

<b>Item No.</b> 17.	<b>Classification:</b> Open	<b>Date:</b> 12 February 2013	<b>Meeting Name:</b> Cabinet
<b>Report title:</b>		Establishing Southwark's Health and Wellbeing Board as a Committee of the Council	
<b>Ward(s) or groups affected:</b>		All Wards	
<b>Cabinet Member:</b>		Councillor Peter John, Leader of the Council	

## **FOREWORD - COUNCILLOR PETER JOHN, LEADER OF THE COUNCIL**

Since last year Southwark's Shadow Health and Wellbeing Board has been meeting in order to prepare for April 1st 2013, when responsibility for public health will pass to us as the local authority. Drawing its membership from the local Clinical Commissioning Group, the council, Police, Kings Health Partners and the voluntary sector, the Board has sought to determine the public health priorities for Southwark in the years ahead and bring a new shared approach to solving some of the public health problems which are too prevalent in our community.

The potential impact of the changes in responsibility for public health is immense - and from the early work of Southwark's Shadow Health and Wellbeing Board I believe that it will be hugely positive. The partnership working amongst the Board's members is already evident and there is a growing anticipation and impatience for change.

The time has now come to establish Southwark's Health and Wellbeing Board as a committee of the council. The proposals contained in this report represent the shared views and vision of all of the shadow board's membership.

## **RECOMMENDATIONS**

That the cabinet:

1. Agree to recommend that council assembly establishes Southwark's Health and Wellbeing Board as a committee of the council from 1 April 2013 and agrees the membership of the board as set out in paragraph 25.
2. Note that the terms of reference and procedural rules for the board will be agreed at council assembly following the publication of secondary legislation.
3. Agree that the Joint Health and Wellbeing Strategy will be proposed by the Health and Wellbeing Board for approval by cabinet and the NHS Clinical Commissioning Group Governing Body.

## **BACKGROUND INFORMATION**

### **Health and Social Care Act 2012**

4. Southwark's Health and Wellbeing Board offers the council an opportunity to make a significant contribution to improving the health of the people living and

working in the borough. It is a new kind of partnership involving the council, health services and the wider voluntary and community sector that aims to focus on those things that each of these organisations cannot do alone. The new role for local authorities, as encapsulated in the establishment of Health and Wellbeing Boards, will be to work with the NHS and other key partners to champion improvements in the health and well-being of people in Southwark and reduce health inequalities.

5. The Health and Social Care Act 2012 brought about significant reform of existing health structures. These changes included the transfer of public health accountabilities from the NHS to local authorities, the abolition of Primary Care Trusts (PCTs) and, in the place of PCTs, the establishment of GP-led Clinical Commissioning Groups (CCGs). It also established the creation of patient champion groups HealthWatch in place of Local Involvement Networks (LINKs). These changes are due to be in place by 1 April 2013.
6. As a member of the Department of Health's Early Implementers Network, Southwark committed to establish a shadow Health and Wellbeing Board by April 2012, a year prior to the board gaining statutory powers. In its newly constituted role as a committee of the council from 1 April 2013, the board will be at the core of the council's new role in championing improvements to the health and wellbeing of the local population, and leading the transformation of public health in Southwark. In this work, the fully constituted board will seek to tackle the health inequalities in the borough and build on the work that took place during the shadow year. The changes in the Health and Social Care Act provide an opportunity to deliver improved health outcomes, through closer working relationships between the council, local GPs and the health community,

### **Planning Group and Southwark's Shadow Health and Wellbeing Board**

7. Following the publication of the NHS White Paper in November 2010, the Leader of the council asked the cabinet Member for Health and Adult Social Care to oversee a programme of work to make preparations for the local implementation of the Health and Social Care Act. This included work to establish a shadow Health and Wellbeing Board for Southwark. A planning group was set up to bring together key players from across the borough including statutory members of the board to set out a clear direction for the establishment of a shadow Health and Wellbeing Board for Southwark.
8. The planning group led work to consider the key health and wellbeing challenges in the borough. They also considered what values and core behaviours should be embedded at the heart of the new partnership, how the board would engage with other partners and residents in the course of its work and how it would operate within the partnership architecture and other organisational systems that already exist in Southwark.
9. The planning group agreed a set of terms of reference for the shadow board and also proposed four priorities for them to focus on. These were
  - Prevention and reduction of alcohol-related misuse
  - Coping skills, resilience and mental wellbeing
  - Early intervention and families
  - Healthy weight and exercise.

