



Executive 11 March 2013

Report from the Director of Strategy, Partnerships and Improvement and the Director of Adult Social Care

Wards Affected:
ALL

Public Health Transfer Final Arrangements

1. Summary

- 1.1 This report sets out for the Executive the final arrangements for the transfer of public health functions and staff from NHS Brent to the local authority. Members have considered two reports previously on the transfer; the first relating to the staffing structure; the second on the extension and transfer of public health contracts. Since those reports have been considered further work has taken place and members need to be updated on the final arrangements ahead the formal transfer on 1st April 2013.
- 1.2 Arrangements also have to be made for the council to sign off the Transfer Scheme that will be issued setting out the assets and liabilities the council will be taking on. The Transfer Scheme is unlikely to be published before 11th March and so authority will need to be delegated to an individual to sign this on behalf of the council.

2. Recommendations

That the Executive:

- 2.1. Notes the update on the public health transfer
- 2.2 Notes the arrangements relating to the public health staffing structure and appointment of the Director of Public Health
- 2.3 Notes the final list of contracts transferring to the local authority from NHS Brent and arrangements for contracts where the council will be an associate commissioner

- 2.4 Approves the council's participation in a collaborative procurement exercise for the provision of Genitourinary Medicine (GUM) Services for 2013/14
- 2.5 Approves the collaborative procurement exercise detailed in paragraph 2.4 above being exempt from the normal requirements of Brent's Contract Standing Orders in accordance with Contract Standing Order 85(c) and 84(a) on the basis that there are good operational reasons as set out in the report
- 2.6 Delegates authority to the Interim Chief Executive to award contracts for the provision of GUM Services for 2013/14
- 2.7 Delegates authority to the Interim Chief Executive to sign the Public Health Transfer Scheme following consultation with the Director of Legal and Procurement ahead of the formal transfer on 1st April 2013.

3. Report

- 3.1 The council has been preparing for the transfer of public health responsibilities and functions from NHS Brent. As members will know from previous reports on staffing and contracts, there are numerous elements to the transfer which are coming together ahead of the formal transition on 1st April 2013. As with any project of this nature, changes and developments that have occurred since previous reports were presented to the Executive and it is important that members are clear on arrangements before the transfer happens.

3.2 Public Health Staff

- 3.3 One of the most significant elements of the public health transition is the transfer of staff from NHS Brent to the council. The Executive has considered a report previously on the public health staff and agreed a structure for the service. Once agreed by the Executive the structure was the subject of a 30 day engagement period with staff from NHS Brent. The Chief Executive also commissioned an independent review of the proposals as part of this process. As a result of the engagement with staff and the independent review it was agreed that:

- Twenty-two public health staff will be transferred from NHS Brent to the council, with staff split across three departments – Adult Social Care, Environment and Neighbourhood Services and Children and Families.
- There will be a Director of Public Health for Brent only, based in the Adult Social Care Department ("ASC") and reporting to the Director of Adult Social Care. For the first 12 months after the transfer, the DPH will manage the public health staff in the ASC directorate and the public health

budget. This arrangement will then be reviewed to assess the effectiveness of the function and the staffing structure.

- The public health staff in ASC will be responsible for commissioning public health services (such as substance misuse services and sexual health services); the staff in Environment and Neighbourhood Services will focus on delivering services directly and implementing health improvement programmes.
- Three members of staff will be based in the Children and Families Department, working on children's health in schools, early years settings such as nursery's and children's centres and providing training resources, especially around safeguarding. These posts have been added to the council's public health service since the original structure was published and will be reviewed in 12 months time to ensure that the arrangement is working.

