

ASSEMBLY

25 February 2013

Title: Constitutional Arrangements for the Health & Wellbeing Board	
Report of the Cabinet Member for Health	
Open Report	For Decision
Wards Affected: All	Key Decision: Yes
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Summary: <p>The Health & Social Care Act 2012 introduced a statutory requirement for the Council to form a Health & Wellbeing Board, which will be an executive committee of the Council. Regulations have been published that further specify elements of the Board's operation. The Board has been operating in shadow form since November 2010, during which time the future statutory status of the Board has been discussed on a number of occasions, both at the Board and in other forums. The resulting proposed entries to the constitution therefore take account of the views of partners as well as the statutory requirements.</p> <p>This report proposes the main entries to the Constitution (attached at Appendices A & B) to cover the operation of the Health & Wellbeing Board in order that the Council can meet its statutory obligations.</p>	
Recommendation(s) <p>The Assembly is recommended to agree:</p> <ul style="list-style-type: none">(i) Inclusion of the sections into the Constitution as set out in appendices A and B.(ii) To receive a further report of any subsequent amendments required as part of the report to Annual Assembly in May 2013.(iii) Note the expectation that the Health & Wellbeing Board will be subject to the scrutiny process, principally by the Health & Adult Services Select Committee.(iv) To delegate to the Council's Monitoring Officer to make any necessary consequential amendments to other areas of the Constitution, such as the Scheme of Delegation.	
Reason(s) <p>The constitutional amendments have been drafted so as to give effect to the statutory requirement placed on the Council to create a Health & Wellbeing Board. Approval at February's meeting of the Assembly will meet the statutory timescale of 1 April 2013 for introducing a Health & Wellbeing Board.</p>	

1.0 Introduction

- 1.1 Barking & Dagenham's Shadow Health & Wellbeing Board was established in November 2010. The 'shadow' designation indicated that it was an interim arrangement pending Royal Assent for the Health & Social Care Act 2012, and publication of final regulations on the running of the Board.
- 1.2 The form of the future operation of the Health & Wellbeing Board has been shaped following a number of discussions at the Shadow Health & Wellbeing Board, as well as directly with partners. This also takes account of statutory requirements laid down in the Health & Social Care Act 2012 and in the regulations that followed it.
- 1.3 The Health & Wellbeing Board will be an important new structure, within which the Council and its partners can work jointly on improving local health and social care services, and on improving the health and wellbeing of the local population. It is part of a series of reforms laid out in the Health & Social Care Act 2012, which together provide the Council with a central role in co-ordinating local health and social care activity. As a mechanism for democratic leadership of health and wellbeing locally, the new Board sits alongside the commissioning of patient involvement and advocacy services (principally the new 'Healthwatch' service), the Council's new responsibilities for leadership of public health, and the long-standing powers of health scrutiny.
- 1.4 The establishment of the Health & Wellbeing Board is governed by sections 194-197 of the Act, which specify that the Council must have a Health & Wellbeing Board. The Health & Wellbeing Board will be a committee of the local authority, as though under Section 102 of the Local Government Act 1972. Subsequent regulations (*The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013*) clarify specific elements of this enactment, disapplying those provisions of the Local Government Act not deemed appropriate to the particular circumstances of Health & Wellbeing Boards. In particular, the regulations remove the necessity of ensuring political balance on the Health & Wellbeing Board; remove disqualifications for non-Elected Members from participating in the Board (except on grounds of bankruptcy or serious criminal conviction); provide an option around non-Elected Members being voting members; and permit the delegation of functions to sub-committees.

