

Report of the City Solicitor/Director of Adult Social Services

Report to General Purposes Committee

Date: 7 May 2013

Subject: Establishing a Health and Wellbeing Board

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

- 1 The Health and Social Care Act 2012 made fundamental changes to the organisation of the health service, including the transfer of public health functions to local authorities.
- 2 The 2012 Act requires the authority to establish a Health and Wellbeing Board as a committee, to discharge specific statutory functions. The minimum membership of the Board is prescribed by statute, but the authority and the Board itself may appoint additional appropriate people. The authority may direct which members should be non-voting, but only after consultation with the Health and Wellbeing Board.
- 3 The report outlines the recommendations of the Executive Board at its meeting on 24 April, in relation to governance arrangements for the Board.
- 4 This report asks the General Purposes Committee to consider and make recommendations to full Council about the proposed arrangements for a Health and Wellbeing Board.

Recommendations

- 5 General Purposes Committee are asked to:
 - 5.1 Consider the recommendations of the Executive Board in relation to governance arrangements for the Health and Wellbeing Board; and

5.2 Make the following recommendations to full Council:

- To approve the terms of reference for the Health and Wellbeing Board set out in appendix 1 to this report.
- To approve the membership proposals for the Health and Wellbeing Board set out in appendix 2 to this report.
- To approve amendments to the Council Procedure Rules to provide for:
 - the quorum for the Health and Wellbeing Board to be four to include one councillor and a Clinical Commissioning Group (CCG) representative; and
 - substitute arrangements for councillors who are members of the Leeds Health and Wellbeing Board, as set out in paragraph 3 to this report.
- To consult the Health and Wellbeing Board about the proposed direction in relation to voting rights, as set out in paragraph 3 of this report.
- To delegate authority to the City Solicitor:
 - to consider the response of the Health and Wellbeing Board about the direction in relation to voting rights, and subject to consultation with the Leader, to make a direction; and
 - further to any appointments made by the Health and Wellbeing Board, amend the Council Procedure Rules to provide for substitute arrangements for voting non-councillor members of the Board, in the terms outlined in paragraph 3 of this report.
- To approve a new Article 17 relating to Health, as set out in appendix 3.
- To approve amendments to the Area Committees' terms of reference so that those committees may advise or make representations to the Health and Wellbeing Board, and also consider proposals referred to them by the Health and Wellbeing Board.
- To approve amendments to the Executive and Decision-making Procedure Rules as set out in appendix A to item 8 on the agenda.

1 Purpose of this report

- 1.1 Further to the Health and Social Care Act 2012, to ask the General Purposes Committee to make recommendations to full Council about governance arrangements for the Health and Wellbeing Board.

2 Background information

- 2.1 The Health and Social Care Act 2012 made significant changes to the overall structure of the health service, and transferred functions relating to public health to the local authority. The Act has significantly impacted on the authority's governance arrangements. From 1 April, (to be reported to full Council on 8 May), the Leader amended the officer delegation scheme (executive functions) to authorise the Director of Public Health to discharge new statutory responsibilities. Health scrutiny arrangements and other consequential amendments were also amended to reflect changes in the legislation.
- 2.2 The 2012 Act requires the authority to establish a **Health and Wellbeing Board**, as a **committee** of full Council.
- 2.3 At its meeting on 24 April 2012, the Executive Board considered a report from the Director of Adult Social Services about establishing the Health and Wellbeing Board. This report provided background information about the 2012 Act.
- 2.4 The report to the Executive Board also outlined work carried out by the shadow Health and Wellbeing Board for Leeds (established in September 2011), and detailed information about the proposed purpose and approach of the Health and Wellbeing Board. The report indicated that the primary purposes of the Board will be to improve the health and wellbeing of the population of the city and in doing so improve the health of the poorest the fastest. Some of the key functions of the Board are shared statutory duties of the authority and the new Clinical Commissioning Groups (CCGs), and other partners are also involved in the Board. It is therefore vital to retain and build upon the spirit of joint working which has been developed by the shadow Board.
- 2.5 At the meeting on 24 April, the Executive Board made recommendations to this committee about governance arrangements for the Health and Wellbeing Board. These are detailed in paragraph 3, below.
- 2.6 The 2012 Act sets a statutory **core minimum membership**, which includes:
- at least one councillor (to be nominated by the Leader);
 - the directors of Adult Social Services, Children's Services and Public Health;
 - a representative appointed by Local Healthwatch; and
 - a representative appointed by each CCG (of which there are 3 within the authority's area).
- 2.7 However, the authority and/or the Health and Wellbeing Board can appoint additional members, as they think appropriate. A representative from NHS

England (previously known as NHS Commissioning Board) is also required to “participate” when the Board are discharging certain functions.