10. It was also decided through the work of the planning group that the meetings of the shadow board would take place in public, with papers and minutes publically available. This ensured that the board was in line with the fairer future principles of being open and transparent and ensured that all groups and communities could have access to the discussions of the shadow board. The decision for Southwark's shadow board to meet in public has meant that the board is well equipped to transition to being a committee of the council, which will also meet in public.
11. Following the work of the planning group, the cabinet approved the establishment of Southwark's Shadow Health and Wellbeing Board on the 17th April 2012. Through the decision, the non-statutory membership was agreed for a fixed term of one year during the existence of the shadow board. As the board did not hold any executive functions or any decision making powers in its shadow year, the board did not need a formal constitutional framework to be set up.
12. Southwark's Shadow Health and Wellbeing Board met for the first time on 10 July 2012. At its first meeting the board agreed the four priorities which had been proposed by the planning group as areas where the board could work together to make an impact. Each priority area was given a 'champion' on the board and an officer lead to support the work.
13. The shadow board has taken some significant steps towards bringing together the organisations that can have an impact on the health inequalities in Southwark in order to make a difference. Once the board is established as a committee of the council from April 2013, it will have a solid foundation to further build on this work and to continue to develop partnership working.

### **Establishing the board as a committee of the council**

14. The Health and Social Care Act 2012 provides a basic, common framework for Health and Wellbeing Boards and specifically sets out that that the Health and Wellbeing Board must be established as a local authority committee. The board is to be treated as if appointed under section 102 of the Local Government Act 1972.
15. The government recognised however that Health and Wellbeing Boards are unusual in comparison to normal section 102 committees and is developing a set of technical regulations in this regard. The regulations will be able to disapply, or modify, any legislation relating to a section 102 committee that would otherwise apply to a Health and Wellbeing Board. Key aspects of the legislation being considered relate to political proportionality requirements, voting restrictions, conflicts of interest, appointment of sub-committees, and access to information provisions.
16. The government set out its intentions regarding this in late 2012, though the full regulations, due to come into force on 1 April 2013, were still not available in time to be included in this report. It is however possible to proceed with this decision based on the primary legislation and other information available at the current time. Officers have also sought legal and constitutional advice to supplement the information currently available. The delay in releasing secondary legislation by government has meant that it has not been possible to draft terms of reference and procedural rules for this report. These will be included in the

report to council assembly.

## **KEY ISSUES FOR CONSIDERATION**

### **Health and Wellbeing duties for the local authority**

17. The Health and Social Care Act 2012 states that the Health and Wellbeing Board will have various functions. These include those conferred on it directly, such as the duty to encourage integrated working. It also includes duties conferred jointly on the local authority and its partner Clinical Commissioning Groups (CCGs) but which must be discharged by the board. These joint duties include the preparation and publication of Joint Strategic Needs Assessments (JSNAs) and Joint Health and Wellbeing Strategies (JHWSs).
18. The government produced a consultation paper for the statutory guidance relating to the JSNA and the JHWS in July 2012. At the same point the Department for Health also collated all the Health and Wellbeing duties for the Local Authority, the CCG, the Health and Wellbeing Board, the Local Healthwatch and the NHS Commissioning Board and published them.
19. The Health and Social Care Act 2012 requires the local authority to establish and participate in the Health and Wellbeing Board, and through the board, to:
  - Prepare and publish a Joint Strategic Needs Assessment (“JSNA”) and a Joint Health and Wellbeing Strategy (“JHWS”) to meet the needs identified in the JSNA in relation to the local authority’s area.
  - Involve third parties in preparation of the JSNA and JHWS including the Local Healthwatch and people living or working in the area, having regard to guidance from Secretary of State.
  - Together with each of its partner clinical commissioning groups, to have regard to the JSNA and JHWS in the exercise of any function.
  - When developing the JHWS, consider extent to which needs could be met more effectively by making arrangements under National Health Service Act 2006, to pool health budgets.