- 3.4 At the time of writing, not all staff transferring to the council have been confirmed in their posts, but the majority have. Job matching panels have taken place to confirm appointments, and interviews held where it was not possible to match an existing member of staff, or where staff decided not to accept job offers from the council.
- 3.5 Currently five posts remain unfilled, although interviews are to take place for one of the posts on the 11th March. Posts that remain vacant on 31st March will pass to the council unfilled and the authority will be able to recruit to them in due course.
- 3.6 Two posts will take longer to confirm appointments. An Advisory Appointments Committee (AAC) is required to appoint the Public Health Consultant (Children), as this post was not successfully job matched. The AAC is still to be set up. Interim arrangements to cover this post will be made if a permanent appointment can't be confirmed before 1st April 2013. The second post affected is the Director of Public Health (DPH). Brent has agreed to appoint a DPH for the borough, and abandoned plans to share with another council. The post is vacant at NHS Brent and so it wasn't possible to job match. This means that the council will need to recruit to the post and this has started, but it is unlikely that the recruitment will be completed and the post holder able to start in post by 1st April 2013. NHS Brent has appointed an interim Director of Public Health and the council could continue with this arrangement after 1st April if it wishes to do so.
- 3.7 Between January and April staff transferring to the council will attend the corporate induction, Civic Centre induction and training and work with their receiving departments on departmental specific inductions as part of their integration into the local authority. Ahead of the transfer work plans for the coming six to 12 months will be agreed within departments so that staff are

clear on their work priorities before they move to work full time for the council. Arrangements will also be made to enable staff to work from the council's buildings before April to aid integration into the local authority.

- 3.8 Public health structure charts are attached as appendices to this report so that members are familiar with the job titles, work areas and reporting lines ahead of transition.

3.9 Public Health Contracts

- 3.10 The majority of the public health budget is spent on contracts with NHS, private and third sector organisations that deliver public health services. Ensuring that the contracts are successfully transferred and services continue from April 2013 onwards is critical. The council is determined that services should be unaffected during the transition period and that service users are not disadvantaged by changes in contracting arrangements.
- 3.11 The Executive has previously approved a report on the public health contract transfer. Members agreed that the majority of public health contracts would be extended and transferred so that services continue in 2013/14 in line with the existing arrangements. Once public health services are successfully transferred to the local authority members will consider how they wish to commission services in the future, but the focus up to now has been on achieving a successful transfer of contracts and service continuity.
- 3.12 The process for transferring contracts from NHS Brent to the local authority is now less clear following announcements by the Department of Health. Officers had been working with colleagues from NHS Brent and provider organisations to ensure that the work was done to progress the extension of contracts so that services continue after the 1st April 2013. This is still the intention. However it is possible that the council and PCT will have to put in place new contracts for each public health service if the Department of Health decides not to grant approval to contract extensions. Officers are still working to clarify this, and an addendum to this report will need to be tabled at the Executive meeting with the most up to date information.
- 3.13 In working with colleagues from NHS Brent, the council is clear that there are 37 public health contracts with external providers. It should be noted that this does not include the individual contract agreements with all GP practices and pharmacists in Brent that deliver services under local enhanced service agreements (LES agreements). Instead, each LES specification, e.g. with GPs to deliver Health Checks, is counted as one contract. The council does know that LES contracts can be extended and aren't affected by the Department of Health's announcements on contract extensions.

