

Cabinet

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NHS reforms and the transfer of public health functions to Durham County Council



Report of Corporate Management Team

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Purpose of Report

1. The purpose of this report is to provide an update on recent developments in relation to NHS reforms, including the transfer of public health functions to Durham County Council from NHS County Durham.

Background

2. During 2012, Cabinet was presented with two separate quarterly reports on NHS reforms and public health respectively. These reports provided details on significant policy developments in relation to the wider NHS reforms and the transfer of public health functions to local authorities.
3. A significant amount of work has been carried out in all of these areas and good progress has been made. This report focuses on the lead up to 1st April 2013 and incorporates developments related to both the wider NHS reforms and public health.
4. From April 2013, Strategic Health Authorities and Primary Care Trusts will be abolished, Clinical Commissioning Groups will take responsibility for health care budgets for their local communities, a statutory Health and Wellbeing Board will be in place for County Durham, and Local Healthwatch will be established to give local people a say in how health and social care services are provided.
5. From 1st April 2013, Durham County Council will have a role across the three domains of public health (health improvement, health protection and health services) and, in addition to improving the health of local people, will have new functions to ensure that NHS commissioners are provided with public health advice.

6. Government key milestones can be found in Appendix 2.

National Developments

7. All of the 211 emerging Clinical Commissioning Groups in England have now submitted their applications for authorisation to take on their clinical commissioning responsibilities.
8. The Department of Health has informed Clinical Commissioning Groups about their responsibilities for NHS continuing healthcare (CHC) from April 2013 and about implementing personal health budgets.
 - By April 2013, CCGs will need to deliver on their statutory duties for NHS CHC, including clinical, legal and managerial skills in relevant areas.
 - Personal health budgets are still being piloted and evaluated nationally; however, from April 2014, people who are eligible for CHC will have a right to ask for a personal health budget.
9. The first Mandate between the Government and the NHS Commissioning Board, setting out the ambitions for the health service for the next two years, was published on 13th November 2012. The Mandate reaffirms the government's commitment to an NHS which remains comprehensive and universal and is able to meet patients' needs and expectations now and in the future.
10. In November 2012, the Department of Health published 'Improving health and care: the role of the outcomes frameworks', which set out how the three outcomes frameworks for Adult Social Care, Public Health and the NHS work together to achieve the desired outcomes for the health and care system. This is the first time that the three outcomes frameworks have been refreshed and published simultaneously.
11. In October 2012, the Local Government Association produced two documents:
 - '*Establishing Local Healthwatch*' - a series of briefings to assist local authorities and their partners in local communities and the NHS to support the commissioning, setting up and early development of local Healthwatch
 - '*Making an impact with Healthwatch*' – a discussion paper which considered the impact that Healthwatch should make and how it might need to work in order to succeed
12. In December 2012, the draft regulations for Local Healthwatch were laid in Parliament. The government's aim is for local Healthwatch to hold commissioners and providers of services to account, acting as a critical friend to help bring about improvements. There is a duty of service on providers to allow Local Healthwatch to enter their premises to observe the activities being carried out.
13. In October 2012, the Department of Health issued guidance on the role, responsibilities and appointment of directors of public health, together with a fact sheet reaffirming local government responsibilities from April 2013.
14. In December 2012, The NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations

2012 were laid before Parliament. These regulations include the responsibilities of Directors of Public Health, dental public health functions of local authorities and complaints about public health functions of local authorities.

15. Public Health England has appointed 8 board directors and work is progressing to set up the new organisation, which begins its work in shadow form in early January 2013 and takes on statutory responsibility from 1 April 2013. Recruitment for the regional directors and centre directors is currently underway.
16. There is regional variation in the way community infection prevention and control services are currently delivered in England. In December 2012, the Department of Health advised that approximately half of the £25 million allocated for community infection prevention and control, which was to go to Public Health England, will be transferred to local government. Discussions are currently taking place regarding local arrangements for this function, which includes the prevention of infection through the correct use of hand cleaning, personal protective equipment, waste disposal and the safe use and disposal of sharp needled objects.
17. The NHS Commissioning Board (NHS CB) and the Department of Health have published a detailed agreement showing how the NHS CB will drive improvements in the health of England's population through its commissioning of certain public health services. The agreement delegates responsibilities to the NHS CB, provides ring-fenced funding of £1.8 billion for certain public health services and sets out the outcomes to be achieved. The NHS CB will be supported by Public Health England for the services included in the agreement:
 - National immunisation programmes
 - National routine screening programmes (non-cancer)
 - National routine cancer screening programmes
 - Children's public health services from pregnancy to age 5
 - Child health information systems
 - Public health services for people in prison and other places of detention
 - Sexual assault referral centres.