### **Governance**

20. This report seeks to clarify the governance of the Health and Wellbeing Board once it is established as a committee of the council from 1 April 2013. The government has recognised that challenges exist for local authorities to set up a Health and Wellbeing Board as a committee of the council and it is expected that they will aim to clarify this in the secondary legislation.
21. The secondary legislation is expected to set out that there will be no prescription regarding political proportionality for Health and Wellbeing Boards. It is therefore proposed that this be reflected in Southwark with no stipulation regarding the political proportionality of the membership of the board. Beyond this the board will follow the current rules relating to committees of the council subject to the secondary legislation from government. The report to council assembly will include the terms of reference and procedural rules for the Health and Wellbeing Board. It has not been possible to include these in this report due to the absence of secondary legislation from government.
22. Beyond the technical governance and constitutional arrangements, there is a

need to set out the way that the board will operate on a practical level. Current indications are that it will be for each Health and Wellbeing Board to determine how their decisions are made. If there is local discretion regarding this, it is proposed that the board collectively decide how decisions are taken. This will be set out in the procedural rules put before council assembly.

## **Membership**

23. Health and Wellbeing Boards must include six statutory members which are:

- at least one councillor, who will be (or be nominated by) the Leader
- the director of adult social services of the local authority
- the director of children's services of the local authority
- the director of public health of the local authority
- a representative of Local HealthWatch
- a representative of the Clinical Commissioning Group.

24. The primary legislation states that beyond the statutory members, the board can also include *(g) such other persons, or representatives of such other persons, as the local authority thinks appropriate*. The board once constituted will have the power to appoint additional members as it sees fit. The local authority may also appoint such additional members as it sees fit (in consultation with the board if an appointment is made after the establishment of the board).

25. The proposed membership of the board is:

- The Leader of Southwark Council
- The Cabinet Member for Health and Adult Social Care
- The Cabinet Member for Children's Services
- The Chief Executive of the Council
- The Strategic Director of Children's and Adults' Services
- The Director of Public Health
- Three representatives from the Clinical Commissioning Group
- A representative of Southwark HealthWatch
- A representative from King's Health Partners
- Southwark Borough Commander, Metropolitan Police Service
- The Chief Executive of Community Action Southwark

26. The membership will be reviewed annually at the Annual Meeting of council assembly from 2014 onwards. This will allow the membership to stay relevant to the work that the board chooses to focus on.

27. All members of the Health and Wellbeing Board are subject to Southwark's Code of Conduct for elected members when acting as a member of the board and will be subject to declarations of disclosable pecuniary interests. As a consequence it is recommended that substitutes should not be permitted at meetings of the board from 1 April 2013.

## **NHS Commissioning Board**

28. The NHS CB is an autonomous non-department public body which operates within the wider health and social care. It assumes its full responsibilities in April 2013, on the dissolution of SHAs and PCTs. The board's overarching role is to

ensure that the NHS delivers better outcomes for patients within its available resources, provide leadership for the NHS, commission services and champion patient and carer involvement.

29. The board will:

- assess, assure and hold CCGs to account for delivering their statutory responsibilities
- commission certain primary services (e.g. dental, pharmaceutical)
- commission specialised services (e.g. specialised cancer, haemophilia)
- commission armed forces and offender health care
- commission certain health services on behalf of Public Health England (e.g. screening and immunisation)

30. The London region of the NHS CB will include one of 10 'enhanced' Area Teams, with an estimated Budget of £4.2bn.

31. In the Health and Social Care Act 2012 it sets out that the Health and Wellbeing Board has a duty to have regard to the NHS CB mandate in developing the JHWS and the JSNA. In light of this the NHS CB must appoint a representative to join the Health and Wellbeing Board for the purpose of participating in its preparation of the JSNA or the JHWS. In addition, If the Health and Wellbeing Board so requests, the NHS CB must appoint a representative to join the Health and Wellbeing Board for the purpose of participating in its consideration of the matter.