- 2.8 Many of the usual statutory provisions relating to council committees apply to the Board, such as those relating to access to information. However, regulations modify some provisions. In particular, **no political balance** requirements apply to appointments to the Board.
- 2.9 Regulations also provide for all members on the Board, (including council officers and co-optees) to be **voting** members **unless** the authority has **directed** otherwise. Before making such a direction, the authority must consult with the Board. Any voting co-optees (including officers) will need to comply with the authority’s Members’ Code of Conduct.

3 Main issues

- 3.1 The proposed **terms of reference** for the Board are attached as appendix 1 to this report. These reflect the specific statutory “core” functions which the Board must carry out. Functions include preparing the joint strategic needs assessment (JSNA) and the joint health and wellbeing strategy (JHWS) (on behalf of the authority and CCGs), and encouraging integrated working (functions 1 – 3).
- 3.2 The Act also provides that Board may also discharge **other functions** delegated to it by the authority (reflected in function 9 of the terms of reference). There are currently no proposals for any council function to be delegated to the Board, nor any executive functions. However, it is proposed to update the Executive and Decision Making Procedure Rules to clarify that the Leader may delegate executive functions to the Board at any time. Any such delegations will be reported by the Monitoring Officer to the next ordinary meeting of full Council. The proposed amendments also provide for the Leader to notify full Council of any delegations to the Health and Wellbeing Board, at the annual meeting. Appendix A of item 8 on this agenda sets out these amendments, together with other unrelated updates to the Rules. Any decisions taken by the Board in relation to these other functions, may be subject to call in – see further below.
- 3.3 The **proposed membership** for the Board, as recommended to this committee by the Executive Board at its meeting on 24 April, is set out in appendix 2 to this report. The Leader has indicated that he will nominate 3 Executive Members to the Health and Wellbeing Board, and one further councillor from each of the main opposition groups (to promote cross-group consensus about the decisions taken by the Board). This reflects the existing number and balance of councillors on the shadow Board. The three statutory officers must all be members; as must 3 CCG representatives (each CCG directly appointing its representative), and a representative directly appointed by Healthwatch Leeds (the Local Healthwatch organisation).
- 3.4 To complement the statutory membership, the Executive Board recommended that the following are appropriate additional representatives, who should be appointed by the authority:

- a representative of the third sector (in its capacity as a commissioner, since it plays a strategic role in commissioning and bringing resources to the City); and
- a representative of NHS England (which is responsible for approximately a third of the health expenditure in the city, and which directly commissions primary care and specialist services, and is therefore a vital partner in realising the City's vision).

3.5 It is not proposed that the authority appoints a provider representative to the Board; the Leeds Health and Social Care Transformation Programme Board is an established forum for commissioners and providers to discuss how to improve services and efficiency.

3.6 As stated above, the Leeds Health and Wellbeing Board may itself appoint such additional members as it thinks appropriate. It recommended that in recognition of the partnership nature of the Board, any further appointments should be left for determination by the Health and Wellbeing Board itself. From work undertaken by the shadow Board to date, it is anticipated that such appointments are likely to be a second CCG representative from each CCG, and an additional Healthwatch Leeds representative.

3.7 The Executive Board recommended the **voting arrangements** set out in appendix 2 to this report. That is, that the following should vote:

- all councillors appointed to the Board by full Council;
- the representative directly appointed by each CCG;
- the representative directly appointed by Healthwatch Leeds; and
- the Third Sector representative.

This arrangement provides for a **parity of votes** between the Council and its partners. This reflects the nature of the Health and Wellbeing Board as a partnership. The Chair will have a casting vote in the event of an equality of votes.

3.8 The terms of a **direction** to give effect to these voting arrangements, are as follows:

“The Council directs that all members of the Health and Wellbeing Board shall be non-voting except for:

- all councillors appointed to the Board by full Council;
- the representative directly appointed by each CCG;
- the representative directly appointed by Healthwatch Leeds; and
- the Third Sector representative.

Any substitute member appointed under Council Procedure Rules who is attending a meeting in place of one of the above members, may also vote at that meeting.”

