

COUNCIL

25 APRIL 2013

HEALTH AND WELLBEING BOARD – ESTABLISHMENT AS A COMMITTEE OF THE COUNCIL

Portfolio Holder: Councillor Rodney Chambers, Leader
Councillor David Brake, Adult Services

Report from: Dr Alison Barnett, Director of Public Health

Author: Julie Keith, Head of Democratic Services

Summary

This report asks the Council to establish the Health and Wellbeing Board (HWB) as a Committee of the Council and sets out proposed terms of reference, the membership and working arrangements for Board.

1. Budget and Policy Framework

- 1.1 Section 194 of the Health and Social Care Act 2012 requires all upper tier local authorities to establish a Health and Wellbeing Board (HWB) as a Committee of the Council from April 2013 with a membership including one or more Councillors, a representative of the Clinical Commissioning Group and Healthwatch, the Director of Public Health, the Director of Children and Adults and the NHS Commissioning Board (for certain issues).
- 1.2 Preparation of the Joint Strategic Needs Assessment (JSNA) will be a statutory responsibility of the HWB together with preparation of a Joint Health and Wellbeing Strategy (JHWS).
- 1.3 The HWB will be treated as if it were a Committee appointed by the Council under section 102 of the Local Government Act 1972. As the HWB will be very different to a normal local authority Committee, regulations have been made which came into force on 1 April 2013 making provision for the disaplication or modification of some of the usual rules relating to Council Committees. Guidance has also been published by the Local Government Association and Association of Democratic Services Officers to assist local authorities in setting up governance arrangements for HWBs.
- 1.4 The Cabinet established a Shadow HWB for Medway in September 2011, constituted as a Cabinet Advisory Group.

2. Background

- 2.1 In addition to the creation of Health and Wellbeing Boards, the Health and Social Care Act 2012 heralds the transfer of responsibility for public health and health improvement from the NHS to local authorities, the strengthening of local authority health and social care overview and scrutiny arrangements and the establishment of Healthwatch to replace Local Involvement Networks.
- 2.2 Since September 2011 the Shadow HWB in Medway has been meeting regularly and has prepared a JSNA and Joint Health and Wellbeing Strategy for Medway. The HWB has been part of the national early implementer network and has engaged in a series of externally facilitated development sessions designed to support HWB members to work collaboratively and take on their new role as system leaders; the overarching aim being to improve health, social care and well being outcomes for local communities.
- 2.3 The Council is now required to approve establishment of the HWB as a Council Committee to meet the statutory requirement effective from 1 April 2013. The Shadow Health and Wellbeing Board considered the proposed governance arrangements for the Board at its meeting on 5 March 2013 and the views of the Board are set out in paragraph 5 below.

3. Legal framework

- 3.1 A summary of the main provisions in the Health and Social Care Act relating to Health and Wellbeing Boards are set out at Appendix A for ease of reference.
- 3.2 The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 came into effect on 1 April 2013. The legal framework for HWBs is as follows:
 - a) The HWB will be able to set up advisory Sub Committees. The Board will also have a power to arrange for the discharge of its functions by a Sub Committee unless the Council directs otherwise. There is a power for the Board or a Sub Committee of the Board to delegate certain functions to a Council officer but this only extends to any additional functions which have been delegated to the Board by the Council under Section 196 (2) of the Health and Social Care Act and only where the local authority or the Board (in the case of a Sub Committee) does not otherwise direct.
 - b) Section 104 (1) of the Local Government Act 1972 (relating to disqualification for membership of Committees and Joint Committees) has been disapplied in relation to HWBs with the exception of disqualification arising from bankruptcy or criminal conviction.
 - c) The usual rules requiring political balance on local authority Committees have been disapplied in relation to HWBs. This is left to local determination.

