

**Cabinet**

**12 October 2011**

**NHS Reforms**



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## **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 with particular reference to policy developments relating to public health and the implications for Local Authorities.

### **Background**

2. The NHS White Paper 'Equity and Excellence: Liberating the NHS', published by the Department of Health on 12<sup>th</sup> July 2010, and subsequent Health and Social Care Bill set out proposals for NHS reform. Included within these reforms is the requirement for all upper tier Local Authorities to establish Health and Wellbeing Boards by April 2013.
3. On 30th November 2010 the Department of Health published 'Healthy Lives, Healthy People: Our Strategy for Public Health in England'. This White Paper set out the Government's long-term vision for the future of public health in England.
4. In addition to consulting on several aspects of the Public Health White Paper the Government also consulted on:

- Funding and Commissioning Routes for Public Health
- Proposals for a Public Health Outcomes Framework

The Government published a summary of responses on 27<sup>th</sup> July 2011.

5. 'Healthy Lives, Healthy People: Update and Way Forward' was released on 14<sup>th</sup> July 2011 by the Department of Health. This document sets out the progress which has been made in developing the Government's vision for public health and identifies those issues where further development is needed. It reflects the responses received during the public health consultation exercise and the Government Listening Exercise on the Health and Social Care Bill.
6. The Health and Social Care Bill was introduced to Parliament on 19<sup>th</sup> January 2011.
7. Following the Government's listening exercise on the Health and Social Care Bill amendments have been made to the Bill. The House of Commons examined these amendments on 6<sup>th</sup> and 7<sup>th</sup> September 2011. The Bill will now be considered by the House of Lords. The first reading in the House of Lords took place on 8<sup>th</sup> September. The second reading, a general debate on all aspects of the Bill is to take place on 11<sup>th</sup> October 2011.  
Government key milestones can be found in Appendix 2.

### **Healthy Lives, Healthy People: Update and Way Forward**

8. Healthy Lives, Healthy People: Update and Way Forward describes how the role of the Secretary of State will be to provide national strategic leadership across all three domains of public health;
  - health improvement (including people's lifestyles as well as the inequalities in health and the wider social influences of health),
  - health protection (including infectious diseases, environmental hazards and emergency preparedness),
  - health services (including service planning, efficiency and audit and evaluation).

### **Public Health England**

9. Public Health England will be part of the Department of Health and will be responsible for the delivery of improvements in public health outcomes, working closely with Local Authorities and other partners. Public Health England will strengthen the national response on emergency preparedness and health protection.
10. 'Healthy Lives, Healthy People: Update and Way Forward' describes Public Health England as a professional, integrated public health organisation dedicated to promoting evidence-based practice, supporting local public health delivery and protecting the health of the public.

11. Nationally, Public Health England will drive the delivery of improved outcomes in health and well-being, and design and maintain systems to protect the population against existing and future threats. Public Health England will be established as an integrated public health delivery body. It will bring together in one organisation the public health skills, knowledge and capabilities that are currently distributed across the following organisations:
  - The Health Protection Agency;
  - The National Treatment Centre for Substance Misuse;
  - The Regional Directors of Public Health and their teams in the Department of Health and Strategic Health Authorities;
  - The Regional and Specialist Public Health Observatories;
  - The Cancer Registries and the National Cancer Intelligence Network;
  - The National Screening Committee and Cancer Screening Programmes.
  
12. Public Health England will bring together a fragmented system, strengthen the national response on emergency preparedness and health protection and support public health delivery across the three domains of public health through information, evidence, surveillance and professional leadership. Locally Public Health England will support action by:
  - Generating information on the state of Public Health England to support the development of local Joint Strategic Needs Assessments;
  - Building the evidence base on what works, working with academic researchers and public health practitioners ensuring local areas are able to share best practice and insight and achieve value for money.
  - Communicating intelligence to local leaders about how best to tackle the public health challenges their population is facing.
  - Supporting the development of Joint Health and Wellbeing Strategies.
  - Reporting on local government contribution in improving population health outcomes as part of the Public Health Outcomes Framework.
  - Promoting, advocacy and encouraging action right across society, including by local employers and individuals and families.
  - Providing robust surveillance and local response capabilities to respond to threats to public health and ensure health is protected.

### **Public Health role and responsibilities for Local Authorities**

13. 'Healthy Lives, Healthy People: Update and Way Forward' advises that upper tier Local Authorities will have a role across the three domains of public health, health improvement, health protection and health services.

