

MUNICIPAL YEAR 2012/2013 REPORT NO. 200

MEETING TITLE AND DATE:

Council - 27 March 2013

REPORT OF:

Director of Health,
Housing and Adult Social
Care

Agenda – Part:1

Item: 10

Subject: Establishment of a Health and Wellbeing Board for Enfield

Wards: All

Cabinet Member consulted: Councillor Donald McGowan

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1. EXECUTIVE SUMMARY

This report sets out the requirements for the establishment of a Health and Wellbeing Board and the specific proposals for Enfield.

The report includes information on the functions of the board, requirements for membership, voting, application of the council code of conduct, transparency and openness and working with other structures of the council

Council is asked to approve the establishment of the Board on the basis set out in the report along with the terms of reference.

2. RECOMMENDATIONS

- 2.1 To agree the terms of reference as set out in Appendix A to the report
- 2.2 To agree the membership of the Board as proposed in Para 3.4.2
- 2.3 To consider whether or not the Council wishes to delegate any other functions to the Board, other than that proposed by statute.
- 2.4 To note that the Council's code of conduct will apply to all Board members. (Para 3.6)
- 2.5 To approve the changes to the council constitution to include the establishment and terms of reference for the Health and Wellbeing Board.

3. BACKGROUND

- 3.1 Under the Health and Social Care Act 2012 all unitary councils will have to establish a Health and Wellbeing Board by 1 April 2013. Health and Wellbeing Boards are being set up as partnership bodies involving local councils, GP's, other health professionals and the local Healthwatch, representing the views of patients, communities and the people who use the services.

The stated purpose of the Government is to bring greater democratic accountability and legitimacy to the NHS, promoting better integration across health and social care in the interests of patients and the public.

At Enfield a Shadow Board was set up and has been in operation since December 2011. The Shadow Board has enabled Enfield to pilot its arrangements for delivery of the functions required under the Health and Social Care Act and to develop procedures for its effective operation. These have been subject to review and the proposed terms of reference (set out in appendix A) for the full board have been based upon those developed by the Shadow Board. They have also been amended to take account of the regulations published in February 2013 and to reflect national guidance produced by the Local Government Association and the Association of Democratic Services Officers.

3.2 Functions of a Health and Wellbeing Board

The Health and Social Care Act 2012 Sections 195 and 196 states that the functions of the board must include

- Preparation of the Joint Strategic Needs Assessment (JSNA), Pharmaceutical Needs Assessment (PNA) and Joint Health and Wellbeing Strategies (JHWSS)
- To encourage integrated working between health and social care commissioning including providing advice assistance or other support to encourage arrangements under section 75 of the National Health Service Act 2006 (ie lead commissioning, pooled budgets and/or integrated provision) in connection with the provision of health and social care services.
- A power to encourage close working between commissioners of health-related services and the board itself
- A power to encourage close working between commissioners of health-related services (such as housing and many other local government services) and commissioners of health and social care services.
- Any other functions that may be delegated by the Council under section 196(2) of the Health and Social Care Act 2012. This will allow the Council to arrange for the Health and Wellbeing Board to exercise any functions exercisable by the authority.

3.3 Establishment of the Board

The Health and Wellbeing Board is to be set up as a committee of the Council under section 102 of the local Government Act 1972. The regulations however modify and disapply certain provisions of the Local Government Act 1972 and the committee should be thought of as a section 102 committee but with some key differences.

3.4 Membership

3.4.1 The core membership of the Board must include

- At least one councillor – nominated by the Leader in councils operating executive arrangements
- The Director of Adult Social Services
- The Director of Children’s Services
- The Director of Public Health
- A representative of the local HealthWatch organisation
- A representative of each relevant clinical commissioning group
- Any other members considered appropriate by the Council

3.4.2 It is proposed that the full board membership is based upon the current Shadow Board membership with a slight amendment to the number of third sector representatives

- Cabinet Member for Adult Services, Care and Health
- Cabinet Member for Community Wellbeing and Public Health
- Cabinet Member for Children and Young People
- Cabinet Member of Environment

- Chair of the local Clinical Commissioning Group
- Clinical Commissioning Group Chief Officer

- Healthwatch Representative
- NHS Commissioning Board Representative
- Joint Director of Public Health
- Director of Adult Social Care
- Director of Children’s Services
- Director of Environment
- Elected Representative of the Third Sector

3.4.3 Councillors

Under the regulations (Regulation 7) modifies sections 15-16 and Schedule 1 of the Local Government Housing Act 1989 to disapply political proportionality requirements for section 102 committees in respect of health and wellbeing boards – this means that it is up to individual councils to decide the approach to councillor membership of health and wellbeing boards. It is proposed that the Cabinet Members for Adult Services, Care and Health, Community Wellbeing and Public Health, Children and Young People and Environment are appointed to the Board.

