

Cabinet

13 March 2013

Health and Wellbeing Board



Report of Corporate Management Team

Colette Longbottom, Head of Legal and Democratic Services

Councillor Simon Henig, Leader of the Council

Purpose of the Report

- 1 Following approval by the Constitution Working Group on 4 March, to approve the composition, functions, and rules of procedure of the County Durham Health and Wellbeing Board, and to recommend its adoption by the Council.

Background

- 2 The Health and Social Care Bill ("the Bill"), introduced into Parliament on 19 January 2011, set out proposals for NHS reforms. The proposals included the transfer of public health functions to local authorities, including the requirement for upper tier local authorities to establish Health and Wellbeing Boards by April 2013. Shadow Health and Wellbeing Boards were expected to be in place after July 2012.
- 3 On 13 July 2011, Cabinet agreed the functions and membership of the Shadow County Durham Health and Wellbeing Board ("the Shadow Board").
- 4 Membership of the Shadow Board has been of a size that was manageable yet effective, which complied with requirements as set out in the Bill, and appointed additional persons as members. Cabinet has continued to receive update reports from the Shadow Board.

Legislation

- 5 Under Section 194 of the Health and Social Care Act 2012, the Council must establish a Health and Wellbeing Board for its area.
- 6 The Health and Wellbeing Board must consist of:-
 - (a) At least one Councillor of the local authority nominated by the Leader;
 - (b) the Director of Adult Social Services for the local authority;¹
 - (c) the Director of Children's Services for the local authority;²
 - (d) the Director of Public Health of the local authority;
 - (e) a representative of the local Health Watch Organisation for the area of the local authority;
 - (f) a representative of each relevant clinical commissioning group; and

¹ This role is covered by the Corporate Director of Children and Adults Services

² This role is covered by the Corporate Director of Children and Adults Services

(g) such other persons, or representatives of such other persons as the local authority thinks appropriate.

- 7 The Department of Health has stated that the Health and Wellbeing Board will be a forum for collaborative local leadership and will be very different to a normal local authority committee appointed under Section 102 of the Local Government Act. The Act therefore enabled Regulations to provide that any enactment relating to a committee appointed under Section 102 of the 1972 Act, does not apply in relation to a Health and Wellbeing Board or, applies in relation to it with such modifications as may be prescribed by the Regulations.
- 8 The Health and Wellbeing Board is a committee of the local authority, which established it for the purposes of any enactment and is to be treated as if it were a committee appointed by the authority under Section 102 of the Local Government Act 1972.
- 9 Normally, a committee of a local authority is subject to a number of statutory provisions which are referred to in paragraphs 10 to 13 below.
- 10 A local authority may discharge its functions by committee, sub-committee, officer or another local authority. Regulations passed under the Act³ provide that unless the local authority establishing the Board otherwise directs, the Board may arrange for the discharge of any of those functions by a sub-committee of the Board, or an officer of the authority. Further modification also enables a sub-committee of the Board to arrange for functions to be carried out by an officer of the authority. The rationale behind allowing this flexibility, is to ensure the efficient conduct of business. It is not therefore recommended that any direction is given preventing the use of this facility.
- 11 Section 104 of the 1972 Local Government Act sets out persons who are disqualified from being a member of a committee or sub-committee. Anyone disqualified by part 5 of the Act being elected or being a member of the local authority, is not entitled to be a member of a committee or sub-committee. The disqualifications are lifted except, in relation to persons disqualified by reason of bankruptcy or criminal conviction where the person has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine.
- 12 Under Section 13 of the 1989 Local Government and Housing Act, members of committees and sub-committees who are not members of the authority have a non-voting status. The Regulations changed this in that a person who is a member of a health and wellbeing board, a sub-committee of such a board, or a joint sub-committee of two or more such boards, shall not be treated as a non-voting member of that board or sub-committee, unless the local authority which established the board otherwise directs. Before making such a direction, the local authority must consult the board. Whilst it is open to direct that non-member officers should not be allowed to vote, members may consider that a forum for collaborative local leadership, which involves representatives of other public bodies, who are then not allowed to vote,

³ The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulation 2013 laid before Parliament on 8 February 2013.

would be impeded in its collaboration. It is therefore recommended that a direction limiting the voting ability of non-council members is not given.

- 13 Under Section 15 and 16 of the Local Government and Housing Act 1989 and Schedule 1 of the same Act, Councils have a duty to apply political balance requirements in relation to its committees and sub-committees. The Regulations disapply these provisions in relation to health and wellbeing boards, and to any sub-committee of the board.
- 14 In summary, therefore, the Health and Wellbeing Board is an unusual committee in that it is stated to be a committee of the local authority, but officers who are appointed to it may vote, the obligations to comply with political balance is lifted, as well as some of the disqualifications from membership.