- 3.14 Work has taken place with the providers to prepare them for arrangements after 1st April. A series of due diligence meetings has been held with each organisation providing public health services to ensure that they are aware of the changes that are happening and that they are happy to continue providing services on the council's behalf beyond April 2013. These meetings have been very productive and all of the current contractors have confirmed that they are willing to have their contracts extended for 12 months and to continue providing services. It is not known whether they would be prepared to accept new contracts, but the assumption is that most, if not all, would.
- 3.15 Separately, discussions are being held with local GPs and pharmacists about the services they provide for public health (such as smoking cessation), which are commissioned via Local Enhanced Service (LES) agreements. The intention is to extend these agreements for 12 months, assuming GPs and pharmacists agree to this. Indications are that they are willing to have their LES agreements extended and arrangements are being made to do this.
- 3.16 Members of the Executive will recall that there were three contracts that they agreed shouldn't be continued in 2013/14 following recommendations from NHS Brent. They were:
- Central London Community Services - Contraceptive services.
 - Young Addaction - Teenage pregnancy services and sexual health services for young people.
 - Lonsdale Practice - Shared care for opiate users with high levels of need had been provided from the Lonsdale Practice.
- 3.17 In working through the regulations relating to the transfer and conducting due diligence with providers it has become clear that since the original report to the Executive, other contracts listed as transferring to the council no longer will. Similarly, not all contracts in scope to transfer had been confirmed in December 2012. The Executive should note that the following contracts will also not be transferring to the council and the reasons why:
- Infection Control Nurse – Ealing Hospital Trust – There has been some confusion about the future location of infection control services. However, the council has been advised that the infection control nursing contract is not a local authority responsibility and so this contract will transfer to the Brent Clinical Commissioning Group. The council only has to provide infection control services in care homes, and there is a separate contract which deals with this.
 - Non-GUM Data Collection – NSCP / Health Protection Agency – In undertaking its due diligence the council contacted NSCP about this contract but was advised that as of January 2013 data collection from non-GUM services would be done by the Health Protection Agency / Public

Health England from April 2013, without the need for a contract with the local authority. Therefore, the contract will not be transferring.

- Pan London HIV Prevention – This contract has been commissioned by NHS Kensington and Chelsea on behalf of PCTs across the capital, but it has not been possible (to date) to set up an arrangement to continue commissioning the service on a pan-London basis. London Council's are looking at the alternatives that can be put in place and in the meantime, because of the importance of this work, Brent will set aside the contract amount in a budget line to commission either a service in the borough in due course, or join pan-London arrangements if they emerge. But, the current contract will not transfer and will come to an end on 31st March.

3.18 The arrangement for contracts with acute trusts, such as North West London Hospitals, Ealing Hospital Trust and Central and North West London NHS Foundation Trust are slightly different to those with third sector providers. The council will be responsible for a number of services that are part of a larger contract with the acute trusts. NHS Brent is already working to agree new contracts with these providers, including the public health elements within those contracts. Guidance has indicated that the council will be associate commissioners of these services, with the contract transferring to Brent CCG as the majority of services in the contract will be the CCGs responsibility. This is how the Department of Health have asked council's to manage this, if they did not disaggregate the public health elements from the main contract. In the time available, it was not possible to disaggregate the contracts and retender the services provided under these contracts.

3.19 Under the proposed arrangement the council will manage its elements of the contract and the provider will be answerable to the council for contract performance. The council will agree appropriate agreements with Brent CCG for these services, so that payments can be made from the council to providers, via the CCG. The services affected are:

- Chlamydia screening services - North West London Hospitals
- Clinical prescribing services - CNWL Foundation Trust
- School nursing and national child measurement programme - Ealing Hospital Trust
- Intensive Lifestyle Advice - Ealing Hospital Trust
- Infection control – Ealing Hospital Trust
- Looked After Children's Nurse

3.20 The final contract for which a different solution is being developed is for Genitourinary Medicine (GUM) Services. The council will have a statutory duty to ensure that residents in Brent have access to GUM services, which diagnose and treat sexually transmitted infections. It is the single biggest area of spend in the public health budget, and members should be under no

illusions that demand for this service presents one of the biggest risks to the council in connection to this transfer. Data on activity is patchy and there is significant potential for costs to vary depending on the activity data reported.

