.4 What it means for Bradford District and Craven**

3.4.1 By signing the MoU partner organisations in Bradford District and Craven will commit to play their full roles as a members of WY&H HCP and to work within the frameworks described. Accepting our share of collective responsibility will give us and our partners the opportunity to achieve greater autonomy and control over how we develop and transform our health and care services.

3.4.2 The partnership will be an overall collaborative framework for local Health and Care Partnerships in each place, including those in Bradford and in Airedale, Wharfedale in Craven. As such the WY&H HCP arrangements described in the MoU are compatible with the local development of neighbourhood level collaborations such as the Primary Care Home model, and with our local Health and Care Partnership Boards.

3.4.3 Active participation in the ICS will enable City of Bradford MDC to shape the delivery of health and care at a strategic level across West Yorkshire and Harrogate. By ensuring that the voice of local political leadership is heard the Council can enhance democratic accountability of decision making and help ensure that decision making recognises the needs of local people and places. For example supporting a focus on prevention and on reducing health inequalities.

**3.5 Next steps**

3.5.1 Each partner organisation is being asked to approve and sign the MoU. It is expected that this process will be completed by October 2018.

**4. FINANCIAL & RESOURCE APPRAISAL**

The MoU does not introduce any additional financial risk or commitments.

## 5. RISK MANAGEMENT AND GOVERNANCE ISSUES

The MoU describes how member organisations will participate in the partnership governance arrangements (see section 4 of the MOU document).

## 6. LEGAL APPRAISAL

**External Legal appraisal**: The WY&H HCP core team has sought a legal opinion on the text of the MoU, on behalf of all partner organisations. The lawyers were able to provide helpful suggestions to improve clarity and remove elements of ambiguity. They also confirmed that the MoU was sound, and was not inconsistent with statutory or regulatory frameworks, or with the powers and duties of individual partners.

**Internal Legal Appraisal:** The WY&H HCP core team has sought legal advice on the text of the MoU from Hill Dickinson, solicitors. The Legal Department has not been involved in drafting or negotiating the MOU.

The external lawyer's advice was that the MOU was sound, and was not inconsistent with statutory or regulatory frameworks, or with the powers and duties of the individual partners.

The critical legal criteria for the Council in relation to this MOU are whether:

i. It has the legal power to enter into these arrangements.
ii. The proposed partnership arrangements are consistent with the Council's constitution.
iii. The Council's decision-making arrangements have been complied with in relation to entering into the MOU.

The document itself states that it has no legal power, is not intended to create legal obligations or rights, will not change existing legal and regulatory frameworks and is intended to sit alongside rather than change existing arrangements. On that basis we consider that the legal criteria are satisfied.

The overall practical effect of these arrangements for the Council will currently be limited to the availability of transformational or HCP funding for priority programmes, the prioritisation of national capital investment in services and response to system stress. We understand that there is no current proposal for the MOU structure to be used for decision-making in relation to the Council's statutory functions. The MOU will also become the regional medium for certain NHS assurance and accountability activities. The legal roles of the Council or the HWB will not be affected by these measures.

There will be financial governance implications in relation to the receipt of transformation funds. The presence of the Council's own Chief Executive and

Leader on the Partnership Board and the Director of Finance on the System Assurance and Oversight Group should ensure that these implications are kept under appropriate review.

The adoption of the MOU structure will not have future legal consequences for the Council so long as the new structure and the decisions made within it are:

i. compatible with the Council's constitutional arrangements and

ii. consistent with its democratic direction through its elected members.

If the WYHHCP sought to impose its will on the Council, this would be unlawful, and the Council would be compelled to act in order to remedy the illegality. If the illegality was only prospective, then such action could include using the dispute resolution procedure in the MOU. If the MOU has no legal status, then it is difficult to see how it could effectively remedy an illegality. This illustrates the difficulties involved in seeking to regulate entities with legal obligations using mechanisms that have no legal status, and raises the possibility that any dissent may either end the entire arrangement, or lead to the expulsion of the dissenting party. It is evident that the key to the future success of these arrangements lies in managing the partner's relationships in order to avoid dispute.

Should disputes arise between the partners then there is a clear possibility for conflicts of interest, and the Council will need to keep this under careful review.

Should the proposed arrangements involve operational and financial decisions that require authorisation by Council officers and members, and are subject to scrutiny, then it is critical that such requirements are complied with before decisions are authorised at the level of the PB, SLE or SAOG.

We would also recommend that careful thought is given to the delegated powers that Council's officers may be required to exercise in the course of the new arrangements. An officer who possesses ostensible but not actual authority may bind the Council to act in a manner that has not been authorised. A scheme of delegation should be established to avoid this possibility.

## 7. OTHER IMPLICATIONS

### 7.1 EQUALITY & DIVERSITY

N/A

### 7.2 SUSTAINABILITY IMPLICATIONS

N/A

### 7.3 GREENHOUSE GAS EMISSIONS IMPACTS

N/A

## 7.4 COMMUNITY SAFETY IMPLICATIONS

N/A

## 7.5 HUMAN RIGHTS ACT

N/A

## 7.6 TRADE UNION

N/A

## 7.7 WARD IMPLICATIONS

N/A

## 7.8 AREA COMMITTEE ACTION PLAN IMPLICATIONS (for reports to Area Committees only)

N/A

## 7.9 IMPLICATIONS FOR CORPORATE PARENTING

N/A

## 7.10 ISSUES ARISING FROM PRIVACY IMPACT ASSESMENT

N/A

## 8. NOT FOR PUBLICATION DOCUMENTS

N/A

## 9. OPTIONS

N/A

## 10. RECOMMENDATIONS

The draft MoU for the West Yorkshire and Harrogate Health and Care Partnership to be approved

## 11. APPENDICES

Annex 1 – Draft Memorandum of Understanding