- d) All members of the Board will be able to vote unless the local authority directs otherwise (after consultation with the Board); this provides scope for the Board to include non-voting members;
- e) Under the Localism Act 2011 all HWB members will be subject to the Code of Conduct for elected members and co-optees adopted by Medway and will have to register and declare disclosable pecuniary interests at meetings in accordance with the provisions of the Localism Act and the Medway Code, taking no further part in the meeting. The Department of Health is exploring whether a modification is necessary in relation to Clinical Commissioning Group (CCG) participation in discussions and decisions in which they could otherwise be potentially excluded;
- f) The law applying to local authorities on access to documents and meetings as set out in the Local Government Act 1972 and amending and subordinate legislation will apply to HWB meetings in the same way as it does to other Council, Committee and Sub Committee meetings; requiring public notice of meetings, holding meetings in public and making papers available with provisions to go into closed session in certain circumstances;
- g) A number of additional existing provisions in legislation will apply, including duties under the Equality Act 2010, duties under the Freedom of Information Act 2000 and the Data Protection Act 1998.

4. Proposed composition, terms of reference and working arrangements for the Health and Wellbeing Board

4.1 The Council is asked to consider and agree the governance arrangements for the Health and Wellbeing Board as set out below taking into account the views of the Shadow Health and Wellbeing Board which are set out in paragraph 5 of the report.

4.2 Membership

The current membership of the Shadow HWB is attached at Appendix B. During the shadow phase Medway has taken the view that the HWB should have a membership broadly reflecting the statutory requirements in the Health and Social Care Act 2012. This is consistent with early Department of Health advice that HWBs will discharge executive functions and should operate as equivalent executive bodies do in local government.

The regulations have disapplied the requirement for political balance to be applied in respect of the Councillors serving on the Board although this will remain a matter for local choice.

As the HWB will be subject to scrutiny by the Council's Overview and Scrutiny Committees, members are recommended to agree that Councillors and Healthwatch should not serve on either the HASC or CYP Overview and Scrutiny Committees for the first year of the life of the HWB to provide time to evaluate the issues likely to arise from dual membership. This will also enable the Council to consider and take into account any government guidance to

promote the coordination and co- operation between local Healthwatch, Health and Wellbeing Boards and local government scrutiny committees which has been called for in The Francis report of the Public Inquiry into the Mid Staffordshire NHS Foundation Trust.

Based on the arrangements in the shadow phase and taking into account the potential for conflicts of interest the recommended membership of the HWB is as set out below. The addition of the Assistant Director Adult Social Care has been suggested by the Director of Children and Adults since the meeting of the Shadow HWB on 5 March on the basis that the Health and Social Care Act envisages a seat on the Board for both the Director of Children's Services and the Director of Adult Social Services whereas in Medway there is one Director fulfilling both roles.

- 7 Councillors to be nominated by the Leader and appointed by the Council (who should not also be members of either the HASC or CYP Overview and Scrutiny Committees*). The requirements of political balance will not apply.
- Medway Healthwatch (statutory member) – one representative (who should not also be a member of either the HASC or CYP Overview and Scrutiny Committees*)
- Director of Children and Adults (statutory member)
- Director of Public Health (statutory member)
- Assistant Director Adult Social Services - under the provision allowing the appointment of such other persons (or representatives of such other persons) as the local authority thinks appropriate
- Medway Clinical Commissioning Group – three representatives (one statutory seat and two additional seats under the provision allowing the appointment of such other persons (or representatives of such other persons) as the local authority thinks appropriate
- NHS Commissioning Board/Kent and Medway Area Team – one representative - under the provision allowing the appointment of such other persons (or representatives of such other persons) as the local authority thinks appropriate

(Note* - Substitutes appointed to attend meetings of the HWB may not also be members of the Health and Adult Social Care or Children and Young People Overview and Scrutiny Committees).

4.3 Terms of Reference

The terms of reference agreed for the Shadow HWB were based on provisions in the Health and Social Care Bill. The provisions in the Act relating to the functions of the Board are broadly the same with some minor changes in terminology. The suggested terms of reference for the HWB once it becomes a Committee of the Council are as set out below. There is no

intention to delegate other Council functions to the Board at this stage. The suggested terms of reference include the four operating principles developed by a number of national organisations including the ADCS, DoH, Royal College of GPs and Royal Society for Public Health.