2. Proposal and Issues

The functions of the Health & Wellbeing Board

- 2.1 The constitutional amendments at appendices A and B set out a proposed role for the Board which adopts the statutory requirements and adds selected further responsibilities.
- 2.2 In terms of function, the Health & Social Care Act expects of the Health & Wellbeing Board that it:
 - Must encourage all those who arrange the provision of health and social care services to work together in an integrated manner;

- Must provide advice, assistance, support and encouragement to organisations making joint commissioning/provision arrangements through Section 75 of the NHS Act 2006;
- May encourage those who arrange provision of health-related services to work closely with the Health & Wellbeing Board ('health-related services' are those, such as housing, which are not health services in themselves, but which have a significant impact on health);
- Must discharge the duty on the Council and Clinical Commissioning Group jointly to prepare and publish a Joint Strategic Needs Assessment and a Health & Wellbeing Strategy (these are, in many respects, the Board's most immediately visible functions);
- Can request appropriate information from the local authority, or from any person represented on the Board, and they must provide it.

2.3 In addition, the Act allows that the Board may take on any of the functions that are exercised by the local authority, should the local authority wish. Locally, it has been proposed that the Health & Wellbeing Board discharge the Council's responsibilities for:

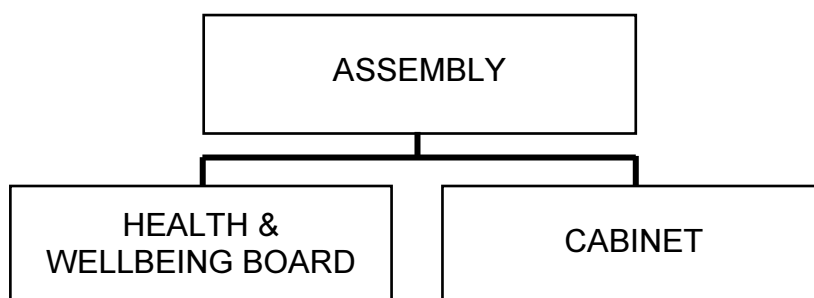
- the tender process for the provision of local Healthwatch, and subsequent decisions as to its performance;
- approving a Local Account for Adult Social Care, and similar annual reports to the local community on social care performance.

2.4 In addition, the functions of the Board are proposed as including the final authorisation of joint commissioning contracts with local NHS organisations (under Section 75 and 256 of the NHS Act 2006) on behalf of the Council. Further, it is proposed that the Health & Wellbeing Board exercise the functions currently allotted to Cabinet for the approval of contracts where the funding source is principally the Public Health Grant or social care budgets. This would only be permissible where the resources had already been allocated within the Council's budget for the purposes described in the agreement. Where there are matters of doubt over the appropriate route for a contract approval, the terms of reference propose that this should be determined by the relevant Corporate Director in consultation with the relevant Cabinet Member(s) and the Chair of the Board.

Reporting Lines for the Board and relationship to other committees

2.5 The Act requires that the Board will be a part of the structure of Council governance, whereas until now it has been seen a partnership board, reporting through the Local Strategic Partnership. This is a different position to other statutory committees such as the Community Safety Partnership.

2.6 As a Section 102 Committee, the relationship of the Health & Wellbeing Board to Cabinet and to Assembly is indicated in the following diagram:



2.7 This means that the Health & Wellbeing Board can act as would Cabinet for those matters that are reserved to it in the Constitution. The Council's principles of transparency and access to information will apply to the Health & Wellbeing Board.

2.8 This further means that the Health & Wellbeing Board will be subject to call-in and scrutiny in the same way that applies to decisions of Cabinet. The legislation is clear that the health scrutiny function remains as a separate entity to the Health & Wellbeing Board. It is assumed that the Health & Adult Services Select Committee would be the usual route for scrutinising matters raised through the Health & Wellbeing Board, but other select committees may also play a role.