In addition to improving the health of the people in its area Local Authorities will also have new functions through regulations for taking steps to protect the health of the people in its area, and for providing clinical commissioning groups with population health and advice.

14. The Department of Health has stated that it is committed to ensuring that Local Authorities are adequately funded for their new responsibilities and that any additional new burdens will be funded in line with the Government's New Burdens Doctrine. Public health grants to upper tier and unitary local authorities will be made for the first time in 2013-14 and the Department of Health intend to provide shadow allocations for 2012-13 by December 2011. The Government's Advisory Committee for Resource Allocation continues to consider what it will recommend as an appropriate allocations formula for the local authority grant.
15. In a letter from the Deputy Director of the Public Health Development Unit and the Deputy Director of Local Government Finance, dated 12<sup>th</sup> August, Local Authority Chief Executives, working with the Chief Financial Officer, were requested to liaise with their local Primary Care Trust (PCT) on the preparation of a data return detailing spend on areas which will in future be funded from the public health budget. Local Authority Chief Executives, working with the Chief Financial Officer were asked to confirm in writing to the Department of Health whether there were any issues they wish to bring to the Department's attention. A number of issues have been identified and a response was forwarded to the Chief Executive of County Durham & Darlington NHS on 16<sup>th</sup> September 2011.
16. The new public health responsibilities for Local Authorities (subject to further engagement and Parliamentary approval) will include:
  - Tobacco control;
  - Alcohol and substance misuse;
  - Obesity and community nutrition initiatives;
  - Increasing levels of physical activity in the local population;
  - Assessment and lifestyle interventions as part of the NHS Health Check Programme;
  - Public mental health services;
  - Dental public health services;
  - Accidental injury prevention;
  - Population level interventions to reduce and prevent birth defects;
  - Behavioural and lifestyle campaigns to prevent cancer and long term conditions;
  - Local initiatives on workplace health;
  - Supporting, reviewing and challenging delivery of key public health funded and NHS delivered services such as immunisation programmes;
  - Comprehensive sexual health services;

- Local initiatives to reduce excess deaths as a result of seasonal mortality;
  - Role in dealing with health protection incidents and emergencies;
  - Promotion of community safety, violence prevention and response; and
  - Local initiatives to tackle social exclusion.
17. It is anticipated that in commissioning public health services Local Authorities will involve existing networks of community groups, pharmacies and third sector providers, and develop new relationships and approaches to improving health and wellbeing.

### **Director of Public Health role**

18. The Director of Public Health role will be;
- The principal adviser on health to elected members and officials.
  - The officer charged with delivering key new public health functions.
  - A statutory member of the health and wellbeing board.
  - The author of an annual report on the health of the population.
19. 'Healthy Lives, Healthy People: Update and Way Forward' states that Directors of Public Health will be employed by Local Authorities, but the appointment process will be joint with Public Health England, who will be able to ensure that only appropriately qualified individuals are appointed, and will continue to provide them with professional support and advice. It is a matter for Local Authorities to determine the precise detail of their own corporate management arrangements. However, given the importance of the new Local Authority public health functions, the leadership position of the Director of Public Health in the local community and the critical health protection functions to be carried out by the Director of Public Health on behalf of the Local Authority, it is expected that the Director of Public Health will be of Chief Officer status with direct accountability to the Chief Executive for the delivery of Local Authority public health functions. Discussions will be held with local government and public health stakeholders on how best to ensure that Directors of Public Health have an appropriate status within the Local Authority, in line with the position of the Directors of Children's Services and Adult Social Services.

### **Public Health Workforce Strategy**

20. The Government is working with stakeholders to develop a public health workforce strategy. Although the workforce strategy will not make specific proposals for the terms and conditions of service of constituent workforces, it will develop a high level HR concordat on the effective transition of public health staff between the NHS and Local Authorities.

The Workforce Strategy setting out the future planning strategy for workforce development will be consulted upon in the autumn.

### **Public Health Outcomes Framework**

21. The Public Health Outcomes Framework will set out opportunities to improve and protect public health and to reduce health inequalities. The Government plan to engage stakeholders to finalise the Public Health Outcomes Framework which will be published later in 2011. Clarity will also be provided on the alignment of the NHS, Public Health and Adult Social Care Outcomes Frameworks. The Government has stated that the burden on Local Authorities in respect of data collection and analysis will be reduced. Performance data on local and national progress on public health outcomes will also be published in one place.