- 3.21 Officers have been working with colleagues from other boroughs in North West London to try to agree an approach to agree contracts with providers in the sector for GUM activity which would help limit the council's financial exposure. It had been hoped to secure contracts by commissioning via the North West London Commissioning Support Unit (CSU). However, despite many months of work to try to secure contract agreements through the CSU, which already has existing contacts and connections with providers, it now appears unlikely that this will be possible. The only viable alternative that borough's in North West London can realistically consider at this stage is to directly commission with providers in a collaborative arrangement.
- 3.22 It is proposed that each council in North West London would lead the negotiations with their local trust on behalf of the other North West London boroughs. For example, Brent would negotiate with North West London NHS Hospitals Trust using a service specification, price and contract that each borough would have agreed to. Brent would then hold the contract with North West London Hospitals, and the other boroughs would be associate commissioners. Similarly, Brent would be associate commissioners to contracts held by other boroughs with their local trust. The services of the CSU would be retained for contract management and invoice payments, if council's felt that this was worthwhile.
- 3.23 Members need to agree that they are happy for officers to work with other North West London council's to try to secure GUM contracts via a collaborative commissioning arrangement, to cover 2013/14. If contracts can't be agreed, then all activity would be carried out on a non-contract basis. The council will be invoiced for each element of activity provided by acute trusts, there will be no control over costs and no possibility of any savings from this service. Securing a contractual mechanism that limits to some degree the financial risk remains a priority. However, at the time of writing agreements are still to be reached.
- 3.24 Around 75% of Brent GUM cases are seen by providers in North West London with whom, it is hoped, there will be a GUM contract. Around 25% of cases are seen at hospitals across the rest of London or outside London. Members should note that the council will not have contracts with these providers, and that it will be invoiced for activity. So, even if a contracts are secured in North West London, that will only protect the council for around 75% of its activity and costs.

3.25 Members will recall from previous financial advice provided to the Executive that the Director of Finance has recommended that a contingency of £500,000 is set aside to cover any overspend in GUM services. Officers still strongly endorse this given the uncertainties about the contract position and the ability to control demand for GUM services. Whilst the transfer of public health functions and duties present the council with many opportunities, it comes with some significant risks, none bigger than those associated with GUM services.

3.26 A full list of public health contracts, providers and values is included as an appendix to this report.

3.27 Public Health Budget

3.28 The council has received details of the public health allocation in 2013/14 and 2014/15. In 2013/14 the ring fenced public health allocation will be £18.335m. In 2014/15 it will be £18.848m. This grant allocation is good news for Brent, although the percentage growth in the budget is at the lower end compared to council's nationally and in London. However, it is more than the £16.007m in the baseline estimate that the council received in February 2012 and means that the authority will be able to meet contract and staffing costs and have some funding for development opportunities in public health.

3.29 Development opportunities have been investigated by the departments and it is proposed that those that meet the most pressing on-going priorities for the local authority is funded for a period of 1 year.

	£'m
Budget Allocation 2013/14	£18.334
Staffing structures	-£1.522
Contracts	-£13.247
CCG Rental Recharge for Offices	-£0.170
Reserve for GP prescribing for substance misuse clients	-£0.250
Reserve for GUM Open Access Service	-£0.500
Contingency for unknown contractual and development budgets, not yet identified	-£0.400
Overheads e.g. IT / Finance / Audit / Insurance / Phones / Management costs – 2.5% of allocation	-£0.458

Drug & Alcohol Services - Adult Social Care	-£0.249
Health Improvements – Environment & Neighbourhood Services	-£0.380
Maternity & Children's Services – Children Services	-£0.665
Funding available to be allocated	£0.494

