

## Executive Team

11 September 2017

<b>Report title</b>	Memorandum of Understanding - Black Country Sustainability and Transformation Plan	
<b>Decision designation</b>	AMBER	
<b>Cabinet member with lead responsibility</b>	Councillor Roger Lawrence Leader of the Council	
<b>Corporate Plan priority</b>	People - Stronger Communities	
<b>Key decision</b>	Yes	
<b>In forward plan</b>	Yes	
<b>Wards affected</b>	All wards	
<b>Accountable Director</b>	Mark Taylor, Strategic Director - People	
<b>Originating service</b>	People	
<b>Accountable employee</b>	Brendan Clifford	Integration Project Director
	Tel	01902 555370
	Email	Brendan.Clifford@wolverhampton.gov.uk
<b>Report to be/has been considered by</b>	Executive Team	11 September 2017
	Strategic Executive Board	22 August 2017
	People Leadership Team	21 August 2017

---

### Recommendation for action or decision:

The Cabinet is recommended to:

1. Consider response to the Black Country and West Birmingham Sustainability and Transformation Partnership (STP) Draft Memorandum of Understanding (MoU) attached as Appendix 1.

### Recommendations for noting:

The Cabinet is asked to note:

1. The process and content of development of the Black Country and West Birmingham STP and the MoU attached as Appendix 1.

## 1.0 Purpose

- 1.1 To advise Cabinet that to contribute to the Black Country and West Birmingham STP process, a draft Memorandum of Understanding (MoU) has been developed to support ongoing partnership working.
- 1.2 To remind Cabinet of the wider background to the Black Country and West Birmingham STP content and process.
- 1.3 For Cabinet to consider response to the draft MoU.

## 2.0 Background

- 2.1 The wider background to the National Health Service (NHS) STP process began with the government's October 2014 NHS Five Year Forward View. It set the direction for the next stage of development for the NHS in the light of an analysis of challenges facing the NHS. These include demographic and financial challenges as well as those of new medical technologies and increasing public expectations.
- 2.2 The NHS Five Year Forward View stated that the NHS today is very different to that of 1948 and therefore, the NHS needs to change. It argued that change should focus on systems. This refers to two aspects. Firstly, how different parts of the NHS integrate better – Clinical Commissioning Groups, Acute Hospitals, Mental Health and primary care. And secondly, how integration can be strengthened between the NHS and partners who are part of the system such as local authorities.
- 2.3 The NHS Five Year Forward View emphasised the importance of the NHS coming together with partners in local areas in the interests of a local population. This is referred to as a place-based approach. It recognised that localities are different, therefore different solutions may be required in different places.
- 2.4 In December 2015, NHS England published guidance setting out the requirement to develop five-year plans covering all areas of NHS spending in England called STPs. 44 areas were identified as the geographical 'footprints' for these plans, based on an average population size of 1.2 million. The Black Country was identified as the relevant population encompassing the City of Wolverhampton. The area also includes that covered by the Sandwell and West Birmingham Clinical Commissioning Group (CCG) which extends into the City of Birmingham area.
- 2.5 After a year's development, the final Black Country and West Birmingham STP was published on 21 November 2016. Four key themes were identified as follows:
- 2.6 **Local place-based care** – to develop standardised locally-focussed integrated models of care to promote prevention and build resilient communities.
- 2.7 **Extended hospital collaboration** – to build a network of excellent care services that deliver efficiencies and improve quality.