### **Public Health Reform Updates**

22. A series of Public Health Reform Updates will be published in autumn 2011 setting out the details of how the new public health system will operate. Updates should cover:

- The Public Health Outcomes Framework and outcome measures.
- The Public Health England Operating Model which will set out details of accountabilities and relationships across the system.
- Public Health in local government and the Director of Public Health.
- Public Health Funding Regime and details of allocation methodology, health premium and shadow allocations.
- Workforce Strategy.

Subject to Parliamentary approval the following dates are proposed in 'Healthy Lives, Healthy People: Update and Way Forward':

- Formal transition plans to be agreed with the Regional Director of Public Health by March 2012.
- Upper tier and unitary Local Authorities will take on their new public health responsibilities in April 2013.
- Public Health England to be established in April 2013.
- Public Health grants will be made available to local authorities in 2013-14 and shadow allocations will be provided for 2012-13 by December 2011.

### **Other Policy Developments**

23. The Department of Health has issued initial proposals about how the National Health Service Commissioning Board will operate and how it will be organised. It states that Local government will need to work closely with the Board to ensure there is strategic coherence and alignment in how the Board seeks to deliver its priorities in partnership with the wider public sector and at national and local level.

24. The NHS Commissioning Board's overarching role will be to ensure that the NHS delivers better outcomes for patients within its available resources. The NHS Commissioning Board will play a vital role in providing national leadership for improving outcomes and driving up the quality of care.
25. The NHS Commissioning Board will operate in shadow form as a Special Health Authority from October 2011. Subject to the passage of the Health and Social Care Bill, the NHS Commissioning Board will be established as an independent statutory body in October 2012. It will then take on some formal statutory accountabilities, including the authorisation of clinical commissioning groups. The Board will be fully operational by April 2013.
26. The Continuing Care National Reference Group published a briefing note in July 2011 explaining the implications for NHS Continuing Healthcare (CHC) and NHS-funded Nursing Care (FNC) in the light of the Health and Social Bill together with key issues to be considered in planning for the transition process and options for future arrangements.
27. The five key areas to be considered by Strategic Health Authorities and Primary Care Trusts when developing CHC models during the transition to clinical commissioning groups are as follows:
  - Assessment of a person's needs and eligibility for CHC and for subsequent review of these.
  - Decision making on eligibility.
  - Commissioning of the care and support package.
  - Case management.
  - Governance and system management issues.
28. The briefing note advises that consideration should be given to partnership arrangements with Local Authorities, including responsibilities where there is a lack of co-terminosity. Also that Joint arrangements with Local Authorities can be based on a variety of CHC models.

### **Shadow Health and Wellbeing Board**

29. A report was submitted to Cabinet on 13<sup>th</sup> July 2011 which set out proposals for the Shadow Health and Wellbeing Board within County Durham including membership, proposed functions and draft Work Programme. Cabinet agreed the recommendations set out in the report in preparation for a statutory Board in April 2013.
30. Three development sessions of the County Durham Shadow Health and Wellbeing Board have taken place. The sessions covered:
  - An update on the national position on NHS Reforms,
  - Regional governance linked to NHS transition.
  - Position of North East Councils related to the transition.
  - Adult NHS and Council Joint Commissioning.
  - The Joint Strategic Needs Assessment.

- Commissioning arrangements in the NHS.
  - NHS/Council Joint Commissioning/Provision of Children and Young People Services,
  - Public Health Reforms,
31. A future development session is scheduled to take place on 18<sup>th</sup> October to consider:
- Terms of Reference for Shadow Health and Wellbeing Board,
  - The draft Work Programme for the Shadow Health and Wellbeing Board will also be agreed.
32. It is anticipated that the first formal meeting of the Shadow Health and Wellbeing Board will be held in late November/early December 2011.
33. The draft Work Programme for the Shadow Health and Wellbeing Board includes the following:
- Agreement of any substructures or working groups supporting the Board including NHS and Social Care Providers.
  - Approval of the Joint Health and Wellbeing Strategy.
  - Approval of Joint Strategic Needs Assessment.
  - Approval of Joint Commissioning Strategies.
  - Authorisation and establishment of Clinical Commissioning Groups through consultation by the NHS Commissioning Board.

