

North Tyneside Council

Report to Council

Date: 16 May 2013

ITEM 11

Title: Health and Wellbeing Governance

Report from Directorate: Law and Governance, Chief Executive's Office

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Wards affected: All

PART 1

1.1 Purpose:

The purpose of this report is to present detailed proposals for the future operation of the Council's Health and Wellbeing Board and health scrutiny functions following the coming into force on 1 April 2013 of various elements of the Health and Social Care Act 2012.

1.2 Recommendation(s):

It is recommended that Council:

- (1) Approve the Health and Wellbeing Board's Articles, Terms of Reference and Rules of Procedure as set out in Appendices A, B and C to this report;
- (2) Invite the Health and Wellbeing Board to review its membership at its first meeting and appoint any such other persons to be members of the Board as it thinks appropriate;
- (3) Direct that only the Elected Mayor and/or Councillors serving as Members of the Health and Wellbeing Board may vote at its meetings, subject to consultation with the Board; and
- (4) Delegate the local authority's health scrutiny functions, including the power of referral to the Secretary of State, to the existing Adult Social Care, Health and Wellbeing Sub Committee.

1.3 Forward Plan:

This report first appeared on the Forward Plan that was published on 3 April 2013.

1.4 Council Plan and Policy Framework

This report has no direct link to the Council Strategic Plan 2012/15. It is relevant to the Sustainable Community Strategy 2010-13 priority that “Health inequalities are reduced and people receive the care and support they need to enjoy healthy lifestyles at all ages”.

1.5 Health and Wellbeing Board

1.5.1 At its meeting on 14 March 2013, the Council approved the establishment of the Health and Wellbeing Board in accordance with the requirements of the Health and Social Care Act 2012 (HSCA). At that time the Council agreed to appoint the Board on an interim basis and to delay final determination of its membership, terms of reference and procedural rules pending consultation with relevant stakeholders and further consideration of recently published regulations and guidance.

1.5.3 This report outlines the key features of the Board, highlights those areas which have been subject to consultation and, in the light of the responses received during the consultation, sets out proposals to determine the Board’s membership, terms of reference and procedural rules.

1.6 Functions

1.6.1 In March the Council agreed that the Board would be responsible for its core statutory functions set out in the HSCA, namely to:-

- prepare a Joint Strategic Needs Assessment (JSNA) and Joint Health and Wellbeing Strategy (JHWS);
- encourage health and social care commissioners to work in an integrated manner to improve the health and wellbeing of people in the area; and
- provide advice, assistance or other support to encourage the making of joint arrangements between health and social care commissioners (i.e. lead commissioning, pooled budgets and/or integrated provision).

1.6.2 The Board may also exercise any functions of the local authority delegated to it by the Council or its executive. The Council may therefore delegate any health related non-executive functions to the Board. During the consultation exercise, elected members and other stakeholders have expressed the view that, initially, the Board should only be responsible for its core statutory functions as set out above. It was suggested that over time the scope of its responsibilities may be reviewed as the Board develops its role and ways of working. The Elected Mayor has indicated that she does not wish to delegate any executive functions to the Board at this stage but the matter will be kept under review.

1.6.3 A comprehensive list of these core statutory functions have been compiled. It is proposed that these will form the Board’s terms of reference as set out in appendix B to the report and be inserted into Part 3 of the Council’s Constitution.

1.7 Membership

- 1.7.1 In March the Council agreed that the Board would comprise of those persons who must be appointed to it in accordance with the requirements of the HSCA, namely:-
- a) the Elected Mayor and/or at least one councillor as nominated by the Elected Mayor;
 - b) Paul Hanson, Strategic Director of Community Services, as the Authority's designated Director of Adult Social Services;
 - c) Gill Alexander, Strategic Director of Children, Young People and Learning, as the Authority's Director of Children's Services;
 - d) Marietta Evans, the Director of Public Health;
 - e) a representative of the North Tyneside NHS Clinical Commissioning Group; and
 - f) a representative of the local healthwatch organisation.

A representative of NHS England must also be appointed to the Board for the purpose of participating in the preparation of the JSNA and JHWS.

