

CABINET

19 March 2013

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| Title: Public Health Transition | |
| Report of the Cabinet Member for Health | |
| Open Report | For Decision |
| Wards Affected: All | Key Decision: Yes |
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| Accountable Divisional Director: Glynis Rogers, Divisional Director, Community Safety & Public Protection | |
| Accountable Director: Anne Bristow, Corporate Director of Adult & Community Services | |
| Summary: <p>From 1 April 2013, local authorities will have conferred upon them under the Health & Social Care Act 2012, a statutory duty to improve the health of the people in their areas. In particular, this will include the transfer of staff, information, and contracts from the former PCT to the Council to establish a Public Health division within the Council for the discharge of those functions.</p> <p>Under the Act, the Secretary of State will transfer public health assets, liabilities, contracts property and staff from the PCT to the Council by way of Transfer Schemes. Although much of the detail will be governed by the Transfer Schemes that are to be published by the Department of Health (if not by the Transfer of Undertakings (Protection of Employment) Regulations 2006), there are decisions that need to be taken on the Council's part to ensure that the necessary governance framework is in place to give effect to the directions of the Secretary of State.</p> <p>Leading to the deadline (31 March 2012), there is a continually emerging flow of information to support those decisions, some of which would require Cabinet decision but for which there will be insufficient time available to come back to Cabinet as its next meeting takes place after the deadline.</p> <p>This report therefore seeks delegated authority from Cabinet to the Corporate Director of Adult & Community Services to take the necessary decisions and actions to comply with the directions as to the establishment of the public health function within the Council.</p> | |
| Recommendation(s) <p>The Cabinet is recommended to:</p> <ol style="list-style-type: none">1. Delegate authority to the Corporate Director of Adult & Community Services, in consultation with the Cabinet Member for Health and the Head of Legal & Democratic Services, to approve and sign off on the Council's behalf, all Transfer | |

Schemes and approve or sign off, conclude and enter into all necessary negotiations, contracts, agreements and any other governance or ancillary transfer-related documentation and take all such other action as may be required under the Act or by law or otherwise to facilitate and implement the effective transfer of the public health functions (including any necessary contractual, staffing and service commitments) from NHS North East London & City cluster of Primary Care Trusts to the Council, and

2. Authorise the Head of Legal and Democratic Services or an authorised delegate on her behalf, to enter into and execute all contracts, agreements and legal documentation deemed necessary and appropriate to facilitate the transfer.

Reason(s)

In order to meet the new statutory duty on 1 April 2013 to provide functions relating to public health, in accordance with directions issued by the Secretary of State.

1. Introduction

- 1.1 Under the NHS Act 2006, as amended by the Health and Social Care Act 2012, upper tier and unitary local authorities will have a new duty to take appropriate steps to improve the health of their populations. Local authorities are also required to provide specific services or take particular steps set out in the Local Authorities (Public Health Functions and Entry to Premise by Local Healthwatch Representatives) Regulations 2013.
- 1.2 This means that, on 1 April 2013, the Council takes on responsibility for leadership of the public health system locally. The Public Health staff, currently under the management of NHS North East London & City cluster of Primary Care Trusts, will transfer to the management of the Council. There will also be a transfer of contracts, information assets and systems to support their work and to ensure the delivery of key public health improvement services.
- 1.3 The individual areas on which the Council is undertaking due diligence from NHS North East London & City and seeking appropriate assurances are summarised on the attached schedule (**Appendix 1**), which also provides information on the key contacts who are leading this work and the supporting documentation involved in each case.
- 1.4 Throughout the process, there have been regular briefings of the Cabinet Member for Health.

2. Staff transfer

- 2.1 As part of these responsibilities, the existing team of staff that co-ordinate these functions, currently under the management of NHS North East London & City, and together with other NHS staff redeployed into vacant posts, will transfer to be employed by the Council.

- 2.2 During the initial stages of the process, NHS employers have undertaken a matching exercise for posts in the existing public health structures. This identified which posts were aligned more closely to the work transferring to local authorities, as opposed to those that aligned to the functions that transfer to Public Health England or the National Commissioning Board. This first stage of the process is complete and there is now a list of posts and staff that will move formally onto the Council's establishment from 1 April 2013.
- 2.3 The usual basis of the transfer, governing the terms and conditions, pension rights and so forth, is set down and in compliance with the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE). All staff and their rights under TUPE will transfer under one of the Transfer Schemes to be published by the Department of Health. Issues identified specifically for the public health transfer were established through discussions between the Department of Health, NHS Employers, the Local Government Association, and NHS and local government trade unions, based on the principles of the Public Health HR Concordat agreed in early 2012.
- 2.4 As part of the staff transfer, the Council will establish the post of Director of Public Health, and the necessary amendments to the Scheme of Delegation within the Constitution will be proposed to the Annual Assembly meeting in May.
- 2.5 The Council continues to work with the NHS to assemble the specific information to set up these new employees on the establishment, and on payroll in time for the April pay run.