- 3.30 The budget position taking into account the most pressing development areas of work means that the council has available £0.494m to look at investing, after reviewing the strategic priorities and the way current services are delivered to ensure that they outcomes are being achieved.
- 3.31 What isn't clear is how long public health budgets will be ring fenced, or how the Government will fund public health in the future. Final details of the funding formula are not available (to the best of our knowledge) and so there needs to be a degree of caution about the direction of public health budgets in the future. Under the formula originally proposed by ACRA, Brent would have seen an 11% reduction in funding and there has to be a risk that funding for public health will eventually fall if the Government implements the formula as originally proposed. There is also a risk that funding could be reduced in the future if it cannot be demonstrated that the grant is being spent on projects and work areas that address the indicators in the public health outcomes framework.
- 3.32 As would be expected in a project of this nature, practical work such as arranging public health payroll, adding cost centres to Oracle (the council's finance system) and other preparatory work is taking place under this work stream to ensure that the council is prepared ahead of the 1st April transfer.
- 3.33 Public Health Transition – what will happen before the 31st March 2013?**
- 3.34 The contracts held by NHS Brent for public health services due to transfer to the council will be transferred under a statutory transfer arrangement (Transfer Scheme). The Transfer Scheme's documentation will list all contracts, staff and other property and liabilities currently held by the PCT relevant to the council that are in scope to transfer. The legal transfer will take effect from 1st April 2013.
- 3.35 The council has been asked by NHS London to make arrangements to sign the Transfer Scheme once it is available. This is likely to be in the middle of March 2013. Once signed by the local authority, it will be returned to the Department of Health for sign off by the Secretary of State. It is recommended that the Executive delegates authority to the Interim Chief Executive to sign

the transfer order on behalf of the council following consultation with the Director of Legal and Procurement. Officers will ensure that the necessary arrangements are made for this to happen.

3.36 Conclusions

- 3.37 Work will continue up to the 31st March and beyond on the transfer and integration of the public health team and functions into the council. As members know, in 2013/14 work will have to take place to re-commission and procure public health services in line with the council's vision for public health and importantly the council's procurement rules. Further reports will be brought to the Executive as this work progresses.
- 3.38 The transfer of public health presents the council with opportunities to make a significant difference to the health and wellbeing of local people and reduce health inequalities. However, councillors also need to be aware of the risks associated with the transfer, such as the GUM service contract. The next 12 months will give members and officers a chance to understand how public health can contribute to the council's aims and objectives and where there is a possibility of doing things differently to reduce health inequalities. It is an exciting opportunity for the council, in spite of the risks, and officers and members will work to design a public health service that meets the borough's requirements.

4. Legal Implications

- 4.1 The Health and Social Care Act 2012 (the "ACT") confers powers on Local Authorities with respect to Public Health and other health related functions. The Act imposes a number of obligations on local authorities to improve public health and develop sustainable community health related services. The relevant sections are due to come into force by 1st April 2013.
- 4.2 Local authorities will be responsible for commissioning Public Health services locally, informed by Joint Strategic Needs Assessments and Joint Health and Wellbeing Strategies developed by health and wellbeing boards on which they are represented, including regard to the Public Health Outcomes Framework which sets out key indicators of public health.
- 4.3 For the reasons detailed in section 3.9 the recommended approach is to extend the majority of contracts expiring by 31st March 2013 to continue provision of service until 31st March 2014 with such contracts thereafter procured by the Council in accordance with its Contract Standing Orders and Financial Regulations. Contracts to be extended are currently subject to the NHS terms and conditions of contract. These contracts as extended will continue to operate existing terms and conditions of contract following transfer although the intention is to agree introduce certain council standard terms and

conditions such as with regard to payment in arrears and the introduction of break clauses.