- 1.7.2 In addition to the above, the Council and/or the Board may also appoint such additional persons as it thinks appropriate. During the consultation exercise it was suggested that the Board itself, at an early meeting, should appoint such other persons to be members of the Board as it thinks appropriate. (Note: At any time after the Board is established, the Council must, before appointing another person to be a member of the Board, consult the Board.)
- 1.7.3 The voluntary and community sector, Age UK, the Safeguarding Adults Board, Northumberland, Tyne and Wear NHS Foundation Trust, Newcastle upon Tyne Hospitals NHS Foundation Trust and Northumbria Healthcare NHS Foundation Trust have all indicated a desire to continue to be represented on the Board. The North Tyneside CCG would appreciate the opportunity to have two places on the Board, in view of the shared responsibilities.
- 1.7.4 As stated above, the Elected Mayor is required to nominate at least one councillor and/or herself to serve on the Board. The Elected Mayor has indicated that she intends to take up her seat on the Board. During the consultation exercise elected members referred to the value of a number of councillors, from across all political parties, serving on the Board to gain a good knowledge and understanding of the health and wellbeing agenda and potentially allow continuity of membership across Mayoral terms of office. It was suggested that in addition to the Elected Mayor, five councillors should be appointed to the Board, of which three should be from the group with the majority of seats on the Council and one each from the minority groups. It is therefore recommended that the membership of the Board includes five councillors. It is then a matter for the Elected Mayor to nominate councillors to these five seats on the Board, taking into account the comments made during the consultation. (Note: The rules relating to the allocation of committee seats according to the political balance of the Council do not apply to the membership of the Board.)
- 1.7.5 The appointment of the Chair and Deputy Chair of the Board will be determined as part of a separate item on the agenda for tonight's meeting.
- 1.7.6 It is proposed that any Member of the Board may appoint a substitute to act on their behalf at meetings.

1.7.7 The membership of the Board and provision for the appointment of substitutes are contained within the proposed procedural rules set out as appendix C to this report. The procedural rules, as approved by Council, will be inserted into Part 4 of the Constitution.

1.8 Voting

1.8.1 The HSCA states that all Members of the Board will be able to vote unless the Council decides otherwise. During consultation with elected members, they expressed the view that only the Elected Mayor and Councillors should be entitled to vote. It was acknowledged that the Board is about bringing political, professional and clinical leaders together with local communities on an equal basis. As such it is envisaged that the majority of decisions taken by the Board will be by consensus. However in exceptional circumstances when matters may be decided by a vote, for example preparing the JSNA and JHWS, Members considered it to be appropriate for elected members only to decide such matters affecting their democratic mandate.

1.8.2 The North Tyneside CCG have suggested that consideration should be given to voting rights of members to ensure fairness and equity. For example, if the three NHS Foundation Trusts continue to be members of the Board, it may not be proportionate for them (as service providers to an area much greater than North Tyneside) each to have a vote and the CCG (as the health commissioner dedicated to North Tyneside) to only have one vote.

1.8.3 If the Council wishes to make a direction that some Members of the Health and Wellbeing Board may not vote then it must first consult with the Board, before making a final decision on the matter. If necessary, this consultation could be undertaken at the first meeting of the Board in June, prior to a further report on the matter being submitted to Council at the June Council meeting.

1.9 Sub-Committees

1.9.1 The Council or the Board may appoint sub-committees and in doing so may determine their membership and term of office. In the light of comments made during the consultation with stakeholders, it is proposed that the Council does not appoint any sub-committees of the Board at this stage, but that this possibility be kept under review.

1.10 Dates and Times of Meetings

1.10.1 The dates and times of Board meetings have been incorporated into the Council's programme of meetings. This is a separate item on the agenda for tonight's Council meeting. It is proposed that the Board meet six times per year with the first meeting of the Board due to be held on 4 June 2013. The Board may hold additional meetings if required.

1.11 Health Scrutiny

1.11.1 The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 introduce new arrangements for local authorities to review and scrutinise matters relating to the planning, provision and operation of the health service in their area.

1.11.2 Local authorities are no longer obliged to have an overview and scrutiny committee through which to discharge their health scrutiny functions, but will be able to discharge these functions in different ways through suitable alternative arrangements. It is for the Council to determine which arrangement is adopted.