### **Developments in Durham County Council**

34. The Durham County Council NHS White Paper Project Board is in the process of implementing a programme of transition to ensure the effective transfer of functions related to statutory requirements.
35. Progress to date includes the following:
- Development of a Joint Communications Strategy.
  - A Joint Consultation and Engagement Strategy is being developed.
  - Establishment of the County Durham Shadow Health and Wellbeing Board.
  - Scoping work on new public health responsibilities for Local Authorities.
  - Mapping of health improvement activity in the Local Authority.
  - Responding to Government Consultation.
  - Participation in emerging Clinical Commissioning Groups arrangements.
  - Participation in GP Pathfinder projects.
36. Future work will include:
- Review of Joint Commissioning arrangements in the context of legislative reforms.
  - Preparation work for the Joint Strategic Needs Assessment and Joint Health and Wellbeing Strategy.
  - Transfer of Public Health responsibilities.



- Scoping model for Public Health commissioning.

### **Recommendations and reasons**

37. Cabinet are recommended to:
- Recognise the significant responsibilities to be transferred to Local Authorities in respect of Public Health.
  - Endorse the progress made in establishing the County Durham Shadow Health and Wellbeing Board.
  - Note that Adults, Wellbeing and Health Overview and Scrutiny Committee will receive update reports regarding NHS reforms.
  - Note that further reports regarding NHS reforms will continue to be provided to Cabinet on a quarterly basis.

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## Appendix 1 - Implications

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**Finance** – Local Authorities will receive a ring-fenced budget for Public Health. Grants will be made available for the first time in 2013/14 and shadow allocations for 2012/13 by December 2011.

**Staffing** – The transfer of Health improvement functions to Local Authorities will have implications for existing NHS staff. DCC Officer time and resource will be required to support the development and management of the Health and Wellbeing Board.

**Risk** – Failing to establish a Health and Wellbeing Board as laid out in the Health and Social Care Bill (which, subject to Parliamentary approval, will become an Act) may leave DCC open to legal challenge.

**Equality and Diversity / Public Sector Equality Duty** – Under provisions in the Health and Social Care Bill the Secretary of State, NHS Commissioning Board and Commissioning Consortia will have a duty to reduce health inequalities. One of the key reforms for public health in England is the commitment to reduce health inequalities across the public health system.

**Accommodation** – The transfer of NHS staff will have implications for accommodation.

**Crime and Disorder** – The Joint Strategic Needs Assessment and Joint Health and Wellbeing Strategy which will be discharged by a Health and Wellbeing Board that will consider the wider determinants of health and well-being within a Local Authority's area, including crime and disorder issues.

**Human Rights** – No direct implications

**Consultation** – The Government has consulted with patients and professionals on the NHS Reforms including proposals for Public Health, funding and commissioning and the Public Health Outcomes Framework.

**Procurement** – The commissioning of Public Health Services will have implications for procurement.

**Disability Discrimination Act** – No direct implications

**Legal Implications** – The Health and Social Care Bill was introduced to Parliament on 19<sup>th</sup> January 2011. The amended Health and Social Care Bill was discussed in the House of Commons on 6<sup>th</sup> and 7<sup>th</sup> September 2011 and had its first reading in the House of Lords on 8<sup>th</sup> September 2011.

The Health and Social Care Bill states that all upper tier local authorities must establish a Health and Wellbeing Board for their area. Subject to Parliamentary approval, this provision will become an Act and failing to enact a provision will have legal implications for the Council.

