

TRAFFORD COUNCIL

Report to: Council
Date: 13 March 2013
Report for: Decision
Report of: Acting Director of Legal and Democratic Services

Report Title

Health and Social Care Act 2012 – Constitutional Changes

Summary

The purpose of the report is to advise Members of the changes to the Council's Constitution required as a result of changes arising from the Health and Social Care Act 2012 that take effect from 1st April 2013.

The report refers to changes relating to the transfer of the public health function to the Council, the formal establishment of the Health and Wellbeing Board and revisions to health scrutiny regulations.

Recommendations

1. That the Council notes the transfer of the Public Health function pursuant to the Health and Social Care Act 2012, along with related staff to the Local Authority with effect from 1st April 2013.
2. That the Council establish a Health and Wellbeing Board with the membership and terms of reference as set out in the report with effect from the 1st April 2013.
3. That the Council membership of the Health and Wellbeing Board as nominated by the Leader of the Council be agreed.
4. That the Council confirms that, with effect from 1st April 2013, responsibility for the scrutiny of health services continue to be discharged by the Health Scrutiny Committee and that the arrangements agreed by Council (Minute numbers 11 and 40 refer) be retained
5. That Council authorise the Acting Director of Legal and Democratic Services to make the necessary changes to the constitution in relation to.
 - the transfer of the Public Health function
 - the establishment of the Health and Wellbeing Board and
 - health scrutiny arrangements

Contact person for access to background papers and further information:

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Background Papers:

There are no background papers to this report

Background Information

Relationship to Corporate Priorities	The transfer of public health functions are in line with the Council's priorities around health and well-being.
Financial	There are no financial issues arising from this report.
Legal Implications	The Legal implications and requirements to ensure lawful decision making from the 1st April 2013 are outlined in this report.
Equality/Diversity Implications	None
Sustainability Implications	None
Staffing/E-Government/Asset Management Implications	The transfer of public health will result in NHS staff transferring to the Local Authority.
Risk Management Implications	Consideration has been given to the implications of the transfer of contracts and other liabilities and the transfer of staff. A due diligence exercise in relation to these liabilities has been carried out
Health and Safety Implications	None

Background

1. The Health and Social Care Act 2012 contains a number of provisions that will see Local authorities taking the lead for improving health and coordinating local efforts to protect the public's health and wellbeing.
2. The Act provides for the transfer of specific elements of the Public Health function to the local authority as well as the establishment of a Health and Wellbeing Board and revised arrangements for health scrutiny. The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 were issued on the 8th February 2013 which set out the specific requirements around the HWB and Health Scrutiny.
3. Much of the ground work around these changes has been carried out. Work on the transfer of public health has been on-going for some time and a shadow Health and Well-being Board has been in place since May 2012. New arrangements around Health Scrutiny were also put in place at the same time.
4. The public health function will be based in the Children, Families and Wellbeing Directorate which was created as a result of the merger of the Children and Young People's and Communities and Wellbeing Directorates.
5. The changes require a number of changes to the Council's constitution and these are set out below.

Public Health

6. Section 12 of the Health and Social Care Act gives each relevant local authority a new duty to take such steps as it considers appropriate to improve the health of people in their area.
7. The Public Health Service will provide a wide range of services in the key area of Public Health. This is a new service for Trafford and involves the transfer of substantial health improvement duties on the 1 April 2013 from the NHS. The role is to commission a range of mandatory and other public health services to people aged 5 and over in Trafford and services (appendix A) that are designed to:
 - Improve significantly the health and wellbeing of the people of Trafford
 - Carry out health protection functions
 - Reduce health inequalities across the borough
 - Ensure the provision of healthcare advice
8. Work on the transfer of public health to the Council has been underway for some time. The Director of Public Health and his team will transfer to the Council on the 1st April. The public health grant allocation was announced in January in the sum of £10.171m to support public health related activity. The service will be hosted in the new Children, Families and Wellbeing Directorate
9. The transfer will require some constitutional changes and the Council is asked to agree to the following:
 - The role and responsibilities of the Director of Public Health and the specific delegations to the post holder and their team that may be required in addition to general officer delegations that are already included in the constitution (appendix A).
 - Changes to the role and responsibilities and scheme of delegation arising from the merger of the Children and Young People's and Community Wellbeing Directorates.
 - Changes to the Delegations to the Corporate Director of Children, Families and Wellbeing to reflect a strategic overview of the local authority's public health responsibilities and statutory responsibilities around children's and adults services (appendix A).
 - Amendments that are required to the Constitution to reflect the position of Director of Public Health as a statutory senior post (appendix A).
10. The Acting Director of Legal and Democratic Services will make the appropriate consequential amendments to the constitution arising from these changes.