These could include:

- a) to continue to appoint a scrutiny committee to undertake health scrutiny;
- b) for Council to undertake the health scrutiny function;
- c) to appoint another body to undertake the health scrutiny function, such as a sub-committee of Council.
- d) a joint overview and scrutiny committee with another Authority or body exercising similar functions.

1.11.3 The Act also extends the scope of health scrutiny to the NHS Commissioning Board (the Board) and clinical commissioning groups (CCGs), and to providers (relevant health service providers) of NHS and public health services commissioned by the Board, CCGs or local authorities. This would include independent and third sector providers.

1.11.4 The new regulations preserve many features of the previous arrangements including the power to review and scrutinise any matter relating to the planning, provision and operation of health services in its area, require relevant NHS bodies and health service providers to provide information to and attend meetings, to make reports and recommendations to them and require them to respond to reports or recommendations.

1.11.5 There continues to be a requirement on 'relevant NHS bodies' (now CCGs, the National Health Services Commissioning Board, NHS trusts and NHS foundation trusts) as well as relevant health service providers, to consult a local authority on proposals for a substantial development of the health service or for a substantial variation in the provision of such a service. Certain proposals continue to be exempt from the duty to consult where a risk to safety or welfare of patients or staff is at stake.

1.11.6 The Regulations enable a local authority to report on a reconfiguration proposal to the Secretary of State in writing if it is not satisfied that consultation on the proposal has been adequate, or that the reasons given for a proposal being exempt from consultation was inadequate or that the proposal would not be in the interests of the health service in its area.

1.11.7 The power of making reports to the Secretary of State is a responsibility of the Council. However, where a local authority chooses to retain a Health Overview and Scrutiny Committee as the means of discharging their health scrutiny functions they can choose to delegate that power of referral to that Health Overview and Scrutiny Committee. They may similarly delegate the power of referral to a joint scrutiny arrangement. Where an authority discharges health scrutiny functions in another way, only the Council will be able to exercise the power of referral. In certain circumstances, where a relevant NHS body or relevant health service provider consults more than one local authority on a proposal, the local authorities concerned are required to appoint a joint overview and scrutiny committee.

1.11.8 Following consultation with elected members, it is proposed that the Council delegates the local authority's health scrutiny functions, including the power of

referral to the Secretary of State, to the existing Adult Social Care, Health and Wellbeing Sub Committee.

1.12 Decision options:

1.12.1 Options for the future operation of the Health and Wellbeing Board are described in Sections 1.5 – 1.10 of the report. Council could:

- a) agree to adopt the responses to the consultation exercise as set out in the main body of the report;
- b) reject the responses to the consultation exercise and ask officers to undertake further work to identify alternative options for the consideration of Council; or
- c) reject part of the recommendations in the report and again request officers to undertake further work in those rejected areas.

1.12.2 The Council are asked to consider the following options for allocating responsibility for its health scrutiny functions as described above. It could:

- a) delegate the functions to the existing Adult Social Care, Health and Well Being Sub Committee;
- b) retain these powers to be exercised by the Council;
- c) establish a new sub committee to exercise these functions; or
- d) explore joint arrangements with other Authorities for future consideration.

1.13 Reasons for recommended option:

1.13.1 The Council is recommended to approve the Board's terms of reference and procedural rules as set out in Appendices B and C to this report. These documents reflect the preferences and wishes of those stakeholders involved in the consultation process as the most appropriate way forward in the development of the Board.

1.13.2 The Council is recommended to delegate its health scrutiny functions to the existing Adult Social Care, Health and Wellbeing Sub Committee as the sub-committee has previously exercised these responsibilities. This option therefore makes use of the experience and knowledge gained by Members of the Sub-Committee, allows those systems and relationships that have been established to continue to be strengthened and provides consistency in approach.

