

# HEALTH AND WELLBEING BOARD

14 March 2023

<b>Title:</b>	<b>Health &amp; Wellbeing Board and ICB Sub-committee Governance Options Discussion Paper.</b>
<b>Report of the Director of Public Health</b>	
<b>Open Report</b>	<b>For Decision *</b>
<b>Wards Affected: ALL</b>	<b>Key Decision: No</b>
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Sharon Morrow, Director of Partnership Impact and Delivery Barking and Dagenham	
<b>Summary;</b> <ul style="list-style-type: none"><li>• The Barking and Dagenham Partnership Board is the collective governance vehicle established by the partner organisations to collaborate on strategic policy matters and oversee joint programmes of work relevant to Barking and Dagenham Place. Where a formal decision needs to be taken which relates solely to a function of the Integrated Care Board ('ICB') or solely to the Local Authority then this can be enacted through, respectively, the Barking and Dagenham ICB Sub-Committee of the North East London Integrated Care Board ('ICB Sub-Committee'<sup>1</sup>) and the Barking and Dagenham Health and Wellbeing Board ('HWB').<sup>2</sup> The HWB and ICB Sub-committee share similar priorities and members and operate across the same geography.</li><li>• Early in 2022 the feasibility of integrating the HWB and ICB Sub-Committee, as a single committee, was explored but legal advice clarified this was not possible within current legislation. The Barking and Dagenham partnership agreed to the establishment of the ICB Sub-Committee to take decisions around functions delegated to Place by the Board of the ICB. This would meet in tandem with the Barking and Dagenham Partnership Board, to form the Barking and Dagenham Place Based Partnership.</li><li>• It was agreed that the HWB would have close links the Partnership Board and ICB Sub-Committee, and could hold meetings with those structures, but the HWB would not meet with those structures as a matter of course. In essence, the HWB would work closely with the Place Based Partnership but sit outside it. There was agreement for further review of the governance arrangements prior to April 2023.</li><li>• The Health and Care Act 2022 came into force on 1 July 2022. The HWB continues to be a statutory requirement and a committee of the Local Authority, and its core statutory membership is largely unchanged under the new Integrated Care System arrangements (other than the addition of an ICB representative replacing the CCG</li></ul>	

<sup>1</sup> The ICB Sub-Committee has been established as a sub-committee of the ICB's Population Health and Integration Committee which is a committee of the Board of the ICB.

<sup>2</sup> Other ICS partners may have delegated functions to individuals, who can take decision in the forum of the Partnership Board rather than through a committee.

representative). HWBs continue to have the flexibility to have a broad membership.

- Further guidance on the role of HWBs within Integrated Care System (ICS) arrangements was published in November 2022. The guidance confirms the importance of HWBs within place-based arrangements and as being key to driving integration.
- There are examples of closer alignment taking place elsewhere in the country provided in the Guidance issued in November 2022 by the Government [Health and wellbeing boards – guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/guidance/health-and-wellbeing-boards-guidance).
- The ICB and Local Authority would like to explore the option of developing a Committees in Common of the Barking and Dagenham ICB Sub-Committee and Health and Wellbeing Board.

### **Recommendation(s)**

The Health and Wellbeing Board is asked to support the proposal to develop the option for developing a Committees in Common of the Barking and Dagenham ICB Sub-committee and the Health and Wellbeing Board.

### **Reason(s)**

A closer alignment of the HWB and the ICB sub-committee will streamline the current governance arrangements; speed up decision making, improve alignment of actions on priorities and in doing so will improve services through greater collaboration and reduction in duplication. It will allow decisions around the Local Authority's functions and the ICB's functions to be taken in the forum of an aligned meeting. Ultimately this simplified governance will result in, greater single focus on health inequalities, improved services for residents and greater sustainability through joint endeavours.