Regional Developments

18. All local authorities in the North East completed a public health self-assessment, led by the Local Government Association in October 2012. The main message was that implementation was well under way, with transition milestones being met and on target for completion. Concerns were however expressed over the ACRA funding formula and its implications on long term finance, information governance issues, such as access to NHS data, and the role of the North East Commissioning Support Service.
19. Work is in progress across the region regarding arrangements for Emergency Planning, Resilience and Response. Testing took place as part of Operation Silverstone on Teesside on 7th November 2012 and Exercise Sentinel as part of a national testing exercise. A report is awaited from the Department of Health on the results of the testing exercises.

20. In December 2012, Professor Paul Johnstone was appointed Regional Director for Public Health England (North of England) and his role will include supporting the five new Public Health England Centres in the region.

Developments in County Durham

County Durham Shadow Health and Wellbeing Board

21. Recent changes to the membership of the Shadow Health and Wellbeing Board (SHWB) are outlined below:
 - Nicola Bailey (Chief Operating Officer Designate) will attend for North Durham Clinical Commissioning Group
 - Colin Burton from the Local Involvement Network will attend, until Local Healthwatch is established.

In addition, Mike Guy, Medical Director Designate from the NHS Commissioning Board Area Team will attend, particularly when discussions on the Joint Strategic Needs Assessment and the Joint Health and Wellbeing Strategy are scheduled to take place.

22. A PCT legacy and handover document and a separate public health legacy document are currently being produced; they will be presented to the Shadow Health and Wellbeing Board for agreement on 6th March 2013.
23. The forward work programme for the Shadow Health and Wellbeing Board includes the following:
 - Review commissioning intentions for Durham Dales Easington and Sedgefield CCG for 2013/14
 - Agree policy framework for Continuing Health Care
 - Agree strategy and funding for intermediate care - Care Closer to Home
 - An update on joint working arrangements for health and wellbeing in County Durham
 - Implement the JHWS through an action plan and performance management framework
 - Receive update regarding the establishment of Local Healthwatch
 - Agree final commissioning intentions for North Durham CCG for 2013/14

Constitutional Arrangements

24. The Health and Social Care Act 2012 requires each upper tier local authority to establish a Health and Wellbeing Board, to be treated as a committee appointed by the council under section 102 of the Local Government Act.
25. In October 2012, Durham County Council was involved in an engagement exercise with the Department of Health on issues relating to which elements of the current legislation for section 102 committees should be disapplied, modified or retained.
26. Following the engagement exercise, the Department of Health intends that the regulations will be laid before Parliament in January 2013 and will come into force on 1st April 2013.

27. The Department of Health has indicated that the current proposals include the following:
 - Core functions of the health and wellbeing board will remain within the collective ownership of the board
 - Sub-committee structures will be a matter for local determination
 - Political proportionality – this will be left to a local decision
 - Transparency – papers and minutes of the statutory health and wellbeing board will need to be publicly available
 - Voting rights – it is proposed that key members of the health and wellbeing board will be able to vote, as well as locally nominated members .
28. A report on changes required to the council's Constitution linked to the County Durham Health and Wellbeing Board will be presented to Cabinet on 13th March 2013.