Membership

2.9 The proposed membership is as follows (an * indicates members required by the Health & Social Care Act):

- Cabinet Member for Health, Chair *
- Cabinet Member for Adult Services & HR
- Cabinet Member for Children's Services
- Cabinet Member for Finance
- The Director of Adult Social Services *
- The Director of Children's Services *
- The Director of Public Health *

- A member appointed by local Healthwatch *

- Chair of the Clinical Commissioning Group *
- Further Board-level GP appointment from the Clinical Commissioning Group
- Accountable Officer for the Clinical Commissioning Group

- Executive Director level appointment from Barking, Havering & Redbridge University Hospitals NHS Trust
- Executive Director level appointment from North East London Foundation NHS Trust

- Borough Commander, Metropolitan Police Service

The Act requires that one councillor and one Clinical Commissioning Group representative are appointed to the Board, the identification of specific posts, as outlined above, is a local decision.

- 2.10 Members may wish to note particularly that, under the statutory arrangements, the Council's places on the Board are shared between Members and officers, and the regulations disapply Section 80(1)(a) of the Local Government Act 1972 to permit this. The regulations also disapply requirements in the Local Government Act 1972 around political balance amongst appointed Elected Members.
- 2.11 The regulations enable all members of the committee, whether or not Members of the Authority, and including Council officers, to exercise a vote in connection with decisions of the Board, but provide an option to the Council about whether this is enacted. All members of the Board (whether or not Elected Members of the Council) will be bound by the Code of Conduct and the procedure for declaring interests.
- 2.12 Once established, the Board can vary its own membership under the terms of the Act. For the Council to vary the membership of the Board after its establishment, it must first consult the Board.

3. Options Appraisal

- 3.1 The establishment of a Health & Wellbeing Board is a statutory requirement under the Health & Social Care Act 2012, with much of its terms of reference and core membership set out in the legislation. Secondary legislation further establishes some of the terms under which the Board will operate.
- 3.2 There is an alternative option to leave responsibilities and/or membership at the statutory minimum requirement, but discussions with the Board have consistently emphasised the importance of tailoring the approach to ensure that the Board is set up to deliver in Barking & Dagenham's best interests.

4. Consultation

- 4.1 The future structure and function of the Health & Wellbeing Board has been the subject of a number of discussions at Shadow Health & Wellbeing Board meetings over the past year, including specific development days. All proposed members of the statutory Board have indicated their agreement to taking up their places.
- 4.2 There has been consultation with the Cabinet over the options proposed for membership and terms of reference, and they have indicated their approval.
- 4.3 A number of discussions have taken place with the Clinical Commissioning Group over their representation on the Board, outside of the discussions at the Shadow Health & Wellbeing Board.

5. Financial Implications

Implications completed by: Dawn Calvert,
Group Manager (Finance, Adults & Children)

- 5.1 There are no direct financial implications to this report. The work of the Health and Wellbeing Board must be contained within current resources.

6. Legal Implications

Implications completed by: David Lawson,
Deputy Head of Legal & Deputy Monitoring Officer

- 6.1 The requirement of s.194 (11) of the Health and Social Care Act 2012 is that the Health & Wellbeing Board must be “a committee of the local authority which established it and, for the purposes of any enactment, is to be treated as if it were a committee appointed by that authority under section 102 of the Local Government Act 1972”. To comply with the statutory provision the Health & Wellbeing Board must become a committee in its own right rather than a sub-committee, or its work being absorbed by another existing committee.
- 6.2 The HSCA 2012 is prescriptive of the minimum membership of Health & Wellbeing Boards. The local authority has power to add members to the Health & Wellbeing Board as it sees fit. The Health & Wellbeing Board as a statutory Council committee will be accountable to the full Council and are also subject to overview and scrutiny functions.
- 6.3 The regulations published in January 2013:
- Modify the relevant section of the 1989 Act to make it clear that key members of the H&WB (those prescribed in section 194 of the 2012 Act) could vote alongside the nominated elected representatives;
 - Disapply the provisions requiring political balance and this matter is left to local determination;
 - Retain the existing committee membership disqualifications but disapply or modify the disqualification that would prevent officers from being members of the board.