## **1. Introduction and Background**

- 1.1 Colleagues across the Integrated Care System (ICS) undertook a piece of work in advance of the establishment of the Integrated Care Board (ICB) on 1<sup>st</sup> July 2022 to determine the form and governance of the seven place-based partnerships in North East London. The intention for place governance in year one was to make use of the new flexibilities in the legislation to establish a governance mechanism that would enable:
  - a) more formal integrated ways of working across the ICS partnership; and
  - b) the lawful and efficient delegation of functions based on the principles of subsidiarity.
- 1.2 There were a number of governance options to support place based working set out in policy which accompanied the Health and Care Bill, and the ICS already had a history of working in an integrated way through the BHR Integrated Care Partnership Board and the CCG Area Committee.
- 1.3 It was important to ensure that the governance arrangements enabled an “evolutionary” approach where Places could take on increasing responsibility for aspects of the ICB's work overtime, and of other partners' work as national policy

around health and social care integration develops. A guiding principle recommended by the principal guidance<sup>3</sup> on the establishment of Place Based Partnerships was to 'build by doing.'

- 1.4 Following legal advice from Browne Jacobson, and discussion at the Barking and Dagenham Delivery Group it was agreed that the preferred option from 1 July 2022 would be to establish the ICB Sub-Committee, to work in tandem with the Barking and Dagenham Partnership Board, thereby forming the Barking & Dagenham Place Based Partnership.
- 1.5 Under these current arrangements, the Partnership Board is the collective governance vehicle established by the ICS partner organisations who operate in Barking and Dagenham to collaborate on strategic policy matters and oversee joint programmes of work relevant to Barking and Dagenham Place. Where a formal decision needs to be taken which relates solely to a function of the ICB, then this can be taken by the ICB Sub-Committee. The Partnership Board and ICB Sub-Committee have aligned terms of reference and a significant overlap in membership which enables them to meet together within the forum of a single meeting. This is the approach taken across North East London in its seven Places.
- 1.6 Other ICS partners<sup>4</sup> may take decisions within the forum of the Partnership Board through individuals on the Board having delegated authority or, in the case of the Local Authority, the decision (depending on what it is) may need to be referred to the HWB. This is especially the case in Barking and Dagenham because the LBBB has delegated further functions to the HWB, which means it has a broader role than that which is mandated for HWBs by statute.
- 1.7 The current governance for the Place Based Partnership enables and encourages strong links with the HWB, for example, through: an overlap in membership (including aspects of chairing); by enabling the HWB to meet with the Partnership Board and ICB Sub-Committee; and by ensuring that plans developed by the Place Based Partnership appropriately reflect the HWB's work. However, under the current arrangements, the HWB takes more of a 'critical friend' and advisory role and is not itself a formal part of the Place Based Partnership.
- 1.8 A revised terms of reference for the Barking and Dagenham Partnership Board and ICB Sub-Committee is being taken to the ICB Sub-committee on 30 March 2023 for consideration. These terms of reference have been updated to reference the Place Mutual Accountability Framework, which describes the activities intended to be undertaken at place (i.e. the delegation of functions by the Board of the ICB to the B&D ICB Sub-Committee). However, it is open to the partners to continue to evolve their arrangements.
- 1.9 Non-statutory guidance on HWBs was published in November 2022, setting out the role and duties of HWBs and clarifying their role in the new system architecture. The guidance supported the ICB and HWB leadership to understand how they should work together to ensure effective and place-based working following the principle of subsidiarity.

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<sup>3</sup> NHS England and LGA guidance: [ICS-implementation-guidance-on-thriving \(england.nhs.uk\)](https://www.england.nhs.uk/guidance-and-research/implementation-guidance-on-thriving/)

<sup>4</sup> (e.g. NHS Trusts and Foundation Trusts)

- 1.10 The Local Authority and ICB would like to streamline the Place governance arrangements and explore the option of establishing “Committees in Common” of the ICB Sub-Committee and Health and Wellbeing Board. Currently the HWB and Place ICB Sub-Committee are permitted to meet together, but this approach would bring them together more formally in an aligned way.
- 1.11 This report asks the HWB to consider and discuss the option to establish “Committees in Common” of the ICB Sub-Committee and HWB and the next steps.

