

# ANNUAL ASSEMBLY

15 May 2013

<b>Title:</b> Ratification of Appointment of the Director of Public Health	
<b>Report of the Cabinet Member for Health</b>	
<b>Open Report</b>	<b>For Decision</b>
<b>Wards Affected:</b> All	<b>Key Decision:</b> Yes
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<b>Accountable Divisional Director:</b> N/A	
<b>Accountable Director:</b> Anne Bristow, Corporate Director of Adult & Community Services	
<b>Summary:</b> <p>Under the Health &amp; Social Care Act 2012, the Council became responsible for co-ordinating interventions to protect and improve the health of the population. This included the transfer of Public Health staff from the Primary Care Trust to the Council, along with the post of Director of Public Health. A Transfer Order, published by the Department of Health after negotiation with the Local Government Association and trade unions, governs the transfer and sets out what is expected of the Council as a receiving organisation.</p> <p>This report outlines the process specified, and seeks confirmation for the arrangements made for the appointment of the current post holder into the newly-created Council post of Director of Public Health, pursuant to the Transfer Order.</p>	
<b>Recommendation(s)</b> The Assembly is recommended to agree:	
(i) To confirm the appointment of the current post holder as Director of Public Health for the London Borough of Barking & Dagenham, in line with the Transfer Order issued by the Department of Health.	
(ii) To note the authorisation previously granted to the Corporate Director of Adult & Community Services in liaison with the Head of Legal & Democratic Services to make other consequential arrangements in connection with the Public Health transition, which will include amendments to the Constitution including the Scheme of Delegation, to reflect this post.	
<b>Reason(s)</b> The Transfer Scheme governs the creation of the post within the Council, including specifying the rights that an existing post holder has to the new post. The Council has implemented the requirements, particularly noting previous authorisations to co-locate the Public Health team at the Town Hall in preparation for formal transfer. This report therefore provides the opportunity to ratify amendments to the Constitution and senior establishment as required.	

## **1.0 Introduction**

- 1.1 The Health & Social Care Act 2012 transferred responsibility for leading and developing the local public health system to the local authority with effect from 1 April 2013. This means responsibility for, in the words of the Department of Health's guidance on the subject, *"a raft of vital public health activity, ranging from cancer prevention and tackling obesity to drug misuse and sexual health services."* The guidance also notes the unprecedented opportunity for local authorities to take a far more strategic role, promoting public health *"through the full range of their business and becom[ing] an influential source of trusted advice for their populations, the local NHS and everyone whose activity might affect, or be affected by, the health of the people in their area."*
- 1.2 This transfer included the move of the previous NHS Public Health staff team from the Primary Care Trust (abolished on the same date) to local government to support the carrying out of these functions. This included the transfer of the Director of Public Health post with the retention of the existing post holder.
- 1.3 National employment guidance (called the HR Transition Framework), was published in July 2011 to support the process of transferring NHS staff to local authorities. Cabinet has previously authorised the Corporate Director of Adult & Community Services to *"make arrangements for the appointment of a Director of Public Health to serve Barking and Dagenham by means of transfer or TUPE arrangement, in line with Department of Health proposals following the Health and Social Care Act 2012"*.
- 1.4 To complete proper administration, in accordance with the Council's Constitution as a statutory Chief Officer, this report requests the Assembly to ratify the appointment of the post holder made under the Department of Health transfer arrangements.

## **2. Proposal and Issues**

### **The Post of Director of Public Health (DPH)**

- 2.1 The statutory responsibilities of the DPH are designed to match the corporate public health duties of their local authority. Amongst the responsibilities specified for the Director of Public Health are leading roles on:
  - all of their local authority's duties to take steps to improve public health;
  - any of the Secretary of State's public health protection or health improvement functions that s/he delegates to local authorities, either by arrangement or under regulations, including services mandated by regulations published by the Secretary of State;
  - exercising their local authority's functions in planning for, and responding to, emergencies that present a risk to public health; and
  - such other public health functions as the Secretary of State specifies in regulations.
- 2.2 They are required to write an annual report on the health of the local population, and the Council is under a duty to publish it. The Director of Public Health is also a required member of the Health & Wellbeing Board, and the report to Assembly on

25 February 2013, which established the Board within the Council Constitution, enacted this requirement.

- 2.3 The Director of Public Health will have day-to-day responsibility for managing the Council's Public Health Grant, although accountability for appropriate Grant expenditure rests with the Chief Executive.
- 2.4 Directors of Public Health must be appropriately qualified, a process governed by the Faculty of Public Health. Medical and dental public health consultants are regulated by the General Medical Council or the General Dental Council. Nurse, health visitor and midwife public health consultants are regulated by the Nursing and Midwifery Council. All public health consultants can also register with the voluntary UK Public Health Register.
- 2.5 As part of the process of assuring themselves of the continuing competence of their DPH, local authorities are required to ensure that they undertake continuing professional development as prescribed by the Faculty of Public Health. In future, appointments to this post must be made with the participation of Public Health England, acting on behalf of the Secretary of State.

