

Divisions Affected – All

OXFORDSHIRE JOINT HEALTH OVERVIEW AND SCRUTINY COMMITTEE

02 August 2024

Consideration of the Response to Buckinghamshire, Oxfordshire and Berkshire West Integrated Care Board Restructuring Proposals

Report by Director of Law and Governance

RECOMMENDATION

1. **The Committee is recommended to AGREE: -**
 - 1.1 Whether or not the proposed restructure constitutes a substantial change.
 - 1.2 How the Committee should proceed in light of the proposed restructure.

Executive Summary

2. Integrated Care Boards (ICBs) nationally were asked by NHS England to reduce their administrative costs by 30 per cent, with at least 20% to be delivered in 2024/25. The local ICB, Buckinghamshire, Oxfordshire and Berkshire West ICB (BOB ICB) have developed a series of proposals in response to this ask, reviewing its operating model at the same time as seeking to reduce its administrative costs.
3. These proposals include the removal of Place-based directors, supporting a move towards a more centralised approach to the ICB's activity. In view of the integrated working between the Council and health partners at a Place level, a change towards a more centralised approach by the ICB raises important questions as to how they will be impacted, for the consequences could be highly significant. Oxfordshire County Council officers have raised concerns over how integrated systems between the Council and NHS partners at Place-level, such as jointly-funded posts, pooled budgets and joint-commissioning arrangements could be impacted as they would be expected to undergo significant change under the new ICB's proposed new operating model.
4. Following a private meeting with senior BOB ICB and Oxfordshire County Council officers, the Committee has called an additional, public meeting of the Committee to consider, under its powers within The Local Authority (Public

Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 ('the Regulations') to consider the proposals and potentially escalate concerns to the Secretary of State. This paper seeks to advise members on their rights concerning any decision to write to the Secretary of State requesting the matter be called in, in readiness to make any decision on whether to do so.

Background

5. A timeline of the key events which have happened to date are included below:

29 April 2024	BOB ICB launches a consultation with its staff on a proposed new structure and operating model.
11 July 2024	BOB ICB sends Oxfordshire County Council an e mail containing a presentation (found in Annex 1), requesting feedback on it by 04 August.
19 July 2024	HOSC Substantial Change Toolkit requested from BOB ICB
22 July 2024	Further request for the HOSC Substantial Change Toolkit requested
23 July 2024	BOB ICB sends further information to Oxfordshire County Council – a Partner Briefing paper (found in Annex 2) and a more detailed breakdown of proposals (not provided to HOSC and not published).
25 July 2024	An informal meeting is held between HOSC members and key officers from BOB ICB and Oxfordshire County Council to determine whether a formal meeting is required.
25 July 2024	An extra meeting of the Oxfordshire HOSC is called to consider the proposals.

6. A number of pertinent dates are missing from the timeline above on the basis that the details are not known. These include:

- (a) When the ICB began developing the proposals
- (b) When, or if, the proposals were discussed at the Place Based Partnership
- (c) When, or if, other Councils and other stakeholders were informed of the proposals
- (d) When the ICB made its decision to 'move into turnaround'¹ and when it informed NHS England of its intention to do so.

7. The ICB informed the Chief Executive of Oxfordshire County Council of its proposed restructure by e mail on 11 July 2024, and with further information shared on 23 July 2024. The Committee is in receipt of two of the three items shared (Annexes 1 and 2), but the ICB declined on request to provide the third item to members of the HOSC.

¹ Annex 2 para 3

8. Having been informed, the Council, via the HOSC, under s. 23 (4) of the Regulations 'may make comments on the proposal consulted on by the date or changed date provided by R under paragraph (1)(b)(ii) or (c)'. The Committee is invited to determine the category of change the proposals represent, and consequently the level of attendant involvement in the process it would expect to have had, as well as that of other key stakeholders.

1. What Constitutes a 'Substantial Change'?

9. The following advice on what constitutes a substantial change is taken from the Oxfordshire HOSC and health provider protocol:

"Whether a development or variation is substantial is not precisely defined and 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:

The following describes and gives examples of the levels of change, variation or development

- The number and vulnerability of the people affected by the proposed change.
- Changes in accessibility of services (both in terms of location and quantity of service available) such as reductions, increases, relocations or withdrawals of service.
- Impact on the wider community and other services such as transport and regeneration and economic impact
- Impact on patients – the extent to which groups of patients are affected by a proposed change.
- Methods of service delivery – altering the way a service is delivered. The views of patients and Healthwatch are essential in such cases."

10. The protocol provides examples of what would and would not be deemed to be a substantial change (overleaf).

Level	Category	Description	Example(s)	Action Required
1	Minor	When the proposed change is minor in nature	A change in clinic times, the skill mix of particular teams, or small changes in operational policies.	Committee would not routinely be notified or become involved.
2	Moderate	Where the proposed change has moderate impact or 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, such as the “smoke free” policy. This does not include where there is: <ul style="list-style-type: none"> • Reduction in service • Change to local access to service • Large numbers of patients being affected 	The responsible commission notifies the HOSC Planning Group at an early stage. HOSC Planning Group 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 <ul style="list-style-type: none"> • Reduction or cessation of service • Relocation of service • Changes in accessibility criteria • Local debate and concern 	Major review of service delivery, reconfiguration of GP Practices leading to practice closures, or the closure of a particular unit.	<ul style="list-style-type: none"> • 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. • The responsible commissioner(s) follow the NHS duty to consult patients and the public. • 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.

