

<b>Item No.</b> 7.1	<b>Classification:</b> Open	<b>Date:</b> 27 March 2013	<b>Meeting Name:</b> Council Assembly
<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>From:</b>		Director of Corporate Strategy	

## RECOMMENDATIONS

That the constitutional steering panel recommends that council assembly:

1. Establishes Southwark's Health and Wellbeing Board as a committee of the council from 1 April 2013 and agrees the membership of the board.
2. Agrees the necessary constitutional changes including the roles and functions / matters reserved and procedural rules as presented in Appendices 1 and 2.

## BACKGROUND INFORMATION

### Health and Social Care Act 2012

3. 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.

### Cabinet – 12 February 2013

4. On 12 February 2013 cabinet considered a report on establishing Southwark's Health and Wellbeing Board as a committee of the council. Cabinet agreed:
  1. That council assembly be recommended to establish Southwark's health and wellbeing board as a committee of the council from 1 April 2013 and to agree the membership of the board as set out in the report.
  2. That it be noted that the terms of reference and procedural rules for the board will be agreed at council assembly following the publication of secondary legislation.
  3. 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.

5. This decision was treated as a recommendation to council assembly and the constitutional aspects of the decision referred to the constitutional steering panel for consideration.

### **Constitutional steering panel – 5 March 2013**

6. On 5 March 2013 constitutional steering panel considered a report on establishing Southwark's Health and Wellbeing Board as a committee of the council. It agreed to recommend that council assembly establishes Southwark's health and wellbeing board as a committee of the council from 1 April 2013 and approve the membership of the board as set out in the report. The panel recommended the roles and functions / matters reserved, known as "terms of reference", and procedural rules for the board following the publication of secondary legislation.
7. This decision is now been treated as a recommendation to council assembly for consideration.

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

8. 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.
9. The government recognised however that Health and Wellbeing Boards are unusual in comparison to normal section 102 committees and has published a set of technical regulations in this regard. The regulations disapply, or modify, any legislation relating to a section 102 committee that would otherwise apply to a Health and Wellbeing Board in respect of political proportionality requirements, voting restrictions and appointment of sub-committees.
10. The government set out its intentions regarding this in late 2012, though the full regulations, due to come into force on 1 April 2013. Following publication of the secondary legislation, officers have also sought legal and constitutional advice. The delay in releasing secondary legislation by government has meant that it was not possible to draft terms of reference and procedural rules for the cabinet. This was considered by CSP and is attached at Appendix 2.

## **KEY ISSUES FOR CONSIDERATION**

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

11. 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).
12. 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.

13. 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.

The Joint Health and Wellbeing Strategy will be developed by the board, who will then recommend the final version to be signed off by cabinet and the CCG Governing Body.

14. 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.
15. 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.
16. The roles and functions / matters reserved to the Health and Wellbeing Board are set out in Appendix 1.

## **Governance**

17. The regulations<sup>1</sup> relating to health and wellbeing boards makes provision for the disapplication and modification of certain enactments relating to local authority committees appointed under section 102 of the Local Government Act 1972, insofar as they are applicable to a health and wellbeing board established under section 194 of the Health and Social Care Act 2012. The regulations aim to provide local areas with the flexibility and freedom to shape their health and wellbeing boards as best fits with local circumstances. In particular:

---

<sup>1</sup> The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 No. 218

- 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) could 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.
18. The secondary legislation provides no prescription regarding political proportionality for Health and Wellbeing Boards. The cabinet recommended that this be reflected in Southwark with no stipulation regarding the political proportionality of the membership of the board. It was noted at constitutional steering panel that the issue of membership and representation from other political groups was an issue that could be considered by the board and the council in the future.
19. 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. It is for each Health and Wellbeing Board to determine how their decisions are made. It is proposed that the board collectively take decisions via consensus, although provision for a vote is included should one be required. The draft procedural rules are set out in Appendix 2.

## **Membership**

20. 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.
21. 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).
22. 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

23. 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.
24. 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.

### **Community impact statement**

25. The health and wellbeing of the community is at the core of the work of the Health and Wellbeing Board.
26. 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.
27. 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.
28. 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**

29. Following the recommendation from constitutional steering panel, council assembly is being asked to establish a Health and Wellbeing Board for Southwark as a committee of the council. This is a statutory duty on the authority set out in the Health and Social Care Act 2012.
30. 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
31. 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).
  32. The Leader will be 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.
  33. 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 produced in February 2013 disapply rules relating to proportionality and voting rights and amend rules relating to disqualification from membership.
  34. 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:
    35. 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.
    36. 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.
    37. Together with each of its partner clinical commissioning groups, to have regard to the JSNA and JHWS in the exercise of any function.
    38. 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.
    39. 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.
    40. 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.
    41. 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.

42. 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.
43. 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.
44. In accordance with Article 1.5, changes to the constitution can only be approved by council assembly if there has been prior consideration of the proposal by the constitutional steering panel. As the health and wellbeing board will be a committee of the council any constitutional changes are reserved to council assembly. In Part 3A (4) – Who takes decisions - of the constitution, the establishment of committees is specifically reserved to council assembly.

## BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Cabinet Report 17 April 2012 and 12 February 2013 - Establishment of a Southwark Health and Wellbeing Board. This document is available at the following web page: <a href="http://moderngov.southwark.gov.uk/ie/ListDocuments.aspx?CId=302&amp;MId=3822&amp;Ver=4">http://moderngov.southwark.gov.uk/ie/ListDocuments.aspx?CId=302&amp;MId=3822&amp;Ver=4</a>	Corporate Strategy, Chief Executive's Department, Council Offices, 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	Will Palmer, Senior Strategy Officer 020 7525 0698
Constitutional Steering Panel 5 March 2013 - Establishment of a Southwark Health and Wellbeing Board	Constitutional Team, Chief Executive's Department	Lesley John, Constitutional Officer 020 7525 7228

## APPENDICES

Appendix	Title
Appendix 1	Draft Part 3 of the Constitution – Health and Wellbeing Board
Appendix 2	Draft Committee Procedure Rules – including additional rules for the Health and Wellbeing Board

## AUDIT TRAIL

<b>Lead Officer</b>	Graeme Gordon, Director of Corporate Strategy	
<b>Report Author</b>	Will Palmer, Senior Strategy Officer Ian Millichap, Constitutional Manager	
<b>Version</b>	Final	
<b>Dated</b>	6 March 2013	
<b>Key Decision?</b>	No - Decision reserved to Council Assembly	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments sought</b>	<b>Comments included</b>
Director of Legal Services	Yes	Yes
Strategic Director of Finance and Corporate Services	No	No
<b>Cabinet Member</b>	No	No
<b>Date final report sent to Constitutional Team</b>	13 March 2013	