- 2.8 **Mental Health and Learning disability** – embrace the opportunities provided by the West Midlands Combined Authority to become a single vision for effective mental health and learning disability services.
- 2.9 **Maternity and Infant Health** – robustly review capacity of maternity services across the Black Country and develop standardised pathways of care to improve maternal and child health.
- 2.10 For the City of Wolverhampton specifically, a model for developing services in the City was proposed. Its main features were:
- Continuing to reduce the demand on hospital services by extending community and primary care services through better access, care co-ordination and continuity
  - Using pilots to work out the best way to commission community services – these include a Primary Care Home (PCH) test site, Primary and Acute Care System (PACS) pilot and the likely development of an alliance-type Medical Chambers Practice contract.
- 3.0 **Progress, options, discussion, etc.**
- 3.1 Nationally, a review of the NHS Five Year Forward View was published on 31 March 2017. It reiterated the need for change in health and care systems. The review continued to emphasise the role of new models of care such as Accountable Care Organisations or Systems in delivering solutions to current challenges. Place-based solutions continued to be recognised as important. Integration of services and the experience of people using those services was also a continuing factor.
- 3.2 Since its publication, the City of Wolverhampton Health and Wellbeing Board has noted and discussed updates on the development of the Black Country STP on 30 November 2016, 29 March 2017 and 28 June 2017 including developments such as:
- Andy Williams (Sandwell and West Birmingham CCG Accountable Officer) being confirmed as the Black Country Sustainability and Transformation Plan lead
  - Black Country Clinical Commissioning Groups agreeing in principle to establish governance arrangements to allow greater joint-working between the CCGs at Black Country level.
  - Active attempts at involvement of senior council employees in the Black Country STP development process since March 2017
  - In particular, through the leadership of the Association of Black Country Authorities, the four Black Country local authorities developing an approach called Care and Support Closer to Home in Our Communities – a place based offer which articulates the Black Country Local Authorities contribution to care and support closer to home in communities
  - Development by the Royal Wolverhampton NHS Trust of a “Vertical Integration” approach which contributes to the development of an Accountable Care system in the City of Wolverhampton, building on the developing models of care and support in the locality.

- 3.3 To initiate specific engagement with the public in the City of Wolverhampton on the Black Country STP, Healthwatch Wolverhampton invited representatives of health and care commissioners and providers in the City to their Annual General Meeting on 5 July 2017. Senior employees from health and social care in the City presented:
- Challenges now being faced by health and social care e.g. ageing population
  - Developments now underway to respond to those challenges e.g. the developing models of care such as the alliances now developing including the vertical integration approach through the Royal Wolverhampton NHS Trust; the integration of Black Country Partnership NHS Trust with other NHS providers; the development of community hubs in adult social care; etc.
  - Updates on specific service developments such as possible developments connected to the Royal Wolverhampton site at West Park.
- 3.4 An MoU has been developed to provide a framework for the developing Black Country STP partnership. A standard template developed elsewhere has been adapted for application by the Black Country and West Birmingham STP. It is understood that a number of STP areas are using an MoU approach to support their partnership.
- 3.5 In terms of content, the MoU for the Black Country and West Birmingham STP includes:
- 3.6 A list of the 18 partners who have contributed to the development of the Black Country STP. Black Country Local Authorities are included alongside NHS organisations – CCGs, Trusts including the West Midlands Ambulance Service and NHS England (Specialised Commissioning).
- 3.7 The availability of an “Associate Member” status for those who wish to contribute to the STP but not sign the MoU.
- 3.8 A stated objective to, “provide a mechanism for securing the Parties agreements and commitment to sustained...delivery of STP plans...to realise a transformed model of care across the Black Country”.
- 3.9 Obligations and benefits: stating that partners of comply with agreed plans.
- 3.10 A note on duration stating that it will be effective from the date it is signed by a partner.
- 3.11 A statement making clear that the MoU “does not and is not intended to give rise to legally binding commitments between parties” and it is not intended to, “affect each Party’s individual accountability as an independent organisation.” Nevertheless, it states that parties, “agree to act in good faith”.
- 3.12 A section on governance which states that, “The Partnership does not have any authority to make binding decisions on behalf of the parties. Collective decision made by the Partnership require ratification by each Party’s unitary Board or equivalent”.
- 3.13 Recognition of the importance of “subsidiarity” in terms of the Black Country’s distinct communities.