11. For the HOSC to determine that a proposal is a substantial change does not require the agreement of the healthcare provider.
12. When making its decisions over whether a change should be considered a substantial one, it is customary practice for the Committee to be provided with a Substantial Change Toolkit, filled in by the organisation making the proposed changes. The ICB was requested to complete the form on two occasions, but did not do so. The Committee is nevertheless advised to use section B of the pro forma Substantial Change Toolkit (Annex 3) as a guide to reaching its decision.
13. Under its powers in 23 (9) of the Regulations, the Committee must make a decision over whether the consultation on the proposals has been adequate in time or scope, and/or whether it believes the proposals would be in the interests of the health service in Oxfordshire. The threshold for determining adequacy relates to the category of change the proposals are adjudged to be, as detailed in the table above. Under this power, it may also write to the Secretary of State requesting that the proposals be called-in.
14. The Committee is strongly advised not to contact the Secretary of State unless it believes the change to be 'substantial.' Centre for Governance and Scrutiny (CfGS) advice, however, does not explicitly preclude writing to the Secretary of State for lesser changes:

“A call-in request can be made about any proposal, not just ones that relate to notifiable reconfigurations. A HOSC (or any other person) could make a request on the basis that they consider that a change is notifiable, and (for example) that the consultation planned for that proposal is inadequate.”
15. It should be noted that if the Committee were to write to the Secretary of State, recent changes to the Regulations² would mean that the old, automatic power of referral to the Secretary of State for consideration no longer exists. Instead, the Committee may only request that the Secretary of State call the matter in, a decision which is at the Secretary of State's discretion.
16. CfGS guidance on referral powers state that “The Statutory guidance does not specify any timeframes. As long as a proposal for reconfiguration exists, a request may be made at any point in the reconfiguration process. However, local attempts to resolve the issue must have been exhausted before this happens.” Should it wish, therefore, to contact the Secretary of State it need not do so during the consultation period. It is advised that the Committee is assured that all efforts to reach a local resolution have been exhausted beforehand.
17. The Committee should be aware that if it wishes to make a response to the ICB consultation, it should do so by the closing date of 04 August 2024.

² Enacted by the Health and Care Act 2022, and enacted on 31st January 2024

Corporate Priorities

18. Improving health and wellbeing of residents and reducing health inequalities are stated ambitions within the Council's Strategic Plan.

Legal Implications

Requirements for Notification Regarding a Substantial Change

19. Under The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 providers of health services have a responsibility to consult over substantial developments or variations to the provision of health services in an area. Regulation 23(1) states:

“where a responsible person (“R”) has under consideration any proposal for a substantial development of the health service in the area of a local authority (“the authority”), or for a substantial variation in the provision of such service, R must—

(a) consult the authority;

(b) when consulting, provide the authority with—

(i) the proposed date by which R intends to make a decision as to whether to proceed with the proposal; and

(ii) the date by which R requires the authority to provide any comments under paragraph (4);

(c) inform the authority of any change to the dates provided under paragraph (b); and

(d) publish those dates, including any change to those dates.”

Secretary of State Call-In

20. Health Overview and Scrutiny Committees (referred to as ‘the authority’ here) have the power to write to the Secretary of State under Regulation 23 (9) in the following circumstances:

“The authority may report to the Secretary of State in writing where—

(a) the authority is not satisfied that consultation on any proposal has been adequate in relation to content or time allowed;

[...]

(c) the authority considers that the proposal would not be in the interests of the health service in its area.”

Comments checked by: Anita Bradley

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Financial Implications

21. There are no direct financial implications arising from the recommendations in this report.
22. The financial implications of the ICB's restructuring proposals are presently unknown. There are likely to be impacts on local joint commissioning arrangements as well as the resourcing and activity arising from place-based coordination for social care and public health. However, further information is needed to be able to assess the impact on the council.

Comments checked by: Kathy Wilcox

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Staff Implications

23. None arising directly from this report, though the implications of the restructure could potentially have far-reaching staff implications for Oxfordshire County Council staff should structures around commissioning and Place-based coordination need to be significantly altered.

Equality & Inclusion Implications

24. None arising directly from this report, though the implications of the restructure are not yet fully understood.

Sustainability Implications

25. None arising directly from this report, though the implications of the restructure are not yet fully understood.

Risk Management

26. Requesting a call-in from the Secretary of State is a sign that a negotiated solution has proven impossible. Doing so is likely to have negative consequences on the working relationship between the Committee and ICB stakeholders. This is not a reason in itself to avoid making a referral when it is justified, but the implications of doing so must be weighed carefully when making that decision.

Anita Bradley
Director of Law and Governance and Monitoring Officer

Annex:

1. ICB Restructure Operating Model presentation
2. ICB Partner Briefing
3. Empty Substantial Change Toolkit

Background papers: None

Other Documents: None

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