The appointment of the Cabinet Member for Environment and the Director of Environment are to recognise the importance of community safety in health and wellbeing.

Councillor representatives will be nominated by the Executive Leader of the Council for approval by Council. .

3.4.4 Council Officers

The Local Government Act 1972 does not allow officers to be members of local authority committees. Regulation 5(1) removes this restriction in relation to health and wellbeing boards by disapplying section 104 (1) of the 1972 Act to enable local authority directors specified in the 2012 Act to become members of health and wellbeing boards.

3.4.5 Clinical Commissioning Group (CCG)

It is proposed that both the Chair and the Chief Officer of the Enfield Clinical Commissioning Group will have places on the Board.

3.4.6 NHS National Commissioning Board

The NHS Commissioning Board has to appoint a representative for the purpose of participating in the preparation of JSNAs and the PNA and to join the health and Wellbeing Board when it is considering a matter relating to the exercise or proposed exercise of the NHS Commissioning Board commissioning functions in relation to the area and it is requested to do so by the Board. Enfield has set aside a position to enable a representative to sit on the full board. Peter Coles is currently the nominated representative of the NHS National Commissioning Board.

3.4.7. HealthWatch

A new HealthWatch organisation will come into being on a statutory footing on 1 April 2013. It will represent the views of patients, communities and people who use health and social care services. Healthwatch will be required to appoint a person to represent them on the Board.

3.4.8 Third Sector Representative

It is proposed that membership of the Enfield Board also includes a representative from the third sector who will be able to represent the particular skills and perspectives of voluntary and community groups. The selection of this representative will be undertaken via an election process being run by the Electoral Reform Society.

The election process will take place before the 14 April 2013 to enable the new representative to take up their post at the first meeting of the Board on 23 April 2013.

The elected representative will be supported by a deputy who will be the candidate with the second most votes. The deputy will only attend meetings when the first elected representative is unable to. They will then have voting and speaking rights.

3.4.9 Additional Members

The Health and Wellbeing Board can in agreement with full Council appoint additional members and, should the full council wish to add further members after the board is established on the principles of inclusiveness and shared ownership (under section 194 of the Health and Social Care Act 2012) it would need to consult the health and wellbeing board before doing so.

3.4.10 Substitutes

The approach to substitution is for local determination. At Enfield, other than for Overview and Scrutiny Committee, we do not operate with substitutes. It is therefore proposed that substitution is not permitted.

3.5 Voting

Regulation 6 modifies the Local Government and Housing Act 1989 (section 13(1)) to enable all members of health and wellbeing boards or their sub committees to vote unless the council decides otherwise. This means that the Council is free to decide, in consultation with the health and wellbeing board which members of the health and wellbeing board should be voting members.

The intention of the legislation is that all members of health and wellbeing boards should be seen as equals and as shared decision makers, acknowledging that health and wellbeing boards are about bringing political professional and clinical leaders and local communities together on an equal basis. It is hoped that this will be achieved by consensus, where possible.

However there will be some occasions where votes will have to be taken.

The Shadow Board has recommended that all members including officers should have a vote which Council is asked to agree in the interests of parity.

3.6 Codes of Conduct and Conflicts of Interest

The regulations under section 194 of the Health and Social Care Act 2012 do not modify or dis-apply any legislation relating to codes of conduct and conflicts of interest. This means that legislation in relation to these issues will apply to health and wellbeing boards.

All voting members of the health and wellbeing board will therefore be governed by the local authority code of conduct. On taking office they will have to sign up to the council's code of conduct and will have to register and

declare disclosable pecuniary, other pecuniary and non pecuniary interests. Public notions of predetermination and bias will also apply.

Training on the Council's code of conduct will be provided to Board members.

3.7 Transparency and Openness

Health and Wellbeing Boards will be subject to the same requirements on openness and transparency as other Section 102 committees.

This will require copies of the agendas and reports of meetings to be open for inspection by the public with the Freedom of Information Act 2000 also applying.

Provisions relating to public access to meetings and to information relating to the decisions of council executives and their committees to apply, that is the need to provide 5 working days notice of meetings.

The Data Protection Act 1998 providing for the regulation of the processing of information relating to individuals will also apply.

The Shadow Board have also developed a protocol for public wishing to speak at meetings which will also apply. This is designed to reflect the desire to be as inclusive as possible whilst also ensuring that decisions can be taken as effectively as possible.

Informal sessions will also be held outside the formal board meetings to enable board learning and development and exploratory in depth sessions on particular topics. This will also enable the board to have early discussions on complex and sensitive issues before formal consultation and discussion.