Health and Wellbeing Board – Proposed Terms of Reference

1. Operating Principles

In line with nationally agreed operating principles the Medway Health and Wellbeing Board will seek to:

- (i) provide collective leadership to improve health and well-being across the local authority area, enable shared decision-making and ownership of decisions in an open and transparent way;
- (ii) achieve democratic legitimacy and accountability, and empower local people to take part in decision-making;
- (iii) address health inequalities by ensuring quality, consistency and comprehensive health and local government services are commissioned and delivered in the area; and
- (iv) identify key priorities for health and local government commissioning and develop clear plans for how commissioners can make best use of their combined resources to improve local health and well-being outcomes in the short, medium and long term.

2. Key functions:

- (i) To prepare the Joint Strategic Needs Assessment (JSNA) which identifies the current and future health and wellbeing needs of the local population and may address needs around wider determinants of health.
- (ii) To prepare a Joint Health and Wellbeing Strategy for Medway to meet the needs identified in the JSNA
- (iii) To prepare the Medway Pharmaceutical Needs Assessment.
- (iv) To encourage persons who arrange for the provision of any health or social care services in the area to work in an integrated manner for the purpose of advancing the health and wellbeing of the people in Medway.
- (v) To encourage persons who arrange for the provision of any health related services (ie services that may have an effect on the health of individuals but are not health or social care services) in Medway to work closely with the Board.
- (vi) To encourage persons who arrange for the provision of any health or social care services in Medway and those who arrange for the provision of any health –related services in its area to work closely together.

- (vii) To provide advice, assistance or other support appropriate for the purpose of encouraging the making of arrangements under section 75 of the National Health Service Act 2006 (ie arrangements under which NHS bodies and local authorities agree to exercise specified functions of each other).
- (viii) To keep NHS commissioning plans under review to ensure they are taking into account the JSNA and local HWB Strategy, referring back to the CCG or the NHS Commissioning Board where they do not.
- (ix) To advise Medway Council's Cabinet of its views on whether the local authority is discharging its duty to have regard to the JSNA and Joint Health and Wellbeing Strategy in discharging its relevant functions.
- (x) To involve users and the public in the work of the Board, as appropriate.
- (xi) To play a formal role in the annual assessment of the Medway Clinical Commissioning Group.
- (xii) To undertake any other functions assigned to Health and Wellbeing Boards in legislation.

4.4 Other governance issues

The Council is recommended to agree the following governance arrangements for the operation of the Medway HWB:

4.4.1 Appointment of Chairman and Vice Chairman

Either

- a) the Chairman and Vice Chairman of the Board will be appointed at the first meeting of the Board after each Annual Council meeting, discounting the Joint meeting of all Committees on the evening of Annual Council. The Chairman will be appointed from among the Councillors serving on the Board

or

- b) the Chairman and Vice Chairman of the Board will be appointed at the first meeting of the Board after each Annual Council meeting, discounting the Joint meeting of all Committees on the evening of Annual Council. The Board will appoint a Chairman and Vice Chairman from among the whole membership of the Board subject to the positions of Chairman and Vice Chairman being held by people from the different stakeholder groups represented on the Board; **(this is an alternative suggestion by the Shadow HWB as set out in paragraph 5.2 (d) below)**

- 4.4.2 **Meetings:** The Board will meet a minimum of four times a year and be administratively supported by Medway Council's Democratic Services Team.

Meetings will take place in public with provision for exclusion of the press and public where confidential or exempt information is likely to be disclosed.