- 3.14 Statements about resources - “the Parties agree to commit their own resources” to achieve the STP objectives; acknowledge the need for openness and transparency in response to duties of public involvement.
- 3.15 General points about termination which allow any party to, “withdraw from the agreement at any time” and dispute resolution.
- 3.16 A number of draft Schedules are attached to the current draft MoU which cover:
- 3.17 Role and Remit of the STP – setting out desired behaviours, requirements and roles of the STP Lead. This includes reference to the need for relevant public engagement should major service change be planned.
- 3.18 Agreed Principles – this includes
- A partnership working agreement which states that parties agree with the principles as a pre-requisite to membership of the partnership for organisations that are signatories to the MoU.
  - A Partnership Statement which includes the following – “Some of the changes may require any of our organisations to enact developments that, whilst demonstrably improving delivery across the system, may be suboptimal to a member’s organisation. We commit to making such changes where these deliver the STP overall objective of sustainability of the system”.
  - Partnership outcomes including a reflection on the definition of ‘place’, taking account of a variety of interpretations including the local authority, more localised/neighbourhood level or wider footprints of the STP level or beyond.
  - Partnership behaviours ranging across need for collaboration, information sharing, learning from best practice, challenge, media protocols and workforce development.
- 3.19 Black Country STP Terms of Reference – includes:
- Membership is clarified as a nominated single representative for each signatory organisation with a voting right should it be needed.
  - It is assumed that a Healthwatch representative and other representatives will attend as non-voting members.
  - Detail on voting beginning with an assumption that consensus is desirable. Specific mention is made of local authorities as follows: “In the case of a Local Authority that is a signatory to the MoU, the Partnership recognises that there may be occasions on which voting on a Partnership decision may be in conflict with an Authority’s statutory rights and responsibilities (for example, in relation to public consultation and the right of referral to the Secretary of State.) Local Authority Partners shall have the right to determine when such circumstances exist and, in such circumstance, to exempt themselves from a Partnership decision”.
  - In terms of partnership recognition, it is stated that “partners recognise that accountability for place-based work sits with local governance”.
  - Resourcing – “It is expected that delivery of the STP objectives is seen as the core business of each member organisation and each will therefore commit in kind resources to deliver STP objectives”.

- 3.20 Some general issues about the content based on legal comment include:
- 3.21 The precise legal status of the STP and the MoU is unclear. Overall, it appears to create a force for strong and binding partnership and creating mutual obligations. The unclear legal status questions the strength of partnership aspired to.
- 3.22 Because the MoU is a template document, it may be unlikely that any amendments can be introduced unless all participating local authorities request it. Therefore, it may be that clarifications rather than variations may be made.
- 3.23 Whether the Council and other local authorities are acting as a formal statutory partner or in a more informal role should be clarified.
- 3.24 How system-wide decisions will be made needs to be clarified:
- Will these be made democratically? If so, by which organisation and for what area?
  - If managerially, under what governance structure or arrangement?
- 3.25 Given the likely executive focus of most meetings, it is assumed that representation by the City of Wolverhampton will be by employees. However, there may be others where Councillor attendance is required. Therefore, level of representation should be clarified.
- 3.26 Should any issues arise affecting the statutory duties of councils, the issue will need to be referred through Council governing process before any decision is taken. Accordingly, the MoU will need to contain a statement that nothing shall impact on the statutory and governance functions of a Council.
- 3.27 The need for financial savings is detailed in the STP. To achieve these, closures or service reductions may be effected. Councils may not wish to align themselves with these decisions of the STP partnership. Therefore, there should be a reference to the STP undertaking a financial risk analysis and/or a business case as soon as possible for any financial savings.
- 3.28 As a partner to any service reduction or closure, the Council will want to be assured that all required steps for formal consultation have been planned and undertaken.
- 3.29 The dispute resolution provisions should only refer to mediation and not arbitration which could be expensive.

#### **4.0 Evaluation of alternative options:**

- 4.1 The draft Black Country and West Birmingham STP MoU is based on a template version developed elsewhere and addresses areas which might be expected in such an agreement. It is appreciated that the development of the MoU is aimed at creating a positive and results-orientated environment for partnership working to bring about the objectives of the STP. It clearly aims to address potential difficulties before they might arise and emphasizes collaboration and consensus.