1.14 Appendices:

Appendix A – Proposed New Article to be inserted into Part 2 of the Constitution

Appendix B – Proposed Terms of Reference of the Health and Wellbeing Board

Appendix C – Proposed Rules of Procedure for the Health and Wellbeing Board

1.15 Contact officers:

Paul Hanson, Strategic Director for Community Services

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Michael Robson, Democratic Services Officer, Law and Governance,

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Alison Campbell, Finance Business Manager, Finance & Resources Directorate,

tel (0191) 643 7038

1.14 Background information:

The following background papers/information have been used in the compilation of this report and are available at the office of the author:

- (1) Health and Wellbeing Boards – A practical guide to governance and constitutional issues
- (2) Health and Social Care Act 2012
- (3) The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013
- (4) Report to Council 15 March 2013 and associated minute.
- (5) Briefing Notes April 2013 regarding the Health and Wellbeing Board and health scrutiny functions.
- (6) Responses to consultation from relevant stakeholders.
- (7) The terms of reference of the shadow Health and Wellbeing Board.

PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING

2.1 Finance and other resources

The costs associated with the operation of the Board and the exercise of health scrutiny functions will be contained within existing budgets.

2.2 Legal

Section 194 of the Health and Social Care Act 2012 states that a local authority must establish a Health and Wellbeing Board for its area.

Pursuant to the Council's executive arrangements under Section 9D of the Local Government Act 2000, Cabinet has responsibility for all matters of Council business except where otherwise provided for in law, in particular by the Local Authorities (Functions and Responsibilities) (England) Regulation 2000. The establishment of the Health and Wellbeing Board, appointment of additional persons to the Board over and above the core membership, and voting rights, are identified as responsibilities of the Council, however other core functions undertaken by Health and Wellbeing Board and other associated public health functions are not reserved to Council and are therefore executive functions. If any executive functions are delegated to the Board by Cabinet they will remain as executive functions but noted as being discharged by the Board on the Cabinet's behalf. These will be subject to the call-in provisions of the Authority's Constitution.

The Local Authority (Public Health, Health and Well Being Boards and Health Scrutiny) Regulations 2013 introduce new arrangements for local authorities to review and scrutinise matters relating to the planning, provision and operation of the health service in their area.

2.3 Consultation/community engagement

Since the Council established the Health and Wellbeing Board in March, consultation has been undertaken with the Elected Mayor, Group Leaders, the Constitutional Task Group, the Council's Directors of Adult Social Services, Public Health and Children's Services, Members of the shadow Health and Wellbeing Board and health partners.

2.4 Human rights

There are no Human Rights implications arising from this report.

2.5 Equalities and diversity

An equalities impact assessment has been undertaken in respect to the establishment and operation of the Board. Particular consideration will be given to develop ways of working that meet the needs of Board members and the communities they serve to ensure everyone who attends meetings understands what is happening and they are able to participate where appropriate.

2.6 Risk management

A risk assessment has not been undertaken in connection to this matter.

2.7 Crime and disorder

There are no crime and disorder implications directly arising from this report.

2.8 Environment and sustainability

There are no environment and sustainability issues arising from this report.

PART 3 - SIGN OFF

- Chief Executive X
- Chief Finance Officer X
- Monitoring Officer X
- Strategic Manager Policy, Partnerships Performance and Communications. X

Proposed New Article to be inserted into Part 2 of the Council's Constitution

Article # - Health and Wellbeing Board

1. Introduction

The Authority is required to appoint a Health and Wellbeing Board to ensure that there is an integrated approach to the provision of health and social care services in the area. The Board brings together representatives from a range of relevant organisations to provide shared leadership of the strategic approach to health and wellbeing of communities in North Tyneside.

The Board is responsible for:-

- encouraging the commissioners of health and social care services to work in an integrated manner to improve the health and wellbeing of people in the area, including the making of joint arrangements;
- preparing a Joint Strategic Needs Assessment, Joint Health and Wellbeing Strategy and Pharmaceutical Needs Assessment; and
- encouraging the commissioners of health-related services, such as housing, to work closely with the Board and the commissioners of health and social care services.

2. Proceedings

The Health and Wellbeing Board will conduct its proceedings in accordance with Part 3.5G, Terms of reference of Committees, and Part 4.7, Health and Wellbeing Board Rules of Procedure, of the Constitution.