- 4.4.3 **Sub Committees:** The Board may set up advisory Sub Committees but any proposal to delegate the functions of the Board to a Sub Committee or an Officer (or from a Sub Committee to an Officer) insofar as this is permitted, shall be subject to agreement by the Council
- 4.4.4 **Attendance:** The quorum for Board meetings will be a quarter of the membership and meetings may only proceed if at least one local authority member and one CCG representative are present. Substitutions are permitted with notification to the Democratic Services Officer ahead of the meeting.
- 4.4.5 **Conduct of meetings:** Meetings will be conducted in accordance with the procedural rules applicable to Council meetings as appropriate.
- 4.4.6 **Voting:** All members of the Board will have the right to vote, subject to the law and procedures for registering and declaring interests which will require non-participation and withdrawal from meetings when conflicts of interest arise
- 4.4.7 **Programming of business:** the Board will determine its own work programme and pre-agenda processes taking into account statutory requirements relating to notice of meetings and publication and availability of agenda papers and will use the templates and standards in place for reports to other Council Committees.
- 4.4.8 **Communications and Engagement:** the Board will develop a Communications and Engagement strategy during 2013/14 which will set out how the Board will engage with stakeholders and the public and how communications on behalf of the Board will be managed.
- 4.4.9 **Operational links:** The Board will work collaboratively with other partnership bodies including the Children's Trust, the Medway Safeguarding Children Board, the Adult Safeguarding Board and the Community Safety Partnership, taking into account the need to for alignment between the Joint Health and Wellbeing Board and other key plans and strategies.
- 4.4.10 **Overview and Scrutiny:** the Board will be subject to overview and scrutiny and will respond to requests for information and representation at Overview and Scrutiny Committees as appropriate. An exercise is planned to review the protocol between Medway Council and the NHS relating to consultation on major NHS service reconfigurations. This protocol is likely to be expanded to cover information sharing and the relationship between the HWB and Overview and Scrutiny. As set out above the report of the Public Inquiry into the Mid Staffordshire NHS Foundation Trust (The Francis Report) includes a recommendation that guidance should be given by the government to promote the coordination and cooperation between local Healthwatch, Health and Wellbeing Boards and local government scrutiny committees. This may guide thinking on dual membership issues and the flow of business.
- 4.4.11 **Review:** The terms of reference of the HWB and the governance arrangements will be kept under periodic review.

5. Comments of the Shadow Health and Wellbeing Board – 5 March 2013

- 5.1 On 5 March 2013 the Shadow Health and Wellbeing Board considered the governance arrangements for the Board once it becomes a Committee of the Council. The Board noted and accepted the advice on avoidance of duality of membership between the HWB and Overview and Scrutiny Committees for the first year and agreed to recommend this rule should also apply to any substitutes appointed to attend meetings of the HWB.
- 5.2 The views of the Shadow Board on the proposals set out in this report were as follows:
- a) That the membership formula for the HWB once it becomes a Council Committee in April 2013, should be as proposed in paragraph 4.2 of the report, noting that the rules requiring political proportionality for Councillor membership have been disapplied;
 - b) That for the first year there should not be dual membership of the HWB and HASC or CYP Overview and Scrutiny Committees by Councillors or Healthwatch and that this should apply to nominated substitutes as well;
 - c) That the proposed terms of reference for the HWB as set out in paragraph 4.3 of the report are appropriate, noting there is no intention to delegate other Council functions to the HWB at this stage;
 - d) That the Council should be recommended to allow the Board to appoint a Chairman and Vice Chairman from among the whole membership of the Board rather than stipulating the Chairman should be a Councillor subject to the positions of Chairman and Vice Chairman being held by people from the different stakeholder groups represented on the Board;
 - e) That legal advice should be sought on the option of the Chairman's second or casting vote always being cast in line with the views of Healthwatch representative on the Board (see paragraph 7.4 below);
 - f) that consideration should be given to payment of special responsibility allowances to the Chairman and Vice Chairman of the HWB.

6. Risk management

- 6.1 Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community.

Risk	Description	Action to avoid or mitigate risk
Failure of the HWB to meet its statutory duties and to improve population outcomes	Failure to develop the collective leadership role of the HWB. Failure to implement the JHWS due to non- alignment of commissioning plans, lack of integration and budgetary constraints.	Continued leadership development for Board members. HWB has prioritised actions for JHWS and developed delivery plans within existing budgets. Outcomes monitored.