The Functions of the Health and Wellbeing Board

- 15 Functions of the Board are set out in the legislation are as follows:-
- Promote integrated working between commissioners of health services, public health and social care services, for the purposes of advancing the health and wellbeing of the people in its area;
 - Encourage those who provide services related to wider determinants of health, such as housing, to work closely with the Health and Wellbeing Board;
 - Develop and agree the Joint Strategic Needs Assessment and Joint Health and Wellbeing Strategy (“JHWS”);
 - Have a formal role in authorising and establishing clinical commissioning groups (“CCGs”);
 - Be involved throughout the process as CCGs develop their commissioning plans and ensure they take proper account of the JHWS when developing these plans; and
 - Provide advice and assistance or other support as it thinks appropriate for the purposes of encouraging the making of arrangements under Section 75 of the National Health Service Act 2006.
- 16 These functions involve joint working and strategic oversight of health and social care functions of both health bodies and the Council. It also involves the production of the Joint Strategic Needs Assessment and Joint and Health Wellbeing Strategy.
- 17 In relation to the Code of Conduct, the provisions of the standards regime in the Localism Act 2011 will be applied to the Board.

The Statutory Board

18 Cabinet agreed the membership of the Shadow Board on 13 July as follows:-

- Portfolio Holder for Adult Services;
- Portfolio Holder for Safer and Healthier Communities;
- Portfolio Holder for Children and Young People's Services;
- Representation from each Clinical Commissioning Group;
- A representative from LINK (pending introduction of Local Health Watch);
- Corporate Director Children and Adults Services;
- Director of Public Health;

and representation from the following bodies:-

- Tees Esk and Wear Valley NHS Foundation Trust;
- County Durham and Darlington Foundation Trust;
- City of Sunderland NHS Foundation Trust;
- North Tees and Hartlepool NHS Foundation Trust; and
- County Durham and Darlington (this body will cease to exist from April 2013).

19 It is an option to consider widening the membership of the Board, or indeed, reducing it to the minimum required by statute. When Cabinet considered the proposed membership of the Board in July 2011, the membership detailed above was proposed as a reasonable size to be manageable and effective, and as the Board has operated well in shadow form with this composition and having regard to the fact that composition would comply with the proposed regulations, it is recommended that the Executive have a formal Board constituted the same as the Shadow Board.

20 Given that the powers which are to be exercised by the Board are aligned to Executive Powers, it is recommended that the Board be comprised of its current membership.

21 It is necessary for the Council to consider whether political balance applies. It is suggested that the stated nature of the Board, as stated in paragraph 7, and the fact that the Act identifies the person who must be appointed to it, that the requirement of political balance should not be applied to this committee.

- 22 Other authorities in the North East have been contacted to find out their proposals for the composition of a statutory Board, with most indicating that they were currently in the process of considering their own arrangements, and some were looking to see the arrangements that Durham was making, however no council was able to provide any certainty on this at the moment.

Rules of Procedure

- 23 As a Committee of the Council, the Council Procedure Rules will apply to the Health and Wellbeing Board.

Recommendations and Reasons

- 24 Cabinet is asked to:

- (i) Approve the composition of the Health and Wellbeing Board as follows:

- Representatives nominated by the Leader (being currently,
 - Portfolio Holder for Adult Services;
 - Portfolio Holder for Safer and Healthier Communities;
 - Portfolio Holder for Children and Young People's Services);
- Representation from each Clinical Commissioning Group;
- A representative from Local Healthwatch;
- Corporate Director Children and Adults Services;
- Director of Public Health

and nominated representation from each of the following:-

- Chief Executive of Tees Esk and Wear Valley NHS Foundation Trust;
- Chief Executive of County Durham and Darlington Foundation Trust;
- Chief Executive of City of Sunderland NHS Foundation Trust;
- Chief Executive of North Tees and Hartlepool NHS Foundation Trust;

- (ii) Approve the functions of the Wellbeing Board as follows:

- Promote integrated working between commissioners of health services, public health and social care services, for the purposes of advancing the health and wellbeing of the people in its area;

- Encourage those who provide services related to wider determinants of health, such as housing, to work closely with the Health and Wellbeing Board;
 - Develop and agree the Joint Strategic Needs Assessment and Joint Health and Wellbeing Strategy (“JHWS”);
 - Have a formal role in authorising and establishing clinical commissioning groups (“CCGs”);
 - Be involved throughout the process as CCGs develop their commissioning plans and ensure they take proper account of the JHWS when developing these plans; and
 - Provide advice and assistance or other support as it thinks appropriate for the purposes of encouraging the making of arrangements under Section 75 of the National Health Service Act 2006.
- (iii) Recommend the adoption of a committee in this form with these functions to full Council.

Background Papers

25 Report to Cabinet 13th July 2011 NHS Reforms/Health and Well Being.

Contact: Colette Longbottom Tel: 03000 269732

Appendix 1: Implications

Finance – There will be some financial impact of Committee Services publishing agendas and minuting the meetings with publication of the Decisions, such costs being similar to agendas, minutes and recording for a Cabinet meeting.

Staffing – There will be similar impact on staffing for servicing the meeting as for a Cabinet meeting.

Risk – Non specific within this report.

Equality and Diversity/Public Sector Equality Duty - Non specific within this report.

Accommodation – Non specific within this report.

Crime and Disorder – Non specific within this report.

Human Rights – Non specific within this report.

Consultation – Non specific within this report.

Procurement – Non specific within this report.

Disability Issues – Non specific within this report.

Legal Implications – Within the body of the report.