32. Given the NHS CB's remit around commissioning health services in Southwark it will be necessary for the board to consider how they engage with the NHS Commissioning Board from 1 April 2013.

### **Joint Health and Wellbeing Strategy**

33. Beyond the duties to prepare and publish the JHWS, there is no clear prescription for how the strategy should be signed off or by whom, which we are interpreting as maximum local discretion. As the strategy will affect the commissioning decisions of a number of organisations represented on the board, it is important that the Health and Wellbeing Board has significant input into the strategy. The board will be a useful forum for board in 'shaping' resource decisions and creating a space for influence over local spending plans.

34. As such it is suggested that the board has the opportunity to support the development of the strategy and recommend the final version to be signed off by cabinet and the CCG Governing Body. Given the importance and wide-reaching nature of the Joint Health and Wellbeing Strategy, it may be also be appropriate to take a report to council assembly on the strategy following the board's recommendation.

### **Executive functions and scrutiny**

35. The Health and Social Care Act 2012 enables the local authority to arrange for any of its functions to be exercised by the board should it so wish. The board will not have the power to perform any of the functions given to the Health Overview and Scrutiny Committee, and it will itself be subject to overview and scrutiny as a committee of the council. In addition members of scrutiny committees should not

be members of the Health and Wellbeing Board as this may create a conflict of interests.

36. It will be for the Leader of the Council under the 'Strong Leader' model to decide, based on the work of the board through its first year of operation, whether any executive functions should be delegated to the board. Until such a decision is taken, the board will operate in accordance within the council's existing decision-making framework and normal council budget setting processes.

### **Administration**

37. Following the establishment of the board as a committee of the council, the organisation and minuting of meetings will be the responsibility of the constitutional team. This will not require any additional resource from the council.
38. In some cases it may be appropriate to establish working groups to support the work of the board. In order that they are able to accurately represent the views of the board at least one board member should be assigned as a 'champion' for each working group. At such meetings, the board 'champion' should attend in order to represent the views of the board. These sub-groups will be resourced by the relevant organisations on the board rather than via the constitutional team.

### **Policy implications**

39. The local authority has a duty to have regard to relevant JSNA and JHWS in the exercise of all functions. Members of the Health and Wellbeing Board representing the local authority will need to take account of this when proposing the JHWS. Officers and members will also need to bear this in mind in their day to day roles.

### **Community impact statement**

40. The health and wellbeing of the community is at the core of the work of the Health and Wellbeing Board.
41. The involvement of communities will be a key part of the work of the Health and Wellbeing Board. The board has acknowledged that the value of including the wider views of individuals and communities will be critical to both understanding and tackling the health and wellbeing issues in Southwark.
42. There are opportunities with the establishment of the Health and Wellbeing Board, for instance, with the greater involvement of GPs in partnership work. One opportunity is the local community knowledge and expertise that GPs will bring in working with the council and other organisations, including public health, to help improve the health and wellbeing of the people of Southwark.
43. In consideration of any future guidance and an understanding of best practice from elsewhere, the council will work with the NHS and other partners in order to ensure that following the establishment of the statutory board in April 2013, that equalities and a respect for human rights are at the heart of the work of the shadow Health and Wellbeing Board, and that those people who have a stake in the health and wellbeing of Southwark have fair access to services and are free from discrimination.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Director of Legal Services**