## **2. Committees in Common**

- 2.1 Committees in Common are a mechanism for collaboration between statutory organisations. They create a framework for aligned decision-making. In essence, under such an approach, each statutory organisation will have delegated relevant functions to its internal committee (i.e. the HWB and ICB Sub-Committee) and those committees can come together, for all intents and purposes within a single meeting, to take decisions about those functions. The approach promotes consistent decisions between organisations.
- 2.2 Decisions taken by the local authority and ICB within the forum would be aligned decisions. Decisions can be taken simultaneously, but they remain separate decisions that each organisation is accountable for.<sup>5</sup>
- 2.3 The governance arrangements can be structured in different ways, but they work best when there is common (or significant overlap in) membership between the committees and where terms of reference, supporting policies and agendas are aligned.
- 2.4 Establishing the arrangements requires careful governance of the decision-making process to ensure that the decision of each organisation’s committee is in line with its internal governance processes (e.g. constitutional arrangements and schemes of delegation). Such arrangements would also need to take into account the respective legal frameworks which apply to local authorities and ICBs.

## **3.0 Next steps**

- 3.1 This report proposes that steps are now taken to explore in detail the option of creating a Committees in Common model aligning the HWB and ICB Sub-committee at Place in Barking & Dagenham, and to operate those arrangements in shadow form before April 2024.
- 3.2 It is proposed that a working group is established to develop the terms of reference for bringing together the HWB and ICB Sub-committee in an aligned way, with a view to the arrangements being considered by the HWB and ICB Sub-Committee in June 2023, and thereafter by the Board of the ICB and the Local Authority as appropriate.

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<sup>5</sup> The approach is not the same as a ‘joint committee’ approach where one binding decision is made on behalf of both organisations involved. This is an alternative approach.

- 3.3 It is recommended that a review of the Partnership Board and the Committees in Common sub-structure is also undertaken to ensure that the partnership governance arrangements brought forward are agile and support the delivery of the Barking and Dagenham Delivery plan, the ICS's priorities and objectives, the HWB's joint local strategy and the North East London Joint Forward plan and integrated care strategy.
- 3.4 This further exploration by the working group will allow detailed options to be considered with full implications examined and outlined for the decision-making bodies within LBBB Council and by the Board of the ICB.
- 3.5 The approach will need to be endorsed by the Barking and Dagenham ICB Sub-Committee as well as the Health and Wellbeing Board before any actions can be taken. This is scheduled for the meeting on 30<sup>th</sup> March 2023.

**Governance implications provided by Alan Dawson, Head of Governance & Electoral Services LBBB with input from ICB Officers.**

The proposals in this report represent the most appropriate way forward for the HWB and the ICB Sub-committee given the existing arrangements. The shadow arrangements will provide the opportunity to fine tune the final arrangements prior to their implementation before April 2024.

### **3 Consultation**

Discussions in summer 2022 determined that this was a potential option that could be developed, however further guidance on the role of HWBs and ICB was expected which it was hoped would clarify the situation for HWBs and ICBs to work together. In November 2022 this guidance did not rule out the option for a Committees in Common approach.

The Executive Group of the Place based Partnership have been appraised of the proposals and endorsed the move to progress this.

### **4 Mandatory Implications**

Subject to Members' support of the proposed arrangements, the terms of reference of both the HWB and the Council's Health Scrutiny Committee, which appear as Chapters 7 and 8a respectively in Part 2 of the Council Constitution, will need to be updated to reflect the new arrangements and these shall be presented to the Assembly for approval.

Any changes to the ICB Sub-Committee Terms of Reference will need to be approved by the Board of the ICB and changes to membership of the ICB Sub-Committee will need to be approved by the Chair of the ICB.

#### **4.1 Joint Strategic Needs Assessment**

The ICB must consider the JSNA, as it develops the Integrated Care Strategy (ICS) at NEL level.

#### **4.2 Health and Wellbeing Strategy**

The Local Delivery Plan under the NEL Joint Forward Plan and ICS will align to the JLHWS.

Supports the Better Care Fund programme

[http://www.local.gov.uk/web/guest/health-wellbeing-and-adult-social-care-/journal\\_content/56/10180/4096799/ARTICLE](http://www.local.gov.uk/web/guest/health-wellbeing-and-adult-social-care-/journal_content/56/10180/4096799/ARTICLE)

#### **4.4 Financial Implications**

The impact on finance, performance and quality will be worked through alongside its governance and will be shared at a later stage.