- 3.9 The direction itself may be reviewed or amended at any time. Identifying non-voting members in this way, (that is, by exception), secures the parity of voting arrangements, whatever additional appointments may be made to the Board. The direction can only be made after consultation with the Health and Wellbeing Board. It is therefore proposed that the City Solicitor is given delegated authority to consider the response of the Health and Wellbeing Board, and subject to consultation with the Leader, to make a direction about voting.
- 3.10 The Executive Board recommended that to provide that the **quorum** for the Health and Wellbeing Board should be four, including one councillor and a CCG representative.
- 3.11 The Executive Board also recommended that **substitute** members for councillors on the Leeds Health and Wellbeing Board, are be appointed via nomination from the relevant group whip, and that relevant non-voting representatives act as substitutes for other voting representatives. It is therefore is proposed that the City Solicitor be given delegated authority to amend the Procedure Rules to provide for a non-voting representative to substitute for a relevant voting representative, should the Health and Wellbeing Board appoint any additional members to the Board.
- 3.12 It is also proposed that a **new Article** be approved, setting out the authority’s arrangements relating to health. The proposed Article is set out in appendix 4 to this report.
- 3.13 Consequential amendments to the **terms of reference for Area Committees** are also proposed, so that those committees may advise or make representations to the Health and Wellbeing Board, and may also consider any proposals referred to them by the Health and Wellbeing Board.
- 3.14 In relation to **scrutiny**, the terms of reference for the Scrutiny Board (Health and Well-being and Adult Social Care) have been updated by the Monitoring Officer under her delegated authority, to reflect legislative changes to health scrutiny arrangements. As part of those amendments, the Scrutiny Board’s general review and scrutiny functions were also extended to functions discharged by the Health and Wellbeing Board.
- 3.15 By law, decisions taken by the Health and Wellbeing Board under its core statutory functions **cannot** be subject to **call-in**, as they are not executive functions. However, any executive decisions taken by the Health and Wellbeing Board (that is, taken in respect of any functions delegated from the Leader) must comply with the usual provisions about executive decisions. Any key decisions taken on behalf of the Leader by the Board will therefore be subject to call-in.

Further amendments are also proposed to the **Executive and Decision Making Procedure Rules** to clarify the position in relation to call in, and the process to be followed if a decision is referred back to the Health and Wellbeing Board as

decision maker. It is proposed that if a matter is urgent, the Rules provide for a relevant Director (under their existing concurrent delegated authority), to confirm a decision of the Board, or vary a decision in line with the recommendations of a Scrutiny Board. These proposed amendments are also set out in appendix A of item 8 on this agenda.

4 Corporate Considerations

4.1 Consultation and Engagement

4.1.1 The Executive Board, at its meeting on 24 April 2012 considered governance arrangements for the Board, as detailed in this report. Other consultation was previously carried out with a number of citywide strategic partnership groups, (the Integrated Commissioning Executive, the Leeds Health and Social Care Transformation Programme Board, and the shadow Health and Wellbeing Board, which includes relevant Executive Members).

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 As a local authority committee, the Health and Wellbeing Board will have to meet public sector equality duties. Equality considerations integrated into the JSNA and JHWS processes will help the authority and other health bodies discharge these equality duties.

4.3 Council policies and City Priorities

4.3.1 The JHWS will inform Health and Wellbeing City Priority Plan, and drive forward its delivery.

4.4 Resources and value for money

4.4.1 The JHWS will be based upon a number of factors, including the current financial context. It will be designed to inform commissioning plans across the partnership with a view to making the best use of collective resources.

4.5 Legal Implications, Access to Information and Call In

4.5.1 This decision is not open to call-in. No information in this report has been classified as exempt.

4.5.2 The proposed arrangements for the Health and Wellbeing Board comply with the requirements of the legislation.

4.6 Risk Management

4.6.1 The establishment of a robust Health and Wellbeing Board will place Leeds in an excellent position to mitigate the risks presented by the unprecedented changes in the structure of the NHS, as well as taking advantage of opportunities arising. The Board will develop its own risk register.

5 Conclusions

- 5.1 The requirement to establish a Health and Wellbeing Board provides an opportunity to integrate partnership working into the authority's formal decision-making arrangements.
- 5.2 Appointing additional non-statutory members will broaden and strengthen partner engagement with the Health and Wellbeing Board. The arrangements will help build a strong and effective partnership to improve the commissioning and delivery of services across the authority and NHS. This, in turn, should lead to improved health and wellbeing for local people.

6 Recommendations

- 6.2.1 General Purposes Committee are asked to:
- 6.2.2 Consider the recommendations of the Executive Board in relation to governance arrangements for the Health and Wellbeing Board; and
- 6.2.3 Make the following recommendations to full Council:
- To approve the terms of reference for the Health and Wellbeing Board set out in appendix 1 to this report.
 - To approve the membership proposals for the Health and Wellbeing Board set out in appendix 2 to this report.
 - To approve amendments to the Council Procedure Rules to provide for:
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 - further to any appointments made by the Health and Wellbeing Board, amend the Council Procedure Rules to provide for substitute arrangements for voting non-councillor members of the Board, in the terms outlined in paragraph 3 of this report.
 - To approve a new Article 17 relating to Health, as set out in appendix 3.

- To approve amendments to the Area Committees' terms of reference so that those committees may advise or make representations to the Health and Wellbeing Board, and also consider proposals referred to them by the Health and Wellbeing Board.
- To approve amendments to the Executive and Decision-making Procedure Rules as set out in appendix A to item 8 on the agenda.

7 Background documents¹

7.1 None

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.