Joint Strategic Needs Assessment and Joint Health and Wellbeing Strategy

29. The Shadow Health and Wellbeing Board agreed the first Joint Health and Wellbeing Strategy for County Durham on 8th November 2012. The Director of the NHS Commissioning Board Area Team for Durham, Darlington and Tees (Cameron Ward) was present at this meeting and provided positive feedback on the strategy.
30. On 12th December 2012, Cabinet received a report on the key messages from the Joint Strategic Needs Assessment 2012 and the Joint Health and Wellbeing Strategy 2013/17.
31. The Joint Health and Wellbeing Strategy will enable Durham County Council and Clinical Commissioning Groups' commissioning plans / intentions to be developed from April 2013. The Joint Health and Wellbeing Strategy objectives are as follows:
 - Children and young people make healthy choices and have the best start in life
 - Reduce health inequalities and early deaths
 - Improve the quality of life, independence and care and support for people with long term conditions
 - Improve mental health and wellbeing of population
 - Protect vulnerable people from harm
 - Support people to die in the place of their choice with the care and support that they need

Clinical Commissioning Groups

32. Clear and Credible Plans have been published by Durham Dales, Easington and Sedgefield Clinical Commissioning Group (DDES CCG) and North Durham CCG for a five year period from 2012/13 – 2016/17.
33. DDES CCG has the following key aims:
 - Improving the health of the populations of Durham Dales, Easington and Sedgefield
 - Making sure our children and young people have a better start in life
 - Tackling the challenges of an ageing and growing population

- Making services more accessible and responsive to the needs of our communities.
 - Managing our resources effectively and responsibly.
34. North Durham CCG has the following key aims :
- Improving the health status of the population
 - Addressing the holistic needs of the changing age profile of the population
 - Commissioning clinically effective, better quality services closer to home
 - Making the best use of public funds to ensure healthcare meets the needs of patients and is safe and effective.
35. The Adults Wellbeing and Health Overview and Scrutiny Committee was provided with presentations and information in relation to both CCG Clear and Credible Plans on 26th November 2012.
36. North Durham CCG presented its clinical commissioning intentions for 2013/14 to the Shadow Health and Wellbeing Board in November 2012; DDES CCG will present its clinical commissioning intentions for 2013/14 in January 2013. The clinical commissioning intentions for both CCGs have been aligned to the Joint Health and Wellbeing Strategy.
37. DDES CCG received authorisation in November 2012 from the NHS Commissioning Board. North Durham CCG has applied for authorisation in January 2013.
38. Durham County Council is working collaboratively with DDES CCG and North Durham CCG to develop a system-wide improvement to intermediate care services across the county – Care Closer to Home. The outcome of this work will be presented to the Shadow Health and Wellbeing Board in early 2013.

Local Healthwatch

39. Local Healthwatch will give citizens and communities a stronger voice to influence and challenge how health and social care services are provided within their locality.
40. Updated key milestones in the commissioning of Local Healthwatch in County Durham are as follows:
- Evaluate submissions from potential providers of Local Healthwatch – January 2013
 - Award contract to chosen Local Healthwatch provider – February 2013
 - Establish Local Healthwatch and decommission the Local Involvement Network (LINK) by 1st April 2013.

NHS complaints advocacy

41. The Independent Complaints Advocacy Service (ICAS) is a national service which supports people who wish to make a complaint about their NHS care or treatment. As part of the Health and Social Care Act 2012, local authorities must commission NHS complaints advocacy from any suitable provider (including local Healthwatch) from 1 April 2013.

42. Gateshead Borough Council is taking the lead commissioner role for the North East councils for the NHS complaints advocacy service.

Medical Examiner Role

43. Following the passing of the Health and Social Care Act 2012, responsibility for the provision of Medical Examiners will transfer from primary care trusts to local authorities from April 2014.
44. A medical examiner is a medically qualified government officer whose duty is to investigate (as necessary) deaths and injuries which occur under unusual or suspicious circumstances. The role of the medical examiner is to determine cause of death and issue death certificates, working with the coroner's office.
45. Issues in connection with the medical examiner role have been considered and a regional benchmarking exercise will be undertaken to look at options for a service model. Work will take place through the Association of North East Councils and consideration will be given to a regional options appraisal for different service models being developed:
 - Direct provision of a standalone service
 - Commission the service from a healthcare provider which can assure independence
 - Integration with existing related services
 - Collaboration with neighbouring authorities to provide a combined service.
46. The Association of North East Councils has suggested that no further action is taken until guidance is received from the Department of Health on the recruitment and selection of medical examiners, which is expected late 2012 / early 2013.
47. A Durham County Council project group has been established, led by Legal and Democratic Services, to take this work forward.

