

COUNCIL

DATE: 16TH APRIL 2013

SUBJECT: HEALTH AND WELLBEING BOARD

REPORT BY: CHIEF EXECUTIVE (HEAD OF POLICY & PERFORMANCE)

CONTACT OFFICER: DEBBIE JANES 01582 546038

IMPLICATIONS:

LEGAL	COMMUNITY SAFETY
EQUALITIES	ENVIRONMENT
FINANCIAL	CONSULTATIONS
STAFFING	OTHER
WARDS AFFECTED:	NONE

PURPOSE

1. To seek Council's approval to the proposed governance arrangements for the Health and Wellbeing Board.

RECOMMENDATIONS

2. Council is recommended to:
 - (i) approve, with immediate effect, the establishment of a Health and Wellbeing Board in accordance with the governance arrangements set out at Appendix A to this report;
 - (ii) approve, in accordance with the governance arrangements set out at Appendix A, that:
 - (a) all members of the Health and Wellbeing Board shall have equal voting rights and
 - (b) substitute members shall be permitted to attend on behalf of members of the Board who are unable to be present;

- (iii) **note that Regulation 7 of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 modifies Sections 15 and 16 and Schedule 1 of the Local Government and Housing Act 1989 to dis-apply the political proportionality requirements for Section 102 Committees in respect of Health and Wellbeing Boards;**
- (iv) **approve the membership of the Health and Wellbeing Board as set out at Appendix A which includes the following local authority elected members nominated by the Executive Leader:**

Councillors M. Hussain, Akbar and Ashraf, being the Executive members with Portfolio responsibility for Adult Social Care, Children’s Services and Public Health, respectively, and a representative of the smaller Minority Group represented on the Council, the name of that appointee to be notified to the Council meeting;
- (v) **That names of substitute members be advised to the Democracy Manager by Friday 31st May 2013 so that they may apply to the first meeting of the Board to be held on 3rd June 2013; and**
- (vi) **instruct the Monitoring Officer to make the necessary changes to the Council’s Constitution to give effect to the establishment of a Health and Wellbeing Board in accordance with the governance arrangements set out at Appendix A to this report.**

BACKGROUND

3. Section 194 of the Health and Social Care Act 2012 (“the 2012 Act”) requires that every upper tier local authority establishes a Health and Wellbeing Board by 1st April 2013. The Boards are intended to be a forum for collaborative local leadership with equal participation of elected members, officers and external partners.

Establishment of Health and Wellbeing Boards

4. Under Section 194 of the 2012 Act, a Board is to established and treated as if it was a Committee appointed under Section 102 of the Local Government Act 1972 (“the 1972 Act”). However the Boards as proposed do not fit within local authority structures, so the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 (“the 2013 Regulations”) have modified and dis-applied certain provisions of the 1972 Act and the Local Government and Housing Act 1989, to allow the participation of elected members, corporate directors and partners. Those modifications and dis-applications also apply to any Sub-Committees established by the Board.
5. The establishment of the Board requires full Council approval. This matter is before the Council this evening as whilst the Board must come into effect from

1st April 2013, the Regulations were only published on 8th February 2013 and guidance on their interpretation on 28th February, after the last Council meeting held on 20th February 2013. The first meeting of the formally established Board is not until June 2013.

Functions of Health and Wellbeing Boards

6. The functions of the Board must include the statutory functions required under the 2012 Act, namely:
 - preparation of Joint Strategic Needs Assessment (JSNA) and Joint Health and Wellbeing Strategies (JHWSs),
 - functions as to promoting integrated working, and
 - any other functions that the Council wishes to delegate to it that are exercisable by the authority.
7. The Terms of Reference shown at Appendix A describe the functions that the Board will be carrying out and there are no current plans to include any other functions permitted under bullet point 3 above.

Membership

8. As referred to at paragraph 3 above, the Boards as proposed do not fit within local authority structures, in particular the establishment of Committees under Section 102 of the 1972 Act which does not allow officers to be members of local authority Committees. Regulation 5 (1) of the 2013 Regulations removes the restriction on membership to allow local authority directors specified in the 2012 Act to become members of health and wellbeing boards.
9. The core memberships of the Board is prescribed by legislation and includes elected members, corporate directors and external partners. The membership proposed as shown in Appendix A, reflects the current composition of the Shadow Health and Wellbeing Board which reflects the minimum requirements of the 2012 Act, with the addition of the Chair of the Community Safety Executive.
10. The 2012 Act also requires the appointment of a representative of the NHS Commissioning Board for the purpose of participation in the preparation of the Joint Strategic Needs Assessment (JSNA) and Joint Health and Wellbeing Strategy (JHWS) and when considering the NHS Commissioning Board's commissioning functions for the area. The membership proposed at Appendix A provides for the representative to be a full voting member which can be accommodated by the discretionary power under the Act for the Council to appoint additional members.
11. The 2012 Act specifically requires that Councillor membership be nominated by the Executive Leader (in Councils operating Executive arrangements, like Luton), with powers for the Leader to be a member of the Board in addition to

or instead of other Councillors. Whilst the power to nominate Councillors falls to the Executive Leader, the appointment of the membership of the Board is a matter for Council.