3.8 Sub Committees

Regulation 3 of the regulations modifies section 101(2) of the Local Government Act 1972 to clarify that health and wellbeing boards can appoint sub committees to discharge their functions in accordance with section 102 of the 1972 Act.

All provisions that apply to health and wellbeing boards will also apply to all sub committees of the Board. The Board may decide to delegate some of their decision making powers to sub committees.

The Health and Wellbeing Board will be able to appoint sub committees to discharge their functions. The Shadow Board currently operate three sub groups which are set up as follows:

- The Health Improvement Partnership Board – Chaired by the Joint Director of Public Health.

- The Joint Commissioning Partnership Board - Chaired by the Joint Chief Commissioning Officer
- Improving Primary Care Board – Chaired by the Chief Officer of the Clinical Commissioning Group

It is proposed that these are continued under the formal board structure.

3.9 Accountability and relationships between the health and wellbeing board and other council structures and partnerships

3.9.1 Health and Wellbeing Boards are not committees of the executive or cabinet. Therefore their decisions will not need to go on the Council's key decision list, giving the statutory 28 days notice of executive decisions.

3.9.2 However if any additional functions are delegated to the Board, the council will need to adhere to the requirements of all applicable legal frameworks.

3.9.3 Health and Wellbeing and Overview and Scrutiny

Overview and Scrutiny will be able to scrutinise the work of the Health and Wellbeing Board in a similar way to the other work of the Council. However although the discharge of functions by health and wellbeing boards falls within the remit of scrutiny, the core functions will not be subject to call in, as they are not executive functions.

3.10 Executive

It is also proposed that the Board will have an executive group which will meet on a monthly basis to oversee on-going work in between board meetings. Its membership will consist of: the Joint Director of Public Health, CCG Chief Officer, Director of Children's Services and Director of Health, Housing and Adult Social Services.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 There are no alternative options as it is a statutory requirement that the Council sets up a Health and Wellbeing Board.
- 4.2 The proposed terms of reference have been considered in detail and agreed for recommendation to Council by the Shadow Board and follow guidance for the Local Government Association and Association of Democratic Services Officers.

5. REASONS FOR RECOMMENDATIONS

- 5.1 To enable the establishment of the statutory health and wellbeing board in Enfield meeting the requirements of the Health and Social Care Act 2012.

6. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES AND OTHER DEPARTMENTS

6.1 Financial Implications

Any costs associated with the creation of the Health & Wellbeing board will be met from existing resources within HHASC.

6.2 Legal Implications

Section 194 (1) Health and Social Care Act 2012 requires a local authority to establish a Health and Wellbeing Board. This requirement comes into force on 1 April 2013. Section 194 (2) sets out the membership.

The functions of a Health and Wellbeing Boards are set out in sections 195 and 196 Health and Social Care Act 2012 and are as set out in paragraph 3.6 above.

The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 relate to Health and Wellbeing Boards. They regulate the details of the establishment and arrangements for such Boards.

Section 194(2) sets out the required membership of the Board which includes three officers (the directors of children's services, adult social services and public health). Regulation 5 (1) disapplies the restriction in section 104 (1) Local Government Act 1972 on officers being members of local authority committees. The Director of Environment is not specifically mentioned but as the regulations and statute give local authorities the right to determine the membership of the Board there is no reason why officers other than the three statutory directors should not be appointed if the local authority wishes.

Regulation 6 modifies section 13 Local Government and Housing Act 1989 so that the assumption is that all members of a Board (including members not set out in statute) will be voting members unless the establishing local authority directs otherwise.

Regulation 7 removes the requirement for allocations and political balance on the Board. The regulations therefore allow for local flexibility.

7. KEY RISKS

7.1 The Council is required under the Health and Social Care Act 2012 to have the Board formally established by 1 April 2013.

7.2 That the Board will need to ensure that it operates under the regulations and statutory requirements.

8. IMPACT ON COUNCIL PRIORITIES

8.1 Fairness for All

The Health and Wellbeing Board will work to ensure that everyone in the borough can access good high quality healthcare according to their needs.

8.2 Growth and Sustainability

Good healthcare is essential for growth and sustainability.

8.3 Strong Communities

An effective health and wellbeing board will ensure the provision of good health and social care services and improve local wellbeing. It will contribute towards the establishment of a strong community where everyone can work together to improve health and care services within the borough.

9. EQUALITIES IMPACT IMPLICATIONS

It has not been necessary to carry out an Equalities Impact Assessment in relation to setting up the Board.

10. PERFORMANCE MANAGEMENT IMPLICATIONS

The Board will monitor the performance of the health services and other bodies concerned with improving health and wellbeing.

11. PUBLIC HEALTH IMPLICATIONS

The Enfield Health and Wellbeing Board is being set up to improve the health and wellbeing of all Enfield residents.

Background Papers

None