7. Other Implications

7.1 Risk Management

The responsibilities proposed for the Board represent a balance of widening the scope of the Board with ensuring that there are no requirements that are deemed to be unmanageable. Advice has been sought on the establishment of the Board, and guidance from pan-London and national organisations has been used.

7.2 Contractual Issues

The Health & Wellbeing Board proposals contain no contracts specifically, but Members should note that the proposed terms of reference include authority for the

Health & Wellbeing Board to sign off agreements between the Council and the NHS under Sections 75 and 256 of the National Health Service Act 2006. The terms of reference also allow the Health & Wellbeing Board to authorise the letting of some contracts where the funding source is principally the Public Health Grant or social care resources.

7.3 Staffing Issues

There is minimal staffing impact, other than the requirement that the establishment of the Board will place on the Council to service its operation. This has been absorbed into existing posts, notwithstanding the reducing numbers of support officers, and so is contained within the existing staffing establishment.

7.4 Customer Impact

The Health & Wellbeing Board represents an opportunity to improve the co-ordination of services designed to improve residents' health and wellbeing. With Healthwatch as a core member of the Board, it will bring the views of service users and patients together with the plans and proposals of commissioners from both the Council and the Clinical Commissioning Group. Whilst the Board does not, ultimately, commission services directly, it will provide a mechanism for challenging commissioners to think more widely and creatively about the services that they are planning and overseeing.

7.5 Safeguarding Children and Vulnerable Adults

Responsibility for establishing standards and challenging local partners on their practice around safeguarding children and vulnerable adults remains firmly with the Local Safeguarding Children Board and the Safeguarding Adults Board. However, the creation of the Health & Wellbeing Board will strengthen the partnership around health and social care services, and serve as an additional base from which to develop joint work and protocols on safeguarding, as well as a further arena in which concerns about institutional culture and practice can be aired and worked through. Inclusion of providers on the Board will further ensure that frontline practice continues to inform strategic decision-making and discussion.

7.6 Health Issues

The Board's primary remit is to promote integration of services and their consequent improvement, bringing together the major commissioners, providers and public and patient engagement leads. The Board is the 'owner' of the Joint Strategic Needs Assessment and the Health & Wellbeing Strategy and, as such, will be a strong champion for the improvement of local health and social care services.

The Health & Wellbeing Board is a critical part of making the health reforms set out in the Health & Social Care Act 2012 work, bringing a democratic accountability to all partners' joint work on improving health, and improving the health and social care services that local residents receive.

7.7 Crime and Disorder Issues

A number of issues have both health and crime and disorder impacts, including domestic violence and alcohol use, and they feature strongly in both the Health & Wellbeing Strategy and the Crime & Disorder Strategic Assessment. In addition, fear of crime can be one driver for people feeling isolated, bringing heightened risks of depression, or avoiding use of parks and open spaces that might provide them with opportunity for exercise. Planning improvements to health therefore requires consideration of community safety issues. The inclusion of the Borough Commander as a member of the Board (alongside the equivalent status of the Clinical Commissioning Group as a statutory 'responsible authority' and required participant in the Community Safety Partnership) is evidence of the commitment to ensure that strategies are established that deliver the widest benefit, with both health and community safety outcomes maximised.

7.8 Property / Asset Issues

The establishment of the Health & Wellbeing Board creates no direct implications for property or assets.

Background Papers Used in the Preparation of the Report:

- Health & Social Care Act 2012
<http://www.legislation.gov.uk/ukpga/2012/7/contents/enacted>
- The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013
<http://www.legislation.gov.uk/uksi/2013/218/introduction/made>
- Operating Principles for Health & Wellbeing Boards (NHS Confederation and the Local Government Association, *inter alia*)
http://www.local.gov.uk/c/document_library/get_file?uuid=c40f27d7-7208-4dc1-9120-fa5fd67e5253&groupId=10171

List of appendices:

- Appendix A: Proposed entry to the Constitution: Part B
- Appendix B: Proposed entry to the Constitution: Part C