44. The cabinet is being asked to recommend to council assembly that a Health and Wellbeing Board for Southwark be established as a committee of the council. This is a statutory duty on the authority set out in the Health and Social Care Act 2012.
45. The board will be made up, as a minimum, of:
  - one local elected representative
  - a representative of the local Healthwatch organisation
  - a representative of each local clinical commissioning group
  - the local authority director for adult social services
  - the local authority director for children's services
  - the director of public health for the local authority
46. The board once constituted will have the power to appoint additional members as it sees fit. The local authority may also appoint such additional members as it sees fit (in consultation with the board if an appointment is made after the establishment of the board).
47. The Leader is being asked to appoint the councillor member or members to the Health and Wellbeing Board for a fixed-term until the Annual Meeting of Council Assembly in 2014, and then on an annual basis for each year after that. Should the Leader wish to he can delegate the selection of councillor members on the board to another Cabinet Member. The Leader can appoint himself to the board should he so wish.
48. A Health and Wellbeing Board is to be a committee of the local authority which established it and, is to be treated as if it were a committee appointed by that authority under section 102 of the Local Government Act 1972. However secondary regulations are due to be produced in January 2013 which are likely to disapply rules relating to proportionality and voting rights and amend rules relating to disqualification from membership.
49. The Health and Social Care Act 2012 requires the local authority to establish and participate in the Health and Wellbeing Board, and through the board, to:
50. Prepare and publish a Joint Strategic Needs Assessment ("JSNA") and a Joint Health and Wellbeing Strategy ("JHWS") to meet the needs identified in the JSNA in relation to the local authority's area.
51. Involve third parties in preparation of the JSNA and JHWS including the Local Healthwatch and people living or working in the area, having regard to guidance from Secretary of State.
52. Together with each of its partner clinical commissioning groups, to have regard to the JSNA and JHWS in the exercise of any function.
53. When developing the JHWS, consider extent to which needs could be met more effectively by making arrangements under National Health Service Act 2006, to pool health budgets.



54. The Health and Social Care Act 2012 requires the board to encourage integrated working, and in particular encourage the use of National Health Service Act 2006 powers to pool health budgets.
55. The Health and Social Care Act 2012 enables the local authority to arrange for any of its functions to be exercised by the board should it so wish.
56. The Health and Social Care Act 2012 enables to board to arrange for health related service providers to work with the board and with each other. It also enables the board to give the local authority an opinion on whether the authority is discharging its duty to have regard to the JSNA and JHWS when exercising its functions.
57. The board will not have the power to perform any of the functions given to the Health Overview and Scrutiny Committee, and it will itself be subject to overview and scrutiny as a committee of the council. In addition it is advised that members of scrutiny committees should not be members of the shadow or statutory Health and Wellbeing Board as their role would be conflicted.
58. All members of the Health and Wellbeing Board are subject to Southwark's Code of Conduct for elected members when acting as a member of the board and will be subject to declarations of disclosable pecuniary interests.

**Strategic Director of Finance and Corporate Services (FC13/005)**

59. The establishment of the Health and Wellbeing Board can be implemented within existing budgets. The ongoing administration and minuting of the board will be undertaken by the constitutional team.
60. As set out in the report, the board will operate in accordance within the council's existing decision-making framework and normal council budget setting processes. A decision to exercise any further local authority functions by the Health and Wellbeing Board would therefore need to be taken by the appropriate decision-making body (e.g. cabinet or council assembly), and a further report would be required for this.

## BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Cabinet Report 17 April 2012 - Establishment of a Southwark Health and Wellbeing Board. This document is available at the following web page: <a href="http://modern.gov.southwark.gov.uk/ie/ListDocuments.aspx?CId=302&amp;MId=3822&amp;Ver=4">http://modern.gov.southwark.gov.uk/ie/ListDocuments.aspx?CId=302&amp;MId=3822&amp;Ver=4</a>	Corporate Strategy, Chief Executive's Department, 160 Tooley Street, London SE1 2QH	James Postgate, Principal Strategy Officer 020 7525 7627
Minutes of the Shadow Health and Wellbeing Board meetings. Available via this web link: <a href="http://www.southwark.gov.uk/downloads/download/3111/shadow_health_and_wellbeing_board">http://www.southwark.gov.uk/downloads/download/3111/shadow_health_and_wellbeing_board</a>	Corporate Strategy, Chief Executive's Department, 160 Tooley Street, London SE1 2QH	Will Palmer, Senior Strategy Officer 020 7525 0698

## APPENDICES

No.	Title
None	

## AUDIT TRAIL

<b>Cabinet Member</b>	Councillor Peter John, Leader of the Council	
<b>Lead Officer</b>	Eleanor Kelly, Chief Executive	
<b>Report Author</b>	Will Palmer, Senior Strategy Officer	
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Director of Legal Services	Yes	Yes
Strategic Director of Finance and Corporate Services	Yes	Yes
<b>Cabinet Member</b>	Yes	Yes
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