#### **4.5 Legal Implications**

##### ***Local Authority legal comments:***

This report recommends the establishment of a streamlined decision-making process by establishing parallel membership of the London Borough of Barking and Dagenham Council Health and Wellbeing Board and the Integrated Care Board Sub-Committee.

The Health and Social Care Act 2012 under Section 194 established Health and Wellbeing Boards (HWB). This is a Council Committee and carries out the Executive function. It is not subject to political balance. The primary duty of the HWB is to encourage those who arrange for the provision of health or social care services to work in an integrated manner.

On 1 July 2022, the Health and Care Act 2022 established Integrated Care Partnerships and Integrated Care Boards (ICB). The latter replaced CCGs. The ICB has its own sub-committees. The ICB Sub-Committee is a Place based Sub-Committee established by NEL ICB's Population Health & Integration Committee, which is a committee of the Board of the ICB.

Reviewing the respective terms of reference of the HWB and the Place Sub-Committee, it is clear that the four core objectives of the ICB and wider ICS i.e. (a) Improve outcomes in population health and healthcare; (b) Tackle inequalities in outcomes, experience and access; (c) Enhance productivity and value for money; (d) Help the NHS support broader social and economic development, are consistent with the objectives and terms of reference of the HWB, so it is not envisaged the principal of the proposals has any inherent structural inconsistency.

The governance of the meeting(s) is dependent on the mode. While operating as the HWB it is a committee for the purposes of section 102 of the Local Government Act 1972 and the rules for such meetings set out in Schedule 12 of the same Act apply. It will be bound by the Council's Constitution. When sitting as the ICB-Sub-committee the NEL ICB governance will apply. There are differences but not insurmountable.

In terms of Quorum the ICB-Sub requires six Members in attendance and must include the following of which one must be a care or clinical professional:

(a) Two of the members from the ICB;

- (b) Two of the members from the local authority;
- (c) One of the members from an NHS Trust or Foundation Trust;
- (d) One primary care member.

The HWB requires as Quorum that five Members are present one of which must be a Barking & Dagenham Councillor. That being so if those present are quorate for the ICB-Sub then it will be so for the HWB.

As the HWB is a Council Committee the implication is that the Members will be subject to the Localism Act 2011 declaration of interests and the Council's Members Code of Conduct. Clearly there will need to be training on being a member of such a body and guidance in identifying any conflicts of interest. Finally, unlike the ICB-Sub as it is a Council Committee it can only make decisions at a defined place with due compliance with the law relating to Council meetings which do not permit virtual meetings.

(Implications completed by: Paul Feild, Senior Lawyer Standards and Corporate Governance)

### **ICB legal comments:**

We agree that it is a sensible step for such new arrangements to be explored further. The proposed arrangements are consistent with national guidance which emphasises the importance of HWBs within Place Based governance (e.g. as key drivers for integration).

The proposal to establish a working group to develop the proposals further is prudent. We are aware that a similar approach to developing terms of reference has worked well in the past in Barking and Dagenham.

In particular, we recommend that the working group should:

- a. review the current Partnership Board's terms of reference, to consider any continuing role for that structure (or otherwise how/where its strategic role and responsibilities will be undertaken);
- b. consider how decisions by individuals representing other statutory organisations within the ICS might be taken within the committees in common arrangements (e.g. NHS Trusts and Foundation Trusts);
- c. give careful consideration to the membership of each committee and consider how participation of others from across the ICS can best be facilitated (e.g. primary care);
- d. consider how respective legislation governing how NHS bodies meet and Local Authorities meet can permissibly mesh together to enable aligned working;
- e. consider how conflicts of interest can best be managed under respective organisations' legal and policy frameworks.

The working group would be assisted in its work by looking to models of good practice as they emerge across the country<sup>6</sup> and from monitoring legal and policy developments around health and social care integration.

*(Browne Jacobson LLP, lawyers to the North East London Integrated Care Board)*

**Public Background Papers Used in the Preparation of the Report:**

[Health and wellbeing boards: guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/health-and-wellbeing-boards)

**List of Appendices:**

**Appendix A - Schematic of the current governance framework**

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<sup>6</sup> (e.g. other aligned approaches or joint committee models)