7. Financial and legal implications

- 7.1 The Health and Wellbeing Board will not hold a budget. However the Board will have oversight of NHS Commissioning Plans and the discharge of relevant local authority functions and will seek to ensure that both the NHS and the Council are taking the JSNA and Joint Health and Wellbeing Strategy into account.
- 7.2 The Shadow HWB has recommended that consideration should be given to payment of special responsibility allowances (SRAs) to the Chairman and Vice Chairman of the HWB. Currently there is no budget provision for this. If the Council wishes to extend the Members Allowances Scheme to include these additional SRAs it must first seek and take into account the views of the Independent Remuneration panel.
- 7.3 The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 make provision in relation to Health and Wellbeing Boards established under section 194 of the Health and Social Care Act 2012 and associated guidance has been published. The governance arrangements proposed in this report ensure compliance with the prescribed statutory framework for the operation of HWBs.
- 7.4 The Shadow HWB asked that legal advice should be sought on the option of the Chairman's second or casting vote always being cast in line with the views of the Healthwatch representative on the Board. The legal position on this is clear. The HWB is to be treated as a Committee established under Section 102 of the Local Government Act 1972. This means that Schedule 12 of the 1972 Act applies. Paragraph 39 of Schedule 12 stipulates that all matters coming or arising before a Committee of the Council shall be decided by a majority of members present and voting at the meeting and in the case of an equality of votes, the person presiding at the meeting shall have a second or casting vote. This second or casting vote cannot be reassigned. Whilst the Chairman may take into account the views of other members of the Board before using a second or casting vote he or she must reach a personal view having taken into account all relevant considerations and ignoring irrelevant ones. There is a need to ensure that when making a decision the result is not one which is irrational in the Wednesbury sense (i.e. one which no reasonable local authority could have made). The statutory framework for local authority

decision- making would not permit a constitutional provision requiring a Chairman of a Council Committee to vote in line with the views of another member with whom he or she may disagree.

8. Recommendations

- 8.1 To agree to establish a Committee of the Council called the Health and Wellbeing Board as required under Section 194 of the Health and Social Care Act 2012 with a membership as set out in paragraph 4.2 above.
- 8.2 To agree that dual membership of the HWB and HASC or CYP Overview and Scrutiny Committees should not be permissible for Councillors and Healthwatch for the first year of the Board and that this should also be applicable to any substitute members
- 8.3 To approve the proposed terms of reference for the HWB as set out in paragraph 4.3 and to note there is no intention to delegate other Council functions to the HWB at this stage.
- 8.4 With reference to paragraph 4.4.1 of this report to decide **either** that the Chairman of the HWB should be appointed from among the Councillors serving on the Board **or** alternatively (as recommended by the Shadow HWB) that the Board should appoint a Chairman and Vice Chairman from among the whole membership of the Board, subject to the positions of Chairman and Vice Chairman being held by people from the different stakeholder groups represented on the Board;
- 8.5 To agree that the Health and Wellbeing Board should appoint its Chairman and Vice Chairman at the first meeting of the Board after every Annual Council meeting rather than at the Joint meeting of Committees on the evening of Annual Council
- 8.6 To consider and agree the governance arrangements set out in paragraphs 4.4.2 to 4.4.11 of this report
- 8.7 To decide whether or not to bring forward a further report on the payment of Special Responsibility allowances to the Chairman and Vice Chairman of the HWB.
- 8.8 To authorise the Monitoring Officer, in consultation with Group Leaders, to make necessary changes to Chapter 3 to the Constitution to incorporate the terms of reference and governance arrangements for the HWB as agreed by the Council at this meeting

Lead officer contact

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Background papers

Report to Medway Council's Cabinet 6 September 2011

Health and Social Care Act 2012
Summary of provisions relating to Health and Wellbeing Boards

<p>Duty to establish a HWB by April 2013</p>	<p>Every upper tier local authority is required to establish a Health and Wellbeing Board for its area – to be treated as if it were a Committee under section 102 of the Local Government Act 1972</p>
<p>Membership must consist of</p>	<p>At least one Councillor nominated by the Leader (who could be the Leader) 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 (CCG) Other persons or representatives as the local authority thinks appropriate, subject to prior consultation with the HWB</p> <p>(The HWB may itself appoint additional members. Once the HWB is established, the Council must consult the Board before appointing any additional members.)</p> <p>Notes: a) The NHS Commissioning Board will be required to send a representative to participate in the preparation of the JSNA and Joint Health and Wellbeing Strategy. It will have to also send a representative on request to discuss any matter relating to its local commissioning functions b) The CCG must co-operate with the HWB in the exercise of the functions of the Board</p>
<p>Functions of HWBs</p>	<p>Duty to encourage integrated working</p> <p>i) HWBs must, for the purpose of advancing the health and wellbeing of the people in its area, encourage persons who arrange for the provision of any health or social care services in the area to work in an integrated manner</p> <p>ii) HWBs must, in particular, provide</p>

advice, assistance or other support as it thinks appropriate for the purpose of encouraging the making of arrangements under section 75 of the National Health Service Act 2006 in connection with the provision of such services.