3. Contract transfers

- 3.1 The novation, extension and signing of contracts for public health services has been the subject of a decision made under Urgent Action procedures and is reported elsewhere on this agenda.

4. Transfer of assets and information

- 4.1 Arrangements must also be made for the transfer of information assets, systems and licenses on which the team rely for the discharge of their functions. These are being agreed between NHS North East London & City and the Council, and will be detailed on the Transfer Scheme.
- 4.2 Revisions are being planned to information sharing frameworks with health partners, including the Caldicott Guardian roles, to reflect the Council's new role in handling health-related data for public health purposes.
- 4.3 Arrangements have been made to revise the Council's registration with the Information Commissioner's Office, to notify the ICO of the new datasets that the Council will hold and the uses to which they will be put.

5. Consultation

- 5.1 The NHS has co-ordinated consultation with affected staff as part of the preparation for transfer and in line with the mapping exercise about which functions transfer to the local authority and which to other NHS bodies. The Council's recognised trade unions have been briefed on the transfer.
- 5.2 Liaison with relevant NHS partners has been core to planning and discharging the actions that are required by the Council as part of the transfer process.

6. Proposal and Options

- 6.1 In order for the public health functions to properly and completely transition to the Council by the deadline of 31 March 2012, a number of specific decisions will need to be taken and a number of related governance transactions such as the sign off of the accompanying Transfer Schemes need to be made.
- 6.2 As a Receiving Authority (as defined in the Act) the Council is responsible for identifying any organisation-specific issues, e.g. access to the LGPS pension scheme. Receivers are also responsible for complying with statutory information requirements. If receivers agree with their senders any local processes for completing the Transfer Schemes, they will be responsible for communicating and overseeing them.
- 6.3 A number of other steps and activity needs to take place before the Secretary of State for Health (SofS) signs off the Transfer Scheme. For example, the detail of Transfer Schemes need to be finalised; Senders need to finalise the content of the people tracker, which should include ALL staff and agree a final assurance template to confirm every transition route for all their staff; Receivers need to formally confirm the transfer of staff to their organisation and notify senders that the transfer of staff has been confirmed.
- 6.4 Not all activity is just about the Transfer Schemes themselves, but cover broader transfer activity such as due diligence. All need to be completed on time to effect the transfer.
- 6.5 Leading to the deadline, there is a continually emerging flow of information to support those decisions, some of which would require Cabinet decision but for which there will be insufficient time available to come back to Cabinet as its next meeting takes place after the deadline.
- 6.6 Cabinet is therefore recommended to grant delegated authority to the Corporate Director of Adult & Community Services acting in consultation with the lead Member for Health and the Head of Legal & Democratic Services, and with the advice of the Director of Public Health where appropriate, to conclude all necessary negotiations for transfer of the public health function from NHS North East London & City to the Council
- 6.7 Additionally, to authorise the Head of Legal and Democratic Services or an authorised delegate on her behalf, to enter into and execute all contracts,

agreements and legal documentation deemed necessary and appropriate to facilitate the transfer.

- 6.8 The Cabinet Member for Health will continue to be kept involved and briefed on the decisions being taken and the processes involved.
- 6.9 Should the necessary decisions not be taken, the Council would be in breach of the statutory duty placed upon it by the Health & Social Care Act 2012, as shaped by the directions provided by the Secretary of State under the Transfer Scheme.

7. Financial Implications

Implications completed by: Dawn Calvert
Group Manager Finance (Adults and Children's)

- 7.1 The Public Health Grant for 2013/14 has been confirmed at £12.9 million. All local authority-related Public Health expenditure must be contained within the grant.
- 7.2 All staff to be transferred to fulfil these functions are covered by allocations from the Public Health Grant and no additional cost burden falls to the Council as a result of the transfer.