**Proposed Terms of Reference of the Health and Wellbeing Board
to be inserted into Part 3.5 of the Council's Constitution**

Part 3.5 Terms of Reference

G. Health and Wellbeing Board

Membership –

Quorum –

Terms of Reference

The following functions are the responsibility of the Health and Wellbeing Board:

1. To encourage persons who arrange for the provision of any health or social care services in North Tyneside to work in an integrated manner for the purpose of advancing the health and wellbeing of the people in the area.
2. To provide advice, assistance or other support to encourage the making of joint arrangements between health and social care commissioners under Section 75 of the NHS Act 2006 in connection with the provision of health and social care services.
3. To prepare a Joint Strategic Needs Assessment (JSNA), which provides an assessment of the current and future health and social care needs of the local community.
4. To prepare a Joint Health and Wellbeing Strategy (JHWS) for meeting the needs identified in the JSNA.
5. To encourage the commissioners of health-related services in North Tyneside to work closely with the Board.
6. To encourage the commissioners of health-related services in North Tyneside to work closely with the commissioners of health and social care services.
7. To assess the needs for pharmaceutical services in North Tyneside and publish a Pharmaceutical Needs Assessment.
8. To provide an opinion to the Authority on whether it is complying with its duty to have due regard to the Joint Strategic Needs Assessment (JSNA) and Joint Health and Wellbeing Strategy (JHWS) in exercising its functions.
9. To consider the draft commissioning plans prepared or revised by the clinical commissioning group and provide an opinion on whether they take proper account of the Joint Health and Wellbeing Strategy.
10. To exercise any functions of the Authority as determined by the Cabinet and/or Council.

**Proposed Rules of Procedure of the Health and Wellbeing Board
to be inserted into Part 4 of the Council's Constitution**

Part 4.# Health and Wellbeing Board

1. Membership

The membership of the Board will comprise:-

- a) the Elected Mayor, if nominated by him/herself;
- b) five councillors to be nominated by the Elected Mayor;
- c) the Council's Directors of Public Health, Adult Social Services and Children's Services
- d) a representative of the North Tyneside NHS Clinical Commissioning Group
- e) a representative of Healthwatch North Tyneside
- f) for the purpose of participating in the preparation of a Joint Strategic Needs Assessment or a Joint Health and Wellbeing Strategy, a representative of the NHS Commissioning Board; and
- g) such other persons as the Board thinks appropriate.

With the exception of those members falling within category a) and b) all other members will be non-voting co-opted members.

2. Meetings

Where possible, a programme of ordinary meetings of the committees will be set each year, usually by the full Council. Notice of meetings will be given to the public in accordance with Part 4.11- Access to Information Rules of Procedure.

3. Extraordinary Meetings

Extraordinary meetings of the Board may be called, where possible following consultation with the Chair and Deputy Chair, where it is considered necessary or appropriate; or at the request of the Chair and Deputy Chair or any three Members of the Board.

Other than in exceptional circumstances, the time of commencement of extraordinary meetings should be the same as for ordinary meetings.

4. Agenda

The Head of Law and Governance, where possible in consultation with the Chair and Deputy Chair, will determine the agenda for meetings of the Board.

At least five clear working days before a meeting, an agenda will be sent to every member of the Board.

The agenda will give the date, time and place of each meeting and specify the order of the business to be transacted, and will be accompanied by such reports as are available.

Urgent reports on items of business may only be added to the agenda if the reasons for urgency can be sufficiently justified and the approval of the Chair has been given. The reasons for urgency will be recorded in the minutes of the meeting.

Any matters referred to the Board by either the Council or the Cabinet will be placed on the agenda for the next available meeting of the Board. The Board will, at that meeting, determine the method and timetable for responding to any such referrals.

5. Chair

The Chair and Deputy Chair of the Board will be appointed by the Council.

Meetings of the Board will be chaired by the Chair or in his/her absence the Deputy Chair. In the absence of the Chair and Deputy Chair, Members of the Board present will elect from amongst themselves a Chair for the duration of the meeting.

6. Quorum

A meeting of the Board cannot begin until a quorum is present. The quorum for the Board will be no less than quarter of the whole membership and at least two elected Members of the Council.