Health and Well-being Board

11. The Health and Social Care Act 2012 also establishes the Health and Wellbeing Board (HWB) as a statutory Committee of the Council from the 1st April 2013. The Act sets out requirements in relation to the membership, responsibilities and functions of the Board.
12. The Department of Health (DoH) issued regulations on the 8th February 2013 about the formal arrangements for the Health and Well-being Board and guidance

on the procedural arrangements for such Boards was issued by the LGA and Association of Democratic Services Officers (ADSO) on the 28th February.

13. The Act gives Health and Wellbeing Boards specific functions. These are a statutory minimum and further functions can be given to the boards in line with local circumstances. The statutory functions are:

- To prepare Joint Strategic Needs Assessments (JSNAs) and Joint Health and Wellbeing Strategies (JHWSs), which is a duty of local authorities and clinical commissioning groups (CCGs).
- To encourage integrated working between health and social care commissioners, including providing advice, assistance or other support to encourage arrangements under section 75 of the National Health Service Act 2006 i.e. lead commissioning, pooled budgets and/or integrated provision) in connection with the provision of health and social care services.
- To encourage close working between commissioners of health-related services and the board itself.
- 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.

14. Other functions may be delegated by the council under section 196(2) of the Health and Social Care Act 2012 as appropriate.

15. The Health and Wellbeing Board is a statutory Committee of the Council. However, the regulations make provision for the disapplication and modification of certain enactments relating to local authority committees appointed under section 102 of the Local Government Act 1972. The aim is to provide local areas with the flexibility and freedom to shape their Health and Wellbeing Boards as best fits with local circumstances. In particular:

- Health and Wellbeing Boards will be free to establish sub-committees and delegate functions to them;
- voting restrictions have been lifted so that non-elected members of a Health and Wellbeing board (i.e. CCG representative, local Healthwatch, Directors of Public Health, Children's Services and Adult Social Services and any wider members) can vote alongside nominated elected representatives on the board.
- political proportionality requirements have also been lifted so that the question of political proportionality of Health and Wellbeing board membership is left to local determination.

16. The Council agreed to set up a Shadow HWB and approved Terms of Reference and membership at the meeting of Council held on 23rd May 2012. The Shadow Board opted for a small membership in line with the guidelines set out by the Department of Health. The membership of the board during 2012/13 was as follows:

- Executive Member for Community Health and Wellbeing
- Executive Member for Adult Social Services
- Executive Member for Supporting Children and Families
- Shadow Executive Member for Community Health and Wellbeing
- Non-Executive Member GM Cluster Board
- Corporate Director of Communities and Wellbeing *

- Corporate Director of Children and Young People *
- Director of Public Health *
- Chair of Pathfinder Clinical Commissioning Group
- Nominated Director Pathfinder Clinical Commissioning Group
- Pathfinder Clinical Commissioning Group Lay Member
- Chair of LINK until such time that it becomes Health Watch

* Must be appointed to HWB (note: at least one Councillor and one member of the CCG must be appointed. A member of the Healthwatch must also be appointed to the Board. The Council membership is nominated by the Leader of the Council)

17. The current arrangements provide for the Executive Member for Community Health and Wellbeing to chair the board and a nominated individual to serve as vice chair. There is provision that where a discussion has been held on a particular subject other relevant stakeholders have been invited to attend the board.