iii) HWBs may encourage persons who arrange for the provision of any health related services in its area to work closely with the Board

iv) HWBs may encourage persons who arrange for the provision of any health or social care services in its area and persons who arrange for the provision of any health –related services in its area to work closely together. (ie services that may have an effect on the health of individuals but are not health or social care services)

Other functions of HWBs

i) Preparation of the JSNA which identifies the current and future health and wellbeing needs of the local population and may address needs around wider determinants of health

ii) Preparation of Joint Health and Wellbeing Strategy to meet the needs identified in the JSNA

iii) Preparation of the Medway Pharmaceutical Needs Assessment

v) Duty to involve Healthwatch and the people who live or work in the area in the preparation of the JSNA and Joint HWB Strategy

iv) May give the local authority its opinion on whether the local authority is discharging its duty to have regard to the JSNA and Joint Health and Wellbeing Strategy in discharging its relevant functions

vi) Must be consulted on CCG Commissioning Plans and may give its opinion to the CCG on whether Commissioning Plans take proper

	<p>account of the Joint HWB Strategy</p> <p>vi) Formal role in authorisation and annual assessment of Clinical Commissioning Groups</p> <p>(Note: There is provision in the Act: a) enabling local authorities arrange for the HWB to exercise any functions that are exercisable by the authority with the exception of health scrutiny and b) allowing two or more HWBs to make arrangements for any of their functions to be exercisable jointly</p>
Supply of Information to the HWB	<p>The HWB may request information from the local authority and any person on the Board representing the local Healthwatch organisation or CCG and any other person serving on the Board appointed by the Council or the Board itself. There is an obligation on those listed to supply the information requested</p>

Health and Wellbeing Board as a Cabinet Advisory Group

Membership in 2012/13

Medway Councillors nominated by the Leader of the Council:

David Brake – Cabinet Member for Adult Services
Howard Doe – Cabinet Member for Housing and Community Services
Councillor Andrew Mackness – Member of Overview and Scrutiny
Committees for Health and Adult Social Care and Children and Young People
Councillor Mike O'Brien – Cabinet Member for Community Safety and
Customer Contact
Vince Maple – Leader of the Labour Group
David Wildey – Cabinet Member for Children's Social Care

Medway LINK/HealthWatch – one seat

David Harris

Director of Children and Adult Services

Initially was Rose Collinson – then replaced by Barbara Peacock

Director of Public Health

Alison Barnett

Medway Clinical Commissioning Group – three seats

Doctor Peter Green, Shadow Accountable Officer, Medway Commissioning
Group
Doctor Gill Fargher, Medway Commissioning Group
Doctor Shariq Lanker, Medway Commissioning Group (Dr Lanker has now
been replaced by Alison Burchell, Chief Operating Officer)

Kent and Medway PCT Cluster – one seat

Helen Buckingham – Deputy Chief Executive of NHS Kent and Medway as
representative of the PCT Cluster (nominated by Ann Sutton, Chief Executive
of the Cluster) until April 2013

Colin Tomson – Kent and Medway PCT Cluster Chairman will attend on an
occasional basis to support the work of the Board during the shadow period
until April 2013.

NHS Commissioning Board – one seat

At the appropriate point, the NHS Commissioning Board will be required to
send a representative to participate in the preparation of the JSNA and Joint
Health and Wellbeing Strategy (JHWBS). It will have to also send a
representative on request to discuss any matter relating to its local
commissioning responsibilities. At present Felicity Cox, Chief Executive, NHS
Kent and Medway and Kent and Medway Area Team attends.