8. Legal Implications

Implications completed by: Eldred Taylor-Camara, Legal Group Manager
(Partnerships & Strategic Procurement)

- 8.1 Under provisions of the Health and Social Care Act 2012 (the "Act"), the lead local responsibility for Public Health is due to transfer to the Council with effect from 1st April 2013. The process of transition includes the transfer by the end of March 2013, of a number of staff and key contracts currently held by the NELC cluster of PCTs to the Council. The transition is to be effected by the introduction by the Secretary of State for Health (SoS) of Transfer Schemes.
- 8.2 The power to make Transfer Schemes under the Health and Social Care Act 2012 belongs to the SoS. There will be two Transfer Schemes— one for staff who are to transfer and one for property, and assets and liabilities (including contracts) that transfer.
- 8.3 The Schemes will be signed off by the SoS. Guidance has been received from the DoH to assist both Senders (the PCT) and Receivers (the local authority) explaining their responsibilities and the process and timing for the implementation of the Transfer Schemes.
- 8.4 Cabinet has already delegated authority to the Corporate Director for Adults and Community Services to negotiate conclude and enter into all necessary contracts and agreements to facilitate the transfer.
- 8.5 Contracts of employment can only legally be transferred between employers, enabling continuity of employment to be preserved, if either the transfer situation falls within the scope of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), or there is a transfer situation falling outside that scope

and there is a statutory power to effect that transfer by way of Transfer Order or Scheme.

- 8.6 In normal circumstances where TUPE applies, no other legal mechanism would be needed to effect a transfer. However, the Act makes provision for staff transfers between certain bodies, including from Primary Care Trusts and Strategic Health Authorities to Local Authorities by way of a Transfer Scheme. The advantage of this approach is that it ensures a consistent approach for transferring employees affected by the transition.
- 8.7 The Staff Scheme will contain a schedule which identifies the forename, surname and NI number of each transferring employee. The document will not be published and will be held confidentially by the DoH (they contain personal data about the employees transferring which would need to be redacted if ever disclosed to third parties).
- 8.9 In view of the urgent timescale it is necessary that Officers be granted authority to take such steps as are necessary to ensure that all relevant documentation are in place on 1 April 2013. The recommendations in this report are intended to ensure this happens and on time.

9. Other Implications

9.1 Risk Management

The proposals contained in this report are designed to minimise the risks involved in the transition from NHS management of these services to Council management. They do not seek to establish significant new services, but enable the Council to take on the existing responsibilities and meet statutory duties. The decisions that are required as part of the nationally-directed transfer process are part of the controls identified in the Corporate Risk Register, where it covers the risks of public health transition to the Council.

9.2 Contractual Issues

Other than staffing matters detailed below, the contracting matters are covered in a separate report.

9.3 Staffing Issues

The Council will incorporate a further 19 posts within its structures as part of the transfer process, for which provision is made within the new Public Health Grant provided by central Government. It is anticipated that the Transfer Scheme will detail any specific terms on which the transfer will occur, where matters are not governed by TUPE provisions.

9.4 Customer Impact

The approach to transition seeks to minimise the impact on the operational delivery of public health related services, and therefore the impact on customers (whether defined as the general public 'end user' of contracted services such as smoking cessation or the 'professional' customers in receipt of services such as data

analysis). In time, there will be ample opportunity for the Council to consider how it may develop Public Health services to integrate with wider Council services and to thereby look for opportunities to improve the offer to customers.

9.5 Safeguarding Children and Vulnerable Adults

The measures are designed to maintain service delivery and, as such, should not have significant safeguarding impact.

9.6 Health Issues

As the main subject of the report, these measures are intended to continue the stable provision of leadership, co-ordination and direct service delivery within the wider health sector, through which improvements in the health and wellbeing of the residents of the borough are sought.

9.7 Crime and Disorder Issues

In time the alignment of public health to the Council's programmes on crime and disorder reduction and prevention will strengthen the delivery of areas such as domestic violence, alcohol and drugs. In the short term, stabilisation of the function through the transitional arrangements will be sufficient to ensure no disruption to the provision of these programmes.

9.8 Property / Asset Issues

The assets to be transferred are minimal, principally information systems and data, and necessary for the conduct of the team's business. The necessary protections around handling of the information are being established, including an update to the Council's registration with the Information Commissioner's Office.

Background Papers Used in the Preparation of the Report:

Local Authorities (Public Health Functions and Entry to Premise by Local Healthwatch Representatives) Regulations 2013
<http://www.legislation.gov.uk/ukdsi/2012/9780111531679/contents>

List of appendices:

Appendix 1: NHS North East London & City Handover Assurance Framework
(current at time of report publication)