18. The arrangements for the Shadow HWB fall are in line with the regulations and it is not proposed to make any changes to these. In summary, the HWB will include the following features:

- Political proportionality requirements are disapplied.
- The membership include statutory and local choice appointments.
- All members of the Health and Wellbeing Board are able to vote.
- All voting members will be subject to the Council's Code of Conduct.
- The HWB is subject to the Council's arrangements around transparency of decision making and public access to information. It is also subject to requirements under the Freedom of Information, Equality and Data Protection Acts.

19. The establishment of a statutory HWB will require amendments to the Council Constitution and these are attached at appendix B. The changes are based on the existing membership and working arrangements for the Shadow Health and Wellbeing Board and include:

- amendments to Article 8 to reflect the establishment of the Health and Wellbeing board
- an addition to Part 3 'Responsibility for Functions' to reflect the membership and terms of reference of the Board

20. Other amendments will be required to Part 4 of the Council Procedure Rules to reflect issues of quorum, membership, voting rights as arise from regulations and Part 5 - Code of Conduct to reflect its extension to all members of the Board. The Acting Director of Legal and Democratic Services will make the appropriate consequential amendments to these sections.

Health Scrutiny

21. New regulations in relation to health scrutiny were issued on 8th February which make provision for local authorities to review and scrutinise matters relating to the planning, provision and operation of the health service in their area. They replace the previous 2002 regulations on health scrutiny.

22. Under the new arrangements for health scrutiny, local authorities have greater flexibilities in how they discharge their health scrutiny functions. It is for the Council

to decide how they wish to deal with health scrutiny matters and they can delegate their responsibilities to Overview and Scrutiny Committees or other Committees (as opposed to the previous position which required the establishment of a Scrutiny Committee to deal with health scrutiny).

23. Certain elements of the previous regulations have been preserved but there are new obligations on NHS bodies, relevant health service providers and local authorities around consultations on substantial developments or variations to services to aid transparency and local agreement on proposals.
24. The Council reviewed its scrutiny arrangements in May and September 2012 and given the importance of health scrutiny established a separate Health Scrutiny Committee alongside a Scrutiny Committee (Minute numbers 11 and 40 refer). The Council also took account of the statutory powers which enable a scrutiny committee to refer a proposed substantial variation in service delivery to the Secretary of State. The Council put arrangements in place that any intended referral by the Health Scrutiny Committee to the Secretary of State must also be agreed by the Chairman of the Scrutiny Committee.
25. It is recommended that the arrangements put in place for health scrutiny be retained and that any constitutional changes required as a consequence of the new regulations and subsequent guidance be made by the Acting Director of Legal and Democratic Services.

Consultation on Changes

26. Before making any recommendations or suggesting amendments to the Constitution the Monitoring Officer is required to consult the Standards Committee, the Scrutiny Committee and the Executive under article 15 of part 2 of the Constitution.
27. The Executive met on the 4th March and made no comments on the proposals set out in the report.
28. There are no scheduled meetings of Scrutiny Committees so the Chairmen and Vice Chairmen were consulted under urgent business. Any issues raised will be reported at Council.
29. The Standards Committee is scheduled to meet on the 6th March and any comments will be reported at Council.