Substitute Members

12. The 2013 Regulations are silent on the issue of substitutions so the approach to substitutions is for local determination. The Shadow Health and Wellbeing Board have expressed a preference for substitute members and a scheme of named substitutes is recommended as set out at Appendix A.
13. The notification and voting arrangements for substitute members, mirrors the arrangements that apply to the Council's scrutiny function; that is, placing the responsibility upon the member to arrange a substitute where they cannot attend a meeting and to notify the name of their substitute member to the Democracy Manager before the start of the meeting. This aims to minimise any confusion over attendees.
14. In order to maintain continuity in business to be considered and to avoid a situation where attendance of substitutes could result in an unlawful delegation of the Boards functions (i.e. functions being discharged by anyone other than the properly constituted Board), substitute members will be sent papers for every meeting and invited to attend as observers as availability allows. In addition the quorum proposed for the Board will be seven properly appointed members attending in person (i.e. one member more than 50%) so that properly appointed members will always be in the majority.

Voting

15. Regulation 6 of the 2013 Regulations modifies Section 13 (1) of the Local Government and Housing Act 1989 to enable all members of the Health and Wellbeing Boards (or their Sub-Committees) to vote, unless the Council decides otherwise; that means the Council is free to decide which members of the Health and Wellbeing Board should be voting members. Voting arrangements need to be agreed by the whole Council. The Health and Wellbeing Board would need to be consulted on any changes proposed subsequently.
16. Whilst voting or otherwise by all members is a matter of choice for the local authority, the intention behind the legislation is that all members of Health and Wellbeing Boards should be seen as equals and shared decision makers. The aim of giving parity of esteem to all members of the Board should be borne in mind.

Political Proportionality

17. Regulation 7 of the 2013 Regulations modifies Sections 15 to 16 and Schedule 1 to the Local Government & Housing Act 1989 so that political proportionality requirements do not apply to Health and Wellbeing Boards.

18. This means that the Council can decide on the Councillor membership of the Board, whether that should be single or multi party representation and how many from each should be appointed. As mentioned at paragraph 11 above, whilst the approval of membership is a matter for the Council the nomination of elected members is a matter for the Executive Leader.

Codes of Conduct and Conflicts of Interest

19. All Councillors and co-opted members of Committees are required to comply with a Code of Conduct. Under Section 27 (4) of the Localism Act 2011, all non-Councillor members of Health and Wellbeing Boards who are entitled to vote are considered 'co-opted members' for this purpose. This means that the requirements of the Member Code of Conduct will apply to all members of Health and Wellbeing Boards – elected members, corporate directors and external partners.
20. Whilst elected members and others who have served on public bodies may be familiar with the conduct expected by the Code, the need to disclose interests, to complete a register of interest form and be aware of potential conflicts of interest where certain matters are under discussion, this may be unfamiliar to newcomers to public sector governance. The Council's Monitoring Officer is available for briefing and guidance on this matter.

Governance Arrangements for the Health and Wellbeing Board

21. In order to capture these issues in a convenient format, set out at Appendix A are proposed Operating Arrangements, Procedure Rules and Terms of Reference for the Health and Wellbeing Board.
22. These proposals have regard to the views expressed by the Shadow Health and Wellbeing Board, established by the Executive as an informal advisory body on 7th March 2011 to prepare and plan for the establishment of the new Board.

LEGAL IMPLICATIONS

23. Save as included within the Report there are no legal implications to this report and this has been agreed with J. Newman Solicitor in Legal Services on 15 March 2013.

PROPOSAL/OPTION

24. It is proposed that the Council approve the establishment of a Health and wellbeing Board as set out at paragraph 2 (i) to (v) above.

APPENDIX

25. The following appendix is attached to this report:

Appendix A: Proposed governance arrangements for the Health and Wellbeing Board.

LOCAL GOVERNMENT ACT 1972 – LIST OF BACKGROUND PAPERS:

Local Government Act 1972

Local Government and Housing Act 1989

Health and Social Care Act 2012

Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013