## Appendix 2 Key Milestones

Date	Key Milestones
<b>July 2010</b>	NHS White Paper 'Equity and Excellence: Liberating the NHS' published
<b>November 2010</b>	<p>White Paper on Public Health</p> <p>Vision for Adult Social Care and Transparency of Outcomes consultation published.</p> <p>Refreshed carers' strategy published</p>
<b>December 2010</b>	<p>Liberating the NHS: Legislative framework and next steps published</p> <p>Initial clinical commissioning group pathfinders identified</p> <p>Government response to Transparency in outcomes and the NHS Outcomes Framework published</p> <p>The Operating Framework for the NHS in England 2011/12 published</p>
<b>During 2011</b>	<p>Public Health England to be set up in shadow form as an executive agency of the Department of Health.</p> <p>Start to set up working arrangements with local authorities, including the matching of PCT directors of public health to local authorities</p>
<b>Jan 2011</b>	<p>Health and Social Care Bill to be introduced to Parliament</p> <p>Launch of Public Health Responsibility Deal</p>
<b>April 2011</b>	<p>Begin to establish clinical commissioning group in shadow form</p> <p>NHS and social care services to work jointly to support people in the 30 days after discharge from hospital introduced</p>
<b>June 2011</b>	PCT clusters to be fully established by 1st June 2011
<b>July 2011</b>	<p>Review of independent commission on the funding of care and support published</p> <p>Operational guidance for NHS Commissioning Boards published</p> <p>Clinical commissioning groups authorisation process guidance published</p> <p>Development of Any Qualified Provider guidance published</p> <p>Development of Public Health England People Transition Policy to take place</p> <p>Begin to abolish and transfer functions of Arms Length Bodies (complete by March 2015)</p>
<b>October 2011</b>	<p>NHS Commissioning Board established in shadow form as a special health authority</p> <p>Begin to introduce enhanced role for LA's through HWB based on strengthened JSNA and new joint health and wellbeing strategies (to Oct 2012)</p>

	<p>SHA cluster arrangements in place</p> <p>Public Health System Reform Updates to be published (Autumn 2011)</p> <p>Public Health Workforce Strategy to be published for consultation (Autumn 2011)</p>
<b>December 2011</b>	<p>HealthWatch set up in shadow form by CQC</p> <p>Shadow allocations for public health grant for 2012/13 to upper tier and unitary local authorities</p> <p>Detailed plans are in place to underpin the transition of public health responsibilities to local authorities and the establishment of Public Health England.</p>
<b>During 2011/12</b>	<p>Ongoing development and sharing of learning from clinical commissioning group Pathfinder Programme</p> <p>Ongoing development and sharing of learning of early implementers of local health and wellbeing boards.</p> <p>Action Learning Networks for Links and Health watch pathfinders</p>
<b>January 2012</b>	Second NHS Outcomes Framework for 2012/13 published.
<b>March 2012</b>	Formal transition plans of public health functions to local authorities to be agreed with the Regional Director of Public Health
<b>April 2012</b>	<p>Any Qualified Provider to begin (phased in gradually)</p> <p>Local health budget allocations established in shadow form.</p> <p>High level design of health premium for local authorities announced</p> <p>Social Care Reform White Paper published</p>
<b>Not before July 2012</b>	<p>Abolition of General Social Care Council</p> <p>Formally establish clinical commissioning group.</p> <p>Shadow Health and Wellbeing Boards in place</p> <p>Clinical commissioning group have shadow allocations</p> <p>Introduce enhanced role for Local Authorities to promote integration</p>
<b>By October 2012</b>	NHS Commissioning Board established as an independent statutory body, but initially only carries out limited functions - in particular, establishing and authorising clinical commissioning groups
<b>October 2012</b>	<p>Monitor starts to take on its new regulatory functions</p> <p>HealthWatch England and local HealthWatch are established</p>
<b>November 2012</b>	Introduction of legislation to achieve reforms set out in adult social care white paper
<b>During 2012/13</b>	Local Authorities will commission local HealthWatch organisations
<b>January 2013</b>	Third NHS Outcomes Framework for 2013/14 published

<p><b>April 2013</b></p>	<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 SHAs' responsibilities for the foundation trust 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 clinical commissioning groups is established. The NHS Commissioning Board will only authorise groups to take on their responsibilities when they are ready.</p> <p>Health and Wellbeing boards to make preparations to carry out JSNAs and develop JHWS (to be undertaken by local authorities and clinical commissioning groups).</p> <p>GP practices will be members of either an authorised clinical commissioning group, or a 'shadow' commissioning group</p> <p>Clinical commissioning groups that are ready and willing could be authorised to take on full budgetary responsibility. This will be determined through a robust process of authorisation, run by the NHS Commissioning Board, with input from emerging Health and Wellbeing Boards and local clinicians.</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 to Local Authorities to commission public health services.</p> <p>Health and Well-Being 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><b>April 2014</b></p>	<p>The majority of remaining NHS trusts will be authorised as foundation trusts.</p>

	If any trust is not ready, it will continue to work towards foundation trust status under new management arrangements.
<b>April 2016</b>	Monitor's transitional powers of oversight over foundation trusts will be reviewed