Public Health Funding

48. On 19th December 2012, the Department of Health announced that it had not yet made a decision about public health budgets for local authorities from April 2013. Durham County Council had expected to receive its public health allocation for 2013/14 in December 2012. Further information is now expected from the Department of Health in early 2013.

Review of Public Health Contracts

49. Following the public health contract prioritisation process, a review of current contracts is taking place to determine how services will be commissioned from 1st April 2013. A workshop has already taken place with providers of public health services, with another planned for 28th January 2013.
50. The review process has begun for the following services:
 - School nursing service (including national child measurement programme)
 - Health improvement service

- Sexual health improvement service, contraceptive and sexual health service and teenage pregnancy service
- Fresh Smoke Free North East office and Balance (alcohol) – both led regionally
- Domestic abuse and Child Independent Sexual Violence Advisor services

Role and responsibilities of the Director of Public Health within Durham County Council

51. In October 2012, the Department of Health issued guidance related to the role and responsibilities of Directors of Public Health from April 2013.
52. The role of the Director of Public Health is to:
 - Be the person who elected members and senior officers look to for leadership, expertise and advice on a range of issues, from outbreaks of disease and emergency preparedness through to improving local people's health and concerns around access to health
 - Know how to improve the population's health by understanding the factors which determine health and ill health, how to change behaviour and promote both health and wellbeing in ways that reduce inequalities in health
 - Provide the public with expert, objective advice on health matters
 - Be a statutory chief officer of the authority
 - Work through local resilience fora to ensure that effective and tested plans are in place for the wider health sector to protect the local population from risks to public health
 - Work with local criminal justice partners and Police and Crime Commissioners to promote safer communities
53. Within Durham County Council, the Director of Public Health will also:
 - Be an active member of the Health and Wellbeing Board, advising on and contributing to the development of Joint Strategic Needs Assessments and Joint Health and Wellbeing Strategy
 - Commission appropriate Public Health services accordingly
 - Take responsibility for the management of Durham County Council's public health services, with professional responsibility and accountability for their effectiveness, availability and value for money
 - Contribute to and influence the work of NHS commissioners, including Clinical Commissioning Groups, ensuring a whole system approach across the public sector
54. A report on delegated powers of authority for the Director of Public Health County Durham and changes to the council's Constitution will be presented to Cabinet in March 2013.

Transfer of public health functions and staff to Durham County Council

55. As previously agreed by Cabinet in March 2012, the public health functions to be transferred from NHS County Durham to Durham County Council will not take place until 1st April 2013.

56. A draft public health structure has been developed and will form part of the formal consultation process with staff, so that a final public health operating model can be agreed in early 2013.
57. Clarification is still awaited from the Department of Health on HR arrangements to be implemented under a 'transfer order' with regard to Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) and / or the Cabinet Office Statement of Practice (COSOP).
58. In the meantime, an induction programme for public health staff has been agreed and initial induction sessions took place at County Hall on 20th November, 30th November and 4th December 2012. The programme will continue in January 2013 and be completed by the end of March 2013.
59. Transitional arrangements will be put in place during January to March 2013 to prepare for the relocation of public health staff to County Hall.

Recommendations

57. Cabinet is recommended to:
 - Agree that a further report regarding NHS reforms, including public health, will be provided to Cabinet in April 2013.
 - Note the developments relating to community infection prevention and control, to transfer to Durham County Council.
 - Note that a report on the revised Constitution, to include public health, will be provided to Cabinet in March 2013.

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Background Documents

There are no background documents for this report.

Appendix 1 - Implications

Finance – Durham County Council is to receive a ring-fenced budget for public health for 2013/14. For 2014/15 and beyond, the level of public health funding for County Durham may be reduced.

Staffing – Plans are currently underway to accommodate and support the public health staff transferring to Durham County Council from NHS County Durham.