If a quorum is not reached 15 minutes after the time appointed for the start of the meeting, the meeting will be reconvened on another date.

During any meeting if the Chair counts the number of Members present and declares there is not a quorum present, then the meeting will adjourn immediately.

Remaining business will be considered at a time and date fixed by the Chair. If the Chair does not fix a date, the remaining business will be considered at the next ordinary meeting.

7. Declaration of Interests in Meetings

Where a Member attends a meeting of the Board they must declare any registerable or non-registerable personal interests as defined in the Council's Code of Conduct for Elected Members and Co-opted Members, before consideration of that item begins or, if later, when they become aware of that interest.

In addition, where in relation to any meeting a Member has declared a registerable or non-registerable personal interest in a matter, and the criteria contained in paragraph 17 of the Members' Code of Conduct apply, the Member must leave the room for the duration of the discussion on that matter.

8. Duration

Unless the majority of Members of the Board present vote for the meeting to continue, any meeting that has lasted for 3½ hours will adjourn immediately. Remaining business will be considered at a time and date fixed by the Chair. If the Chair does not fix a date, the remaining business will be considered at the next ordinary meeting.

If the majority of Members vote for the meeting to continue no further business shall be taken after a further 15 minutes beyond the initial 3½ hours.

9. Voting

Where possible matters will be decided by a consensus of members of the Board present at in the room at the time the question was put.

When a consensus cannot be reached on any matter then it will be decided by a simple majority of the Members of the Board entitled to vote who are present in the room at the time the question was put.

Unless a ballot or recorded vote is demanded, the Chair will take the vote by show of hands. The Chair will announce the numerical result of the show of hands immediately after the result is known.

The vote will take place by ballot if two Members of the Board present at the meeting demand it. The Chair will announce the numerical result of the ballot immediately the result is known.

If two Members of the Board present at the meeting demand it, the names for and against the motion or amendment or abstaining from voting will be taken down in writing and entered into the minutes. A demand for a recorded vote will override a demand for a ballot.

Where any Member of the Board requests it immediately after the vote is taken, their vote will be so recorded in the minutes to show whether they voted for or against the motion or abstained from voting.

If there are more than two people nominated for any position to be filled and there is not a clear majority of votes in favour of one person, then the name of the person with the least number of votes will be taken off the list and a new vote taken. The process will continue until there is a majority of votes for one person.

10. Substitutions

Any Member of the Board who is unable to attend any meeting may appoint a Member to act as a substitute at that meeting. Substitute Members may attend only in the capacity set out below:

- a) to take the place of the ordinary member of the Board;
- b) where the ordinary member of the Board will be absent for the whole of the meeting; and

- c) after notifying the relevant Democratic Services Officer prior to the commencement of the meeting of the intended substitution.

Appointments of substitute Members will be reported to meetings of the Board at the commencement of business.

Once notification of a substitute Member has been received (unless it is withdrawn prior to the commencement of the meeting) the appointed Member of the Board shall not be entitled to attend the relevant meeting as a Member of the Board.

Any substitution shall apply for the entire meeting including where the meeting is reconvened after adjournment.

11. Minutes

The Chair will sign the minutes of the proceedings at the next suitable meeting. The Chair will move that the minutes of the previous meeting be signed as a correct record. Discussion of the minutes must be limited to their accuracy.

Where in relation to any meeting, the next meeting for the purpose of signing the minutes is a meeting called under paragraph 3 of schedule 12 to the Local Government Act 1972 (an Extraordinary Meeting), then the next following meeting (being a meeting called otherwise than under that paragraph) will be treated as a suitable meeting for the purposes of paragraph 41(1) and (2) of schedule 12 relating to signing of minutes.

The effect of this is that minutes will not be submitted for approval to an extraordinary meeting.

12. Exclusion of Public

Members of the public and press may only be excluded either in accordance with Part 4.11 - Access to Information Rules or when causing a disturbance (see below).

13. Disturbance by the Public

If a member of the public interrupts proceedings, the Chair will warn the person concerned. If s/he continues to interrupt, the Chair will order his/her removal from the meeting room.

If there is a general disturbance in any part of the meeting room open to the public, the Chair may call for that part to be cleared.