- 4.2 Subject to Cabinet consideration, the main options are most likely to be as follows.
- 4.3 **Option one** – accept the assurances stated in the MoU and become a signatory. This would be done on the basis that no legal obligation is created through becoming a signatory, signatories can leave at any time and agency governance arrangements are sovereign as stated in the draft MoU. On the other hand, whilst some specific aspects of the direction of the Black Country STP remain unclear, it may be too early for the Council to embrace the process when it may need to represent the interest of electors in response to any suggested service change.
- 4.4 **Option two** – accept the offer of “Associate Member” status which maintains Council involvement without voting rights. It can be argued that the Council may not need a deeper membership than “Associate Member” as most change envisaged in the Black Country STP is aimed at the NHS. This option leaves the Council free in respect of any conflict of interest which might emerge over time of which it is not currently aware. On the other hand, an “Associate Membership” status is less than full membership and this may introduce some obstacle on leadership of the place-based theme although this is not inevitable.
- 4.5 **Option three** – seek some changes to the draft MoU so that the specific character of the contribution of councils as partners with the NHS can be strengthened. This might allow the generalised template to be made even more specific to local needs. Depending on the extent of agreement and change on this basis, the Council may then choose either option one or two outlined above or any other option it sees fit in the light of the situation.
- 5.0 Reasons for decision(s):**
- 5.1 The Cabinet may determine any option including one beyond those suggested above based on any wider consideration judged important by the Cabinet.
- 6.0 Financial implications**
- 6.1 There are no current direct financial implications at this stage. The development of the draft Black Country STP completed in October 2016, CCGs, NHS providers and Local Authorities provided detail of their financial plans for health and social care over the five year period (up to 2020-21.) A ‘Do nothing’ option which takes the recurrent starting position pre-2017-18 budget reduction plans and allowing for growth, this gives a potential cost pressure of £700 million across the Black Country footprint - £512 million in relation to health and £188 million across social care.
- 6.2 A number of potential solutions were identified across the footprint including demand management, cost efficiencies and service transformation to address this gap. This reduced the gap by 2020-21 to nil across the health system and £118 million across social care.

## **7.0 Legal implications**

- 7.1 The government's mandate to NHS England 2016-17 sets the direction for the NHS pursuant to Section 13A (1) of the National Health Service Act 2006.
- 7.2 NHS England publications on The NHS Five Year Forward View (2015,) and Next steps on the NHS Five Year Forward View (2017) amongst other documents respond to the mandate which specifically initiated and continued the STP process.
- 7.3 The MoU does not give rise to legally binding commitments between the parties. Nevertheless, the parties must act in good faith to meet the requirements of the memorandum.

[RB/24032017/Q]

## **8.0 Equalities implications**

- 8.1 The Council is a committed partner in local health and social care arrangements including the STP and MoU led by the NHS. Council representatives will seek reassurance that the STP does not inadvertently create inequity in access to health care. Service leaders will ensure that any service redesign addresses equality issues as needed. For instance, where internet access is required, strategies will be developed to ensure that those without such access can be included within the improvement made.

## **9.0 Environmental implications**

- 9.1 The focus on local, place-based approaches encourages improved approach to local environments as travel time and journeys are minimised. It is possible that the scaling-up of some services through new NHS partnership arrangement may create longer journeys for some people.

## **10.0 Human resources implications**

- 10.1 There are no direct service changes associated with the consideration of the Black Country and West Birmingham STP MoU at this time. Any service change developed as a result of the overall plan would be subject to accepted procedures for human relations issues.

## **11.0 Corporate Landlord implications**

- 11.1 Corporate Landlord services are actively involved in the relevant local health and care workstream established under the Systems Development Board to strengthen localised, community-focussed delivery arrangements.

## **12.0 Schedule of background papers**

- 12.1 National Health Service Act 2006

12.2 The NHS Five Year Forward View 2015

12.3 Black Country and West Birmingham System Transformation Plan 2016

12.4 Next steps on the NHS Five Year Forward View 2017

**13.0 Appendices**

13.1 Appendix 1 - The Black Country and West Birmingham Sustainability & Transformation Partnership Memorandum of Understanding