APPENDIX A – TRANSFER OF PUBLIC HEALTH

PART 3 - SCHEME OF DELEGATION TO OFFICERS

DIRECTOR OF PUBLIC HEALTH	<p>The holder of the post of Director of Public Health shall be responsible for the management of the public health function within the Children, Families and Well-being Directorate and the discharge of the statutory responsibilities of the Director of Public Health. This includes:</p> <ul style="list-style-type: none"> • Preparing the annual report on the health of the local population • Responsibility for all of the Council’s duties to take steps to improve public health • Responsibility for the delivery of 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 – these include services mandated by regulations made under section 6C of the 2006 Act, inserted by section 18 of the 2012 Act. • Exercising the Council’s functions in planning for, and responding to, emergencies that present a risk to public health, their local authority’s role in co-operating with the police, the probation service and the prison service to assess the risks posed by violent or sexual offenders. • Carrying out of such other public health functions as the Secretary of State specifies in regulations • Being responsible for the Council’s public health response as a responsible authority under the Licensing Act 2003, such as making representations about licensing applications. • If the local authority provides or commissions a maternity or child health clinic, then regulations made under section 73A(1) will also give the Director of Public Health responsibility for providing Healthy Start vitamins (a function conferred on local authorities by the Healthy Start and Welfare Food Regulations 2005 as amended). • Being a member of the Health & Well Being Board. <p>The following mandatory and other public services will be carried out by the Director of Public Health</p>
MANDATORY SERVICES	
1. Appropriate access to sexual health services (ie., comprehensive sexual health services (including testing and treatment for sexually transmitted infections, contraception outside of the GP contract and sexual health promotion and disease prevention)	
2. Steps to be taken to protect the health of the population, in particular, giving the local authority a duty to ensure there are plans in place to protect the health of the population	
3. Ensuring NHS commissioners receive the public health advice they need	
4. The National Child Measurement Programme	
5. NHS Health Check assessment.	
OTHER SERVICES	
1. Tobacco control and smoking cessation services	
2. Alcohol and drug misuse services	
3. Public health services for children and young people aged 5-19 (including Healthy Child Programme 5-19) (and in the longer term all public health services for children and young people)	
4. Interventions to tackle obesity such as community lifestyle and weight management services	
5. Locally-led nutrition initiatives	
6. Increasing levels of physical activity in the local population	
7. Public mental health services	

OTHER SERVICES
8. Dental public health services
9. Accidental injury prevention
10. Population level interventions to reduce and prevent birth defects
11. Behavioural and lifestyle campaigns to prevent cancer and long-term conditions
12. Local initiatives on workplace health
13. Supporting, reviewing and challenging delivery of key public health funded and NHS delivered services such as immunisation and screening programmes
14. Local initiatives to reduce excess deaths as a result of seasonal mortality
15. The local authority role in dealing with health protection incidents, outbreaks and emergencies
16. Public health aspects of promotion of community safety, violence prevention and response
17. Public health aspects of local initiatives to tackle social exclusion
18. Local initiatives that reduce public health impacts of environmental risks.

Part 3 – Corporate Director Delegations

Add the following to the Scheme of Delegation for the Corporate Director for Children, Families and Wellbeing.

Without prejudice to the specific delegations to the Director of Public Health to maintain a strategic overview of the discharge of the Council's functions in relation to public health.

Amendments will also be made to the roles and responsibilities and scheme of delegation to reflect the new Directorate following the merger of the Children and Young People's and Communities and Wellbeing Directorates.

Part 3 - Appointment of Officers

1. As set out in Article 12 of the Constitution, the following designations have been made:
 - a) The Chief Executive is designated Head of Paid Service in accordance with section 4 of the Local Government and Housing Act 1989
 - b) The Director of Legal & Democratic Services is designated Monitoring Officer in accordance with section 5 of the Local Government and Housing Act 1989
 - c) The Director of Finance is designated Chief Finance Officer in accordance with section 151 of the Local Government Act 1972
2. The Chief Executive is appointed Returning Officer for any constituency or part of a constituency coterminous with or contained in the Borough of Trafford
3. The Chief Executive is appointed Returning Officer for the elections of Councillors for the Borough of Trafford and of Councillors for parishes within the Borough.
4. The Chief Executive is appointed Registration Officer for any constituency or part of a constituency coterminous with or contained in the Borough of Trafford.
5. The Chief Executive following consultation with the Leader of the Council may appoint a Corporate Director to the role of Deputy Chief Executive on such terms and conditions including remuneration, as the Chief Executive sees fit. The Deputy Chief Executive shall:

1. undertake any duties delegated to him/her by the Chief Executive
2. perform duties of the Chief Executive set out in this Constitution either;
 - (i) upon the instruction of the Chief Executive; or
 - (ii) upon the instruction of the Leader of the Council when the Chief Executive is absent from his/her duties for whatever reasons for a period of five consecutive working days or more. During such times, the Deputy Chief Executive shall undertake any of the powers of the Chief Executive set out in this Constitution, except where the Constitution already provides for deputising arrangements (for example, Proper Officer functions)
6. The Director of Legal & Democratic Services is appointed as the officer who may do acts in respect of Registration in the event of the Chief Executive's absence or incapacity
7. The Corporate Director Children, Families and Wellbeing is appointed as the Statutory Director of Children' Services under section 18 of the Children Act 2004
8. The Corporate Director Children, Families and Wellbeing is appointed as the Statutory Director of Social Service (Adults) under section 6 of the Local Authority Social Services Act 1970
9. The Corporate Director Transformation and Resources is appointed as the Statutory Scrutiny Officer under section 21ZA of the Local Government Act 2000
10. The Director of Public Health is appointed as the Statutory Director of Public Health as required under the Health and Social Care Act 2012.

Appendix B – Health and Wellbeing Board

Part 2 - ARTICLE 8 – REGULATORY AND OTHER COMMITTEES

8.01 Regulatory and other committees

- (a) The Council will appoint the committees set out in the left hand column of the table “Responsibility for Council Functions” in Part 3 of this Constitution to discharge the functions described in column 3 of that table.
- (b) These Committees will conduct their proceedings in accordance with Article 13.
- (c) The Council will appoint a Health and Wellbeing Board with the membership and terms of reference as set out in the table “Responsibility for Council Functions” in Part 3 of this Constitution. The Board will conduct their proceedings in accordance with the procedure rules in Part 4 of the Constitution.

Part 3 - RESPONSIBILITY FOR COUNCIL FUNCTIONS

Committee	Membership	Functions
Health and Well-Being Board (established in accordance with S194 of the Health and Social Care Act 2012).	Membership of the Health and Wellbeing Board will comprise of: <ul style="list-style-type: none"> • Executive Member for Community Health and Wellbeing • Executive Member for Adult Social Services • Executive Member for Supporting Children and Families • Shadow Executive Member for Community Health and Wellbeing • Non-Executive Member GM Cluster Board • Corporate Director of Children, Families and Wellbeing * • Director of Public Health * • Chair of Clinical Commissioning Group • Nominated Director Clinical Commissioning Group 	<u>Terms of Reference</u> <ol style="list-style-type: none"> 1. To provide strong leadership and direction of the health and wellbeing agenda by agreeing priority outcomes for health and wellbeing. 2. To develop a shared understanding of the needs of the local population and lead the statutory Joint Strategic Needs Assessment (JSNA). 3. To seek to meet those needs by producing a Joint Health and Wellbeing Strategy for Trafford and ensure that it drives commissioning of relevant services. 4. To drive a genuine collaborative approach to commissioning of improved health and care services which improve the health and wellbeing of local people and reduces health inequalities. 5. To promote joined-up commissioning plans across the NHS, social care and public health. 6. To have oversight of local Clinical Commissioning Group (CCG) and local authority commissioning plans. 7. To operate as a thematic partnership within the context of the Sustainable Community Strategy Trafford 2021 and align its work to the Trafford Partnership in that capacity. 8. To improve local democratic accountability and engage with the Health and Wellbeing Forum which includes Trafford residents, service providers and other key stakeholders to

Committee	Membership	Functions
	<ul style="list-style-type: none"> • Clinical Commissioning Group Lay Member • Chair Health Watch <p>The Executive Member for Community Health and Wellbeing will chair the board and a nominated individual will serve as vice chair</p> <p>* Denotes that this position must be represented on the HWB (Note at least one Councillor and one member of the CCG must be appointed. A representative from Healthwatch must also be a member)</p> <p>The Council Membership is nominated by the Leader of the Council)</p>	<p>understand health and wellbeing needs in Trafford.</p> <p>9. To monitor and review the delivery of health and wellbeing improvements and outcomes through robust performance monitoring.</p>