### **Appointment process**

- 2.6 Under the transition arrangements, the Department of Health issued a Transfer Scheme which governs the relocation of staff from within NHS management structures to the Council. This specifies the transfer of the Director of Public Health post, and the present incumbent with it.
- 2.7 The details of the Transfer Order, including the protections that will apply to existing terms and conditions for post holders, have been negotiated with the relevant trade unions for the health service, as well as by the Local Government Association on behalf of the local government sector. The Government initially indicated that the Transfer Order would be 'like' the Transfer of Undertakings (Protection of Employment) regulations (TUPE), whilst TUPE itself would not directly apply. This position has since shifted, and in respect of the Director of Public Health post, this is now considered a TUPE transfer, with the Transfer Order addressing further consequential details.
- 2.8 The Cabinet has previously received two reports (18 September 2012 and 19 March 2013) which included delegation to the Corporate Director of Adult & Community Services to conclude the negotiations for the transfer of the staff team, including the Director of Public Health in line with the terms set out in the Transfer Order, and authority to the Head of Legal and Democratic Services to enter into and execute all contracts, agreements and legal documentation deemed necessary to facilitate the transfer. However, as a chief officer appointment, the Director post needs the formal ratification by Assembly. With the required information to complete the transfer arriving very late in the process, this was not possible in advance of the 1 April 2013 transition point.

### **3. Options Appraisal**

- 3.1 The TUPE regulations, backed up by the Transfer Scheme, are specific in its legal requirements with respect to the appointment of the Director of Public Health where

there is a present occupant of the post on 31 March 2013. This provided the Council with no legal alternative to the appointment of the incumbent under the terms of the Transfer Scheme.

#### **4. Consultation**

- 4.1 As part of the planning process for the transfer, NHS employers consulted the appropriate trade unions, and individual agencies consulted NHS staff about the terms of transfer. More broadly, plans were drawn up with the involvement of the Local Government Association, negotiating on behalf of local government.

#### **5. Financial Implications**

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

- 5.1 The cost of the post is fully covered within the Public Health Grant, which was provided to the Council from the Department of Health as part of the transition to the new arrangements under the Health & Social Care Act 2012. Expenditure on public health leadership is an explicit expectation for an element of this funding.

#### **6. Legal Implications**

Implications completed by: Paul Feild,  
Senior Corporate Governance Lawyer

- 6.1 The Health and Social Care Act (HSCA) 2012 amongst other detailed measures makes arrangements for the transferring of functions carried out by a Primary Health Care Trust (PCT) to local authorities. This necessarily requires transferring employment responsibilities from the PCT to the local authority and in particular the post of Director of Public Health for the borough. It makes reference to provision for staff transfers between bodies listed in schedule 23 of the Act by way of a Transfer Scheme. The Scheme is constructed in terms of a *sender* (PCT) and a *receiver* (local authority). The Government during the process of establishing the arrangements initially took the view that a transfer scheme would be similar to a transfer of employees as would be covered by the Transfer of Undertakings Employment Regulations (TUPE). However as consultation progressed it was accepted that the arrangements would be explicitly covered by TUPE.
- 6.2 The implications are that for the staff affected their terms and conditions of employment should not change as a result of change of employer and they will continue to enjoy the same terms as they had prior to the transfer. Any changes the Local Authority may seek to bring about post the transfer must be carried out through the process as the staff would expect under their transferred terms.
- 6.3 A key point of the TUPE regulations is that a dismissal directly due to the transfer will be automatically unfair. As the main body of this report observes while the appointment of Chief Officers is a matter reserved for Assembly; the TUPE provisions application have operated so as to effect the continuity of employment of the Director of Public Health from the PCT to the Council commencing 1 April 2013 .

## **7. Other Implications**

### **7.1 Staffing Issues**

The process of transition has had the active involvement of HR Business Partners, supporting senior management to ensure that necessary HR processes are in place to support the transfer of staff. The amendments to establishment are all fully funded by the Public Health Grant which is provided to the Council to support its work on these new statutory duties.

### **7.2 Health Issues**

Establishing a robust public health function will be critical to supporting the whole Council to deliver against its new duties for improving the health of the local population. Leadership of the public health 'system' is discharged through the Director of Public Health and his team, and the continuity provided by there being a long-standing occupant of the post whose transfer is secured through the transition process will be helpful in ensuring that the Council can seamlessly pick up the work and priorities, whilst beginning to build its own view of the future direction of public health.

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

- Transfer Scheme guidance as issued by Department of Health
- Cabinet Report, 19 March 2013, 'Public Health Transition'
- Cabinet Report, 18 September 2012, 'Transition of Public Health to Local Authorities: Delivery of the Future Public Health Responsibilities'