Risk – Failing to establish a Health and Wellbeing Board as laid out in the Health and Social Care Act may leave Durham County Council open to legal challenge.

There are risks in the transfer of public health functions from NHS County Durham to Durham County Council. This is monitored by the DCC Receiver Group and the corporate risk assessment process, and due diligence is being carried out by Internal Audit and Risk to ensure that the necessary controls, evidence and quality assurance are in place.

Equality and Diversity / Public Sector Equality Duty – Under provisions in the Health and Social Care Act, the Secretary of State, the NHS Commissioning Board and Clinical Commissioning Groups will have a duty to reduce health inequalities.

Equality Impact Assessments are carried out as part of the development of the Joint Strategic Needs Assessment and Joint Health and Wellbeing Strategy.

Accommodation – Suitable accommodation has been agreed for the public health staff to be transferred to Durham County Council.

Crime and Disorder – The Joint Strategic Needs Assessment considers the wider determinants of health and wellbeing within a local authority's area, including crime and disorder issues and signposts to the Safe Durham Partnership Strategic Assessment.

The Director of Public Health County Durham will have a role to work with the Police and Crime Commissioner to promote safer communities.

Human Rights – There are no direct implications

Consultation – The government has consulted with patients and professionals on the NHS reforms. The government continues to consult on key policy in relation to public health reform.

Local consultation in relation to the Joint Health and Wellbeing Strategy was undertaken between September and November 2012.

Procurement – The commissioning of public health services from 1st April 2013 is being considered as part of the DCC Receiver Group's transition plan.

Disability Discrimination Act – There are no direct implications.

Legal Implications – The Health and Social Care Bill received Royal Assent on 27th March 2012 and is now an Act of Parliament.

The Health and Social Care Act states that all upper tier local authorities must establish a Health and Wellbeing Board for their area - failing to enact a provision will have legal implications for Durham County Council.

Durham County Council's Constitution will be amended to ensure that it incorporates relevant future responsibilities from 1st April 2013 with regard to public health.

Appendix 2 - Key Milestones

Date	Key Milestones
January 2013	<p>PCT Clusters / Local Authorities will ensure final legacy and handover documents produced</p> <p>Public Health England business and operational plans published</p> <p>Completion of initial round of CCG assessments</p>
February 2013	<p>CCGs to work with partners in Health and Wellbeing Boards to ensure that commissioning plans fully reflect the local priorities in the Joint Health and Wellbeing Strategy</p>
April 2013	<p>SHAs and PCTs are abolished</p> <p>NHS Commissioning Board takes on its full functions</p> <p>Health Education England takes over SHAs' responsibilities for education and training</p> <p>NHS Trust Development Authority takes over SHA responsibilities for the foundation trust 'pipeline' and for the overall governance of NHS trusts</p> <p>Public Health England established as an executive agency of the Department of Health</p> <p>Full system of CCGs is established to take on budgetary responsibility - the NHS Commissioning Board will only authorise groups to take on their responsibilities if they are ready</p> <p>GP practices will be members of either an authorised clinical commissioning group, or a 'shadow' commissioning group</p> <p>Formal commissioning arrangements implemented between Public Health England, NHSCB, clinical commissioning groups and local authorities</p> <p>Public Health England to allocate ring-fenced budgets, weighted for inequalities, to local authorities to commission public health services</p> <p>Health and Wellbeing Boards assume statutory responsibilities</p> <p>Local authorities will have a duty to improve the health of their populations</p> <p>Local authorities and local Healthwatch will take formal responsibility for commissioning NHS complaints advocacy</p> <p>Local public health budgets allocated</p> <p>Personal budgets for ongoing social care granted</p>

	<p>Monitor's licensing regime is fully operational</p> <p>Local authorities take responsibility for Directors of Public Health and their functions</p> <p>Launch of Local Healthwatch</p>
April 2014	<p>The majority of remaining NHS trusts will be authorised as foundation trusts - if any trust is not ready, it will continue to work towards foundation trust status under new management arrangements</p> <p>Local Medical Examiner service transferred to local authorities</p>
April 2016	<p>Monitor's transitional powers of oversight over foundation trusts will be reviewed</p>