- 4.4 Contracts, staff and liabilities transferring to the Council effective from 1st April 2013 will be transferred under a statutory transfer arrangement ("Transfer Scheme") as detailed in paragraph 3.33 of this report.
- 4.5 Due diligence meetings with providers of contracts to be transferred to the Council have indicated no known pending litigation or contract disputes. This however is still subject to written confirmation from the service providers.
- 4.6 In addition to those contracts to be extended, Section 3.9 sets out arrangements with regard to certain other contracts such as for GUM services. As detailed in Section 3.9 specific contractual arrangements are necessary for these contracts and Officers intend to pursue such contractual arrangements in accordance with government guidance and external legal advice being sought in association with other North West London boroughs.
- 4.7 In relation to GUM Services as set out in paragraphs 3.21 to 3.25, it will be noted that the intention is for each council in North West London to lead on negotiations with their local trust on behalf of other North West London councils. It is proposed that the council leading the negotiations will hold the contract with the other councils being associate commissioners. Approval is sought to enter into such collaborative procurement arrangements and under Contract Standing Orders 85(c) such collaborative procurements need to be tendered in accordance with Brent Standing Orders and Financial Regulations, unless the Executive grants an exemption in accordance with Standing Order 84(a). A request for an exemption under Standing Order 84(a) can be approved by the Executive where there are good operational and / or financial reasons.
- 4.8 For contracts transferring to the Council from 1st April 2013, there is no Clinical Governance policy framework in place by the Council and it is noted that there is therefore a risk with respect to Clinical Governance issues in the provision of services under these contracts.
- 4.9 Section 73A of the NHS Act 2006 provides for Local Authorities acting jointly with the Secretary of State to appoint an individual (the Director of Public Health) to have responsibility for prescribed functions.
- 4.10 Staff transferring to the council from NHS Brent will be entitled to retain their pre-existing terms and conditions of employment, meaning that they will be on their own terms and conditions unless an agreement can be reached to expressly waive them. The council will also need to be aware that as there is a proposed cut in the budget, reorganisation may potentially require redundancy of staff that have transferred from the NHS. Furthermore, if the NHS redundancy policy is contractual then careful attention will need to be

paid to its terms and conditions in order that these provisions are not broken should any staff be made redundant.

5. Finance Implications

- 5.1 On 10th January 2013, the public health grants for 2013/14 and 2014/15 were announced. Brent has been allocated £18.334m in 2013/14 and £18.848 in 2014/15. These are ring fenced grants to be spent on public health services for the local population of Brent which have been made under Section 31 of the Local Government Act 2003.
- 5.2 Whilst a lot of work has been undertaken between the Primary Care Trust and the authority to understand current public health spend, there is still a concern that two services areas are entirely demand-lead (sexual health and health checks) and current spend accounts for around 25% of the total budget. In 2012/13, the projected spend has increased by £0.288m more than first thought on GUM services.
- 5.3 It was initially thought that the council might have to pick up any redundancy costs associated with the transfer. It has now been clarified that the NHS will do this. Therefore the proposed reserve of £1¼m that was requested in the last report to Executive is no longer required.
- 5.4 After taking into account staffing and other contractual arrangements, the available grant funding for initiatives is £1.938m. The Public Health Transition Board have requested that £0.400m be held in reserve until later in the financial year to cover for any committed spend not identified at this stage.
- 5.5 The expectation is that funds will be utilised in-year, but if at the end of the financial year there is any underspend this can be carried over, as part of a public health reserve, into the next financial year.
- 5.6 Under new section 2B of the National Health Service Act 2006 (as inserted by section 12 of the Health and Social Care Act 2012), the local authority has a duty to take steps, as it considers appropriate, for improving the health of the people in its area. The local authority may also be required by regulations under new section 6C of the NHS Act (as inserted by section 18 of the Health and Social Care Act 2012) to take steps to protect the public in England from disease or other dangers to health.
- 5.7 These services form part of the comprehensive health service and are therefore subject to the general prohibition on charging under section 1(3) of the NHS Act unless exempted through regulations. Therefore the local authority is unable to charge for any public health services provided.
- 5.8 There are not expected to be any capital requirements arising from this transfer.

6. Diversity Implications

- 6.1 The Council will need to comply with the Equality Act 2010 in the provision of Public Health Services. The Public Sector equality duty imposed by Section 149 of the Equality Act 2010 will need to be addressed at the time when both the services and contracts are reviewed. The transfer and extension of the existing contracts is an interim measure designed to secure continued service within a very tight time scale and it is not practicable to consider and address the equalities issue within this transitional period during which the contracts are extended for a short period of 12 months.

7. Staffing/Accommodation Implications

- 7.1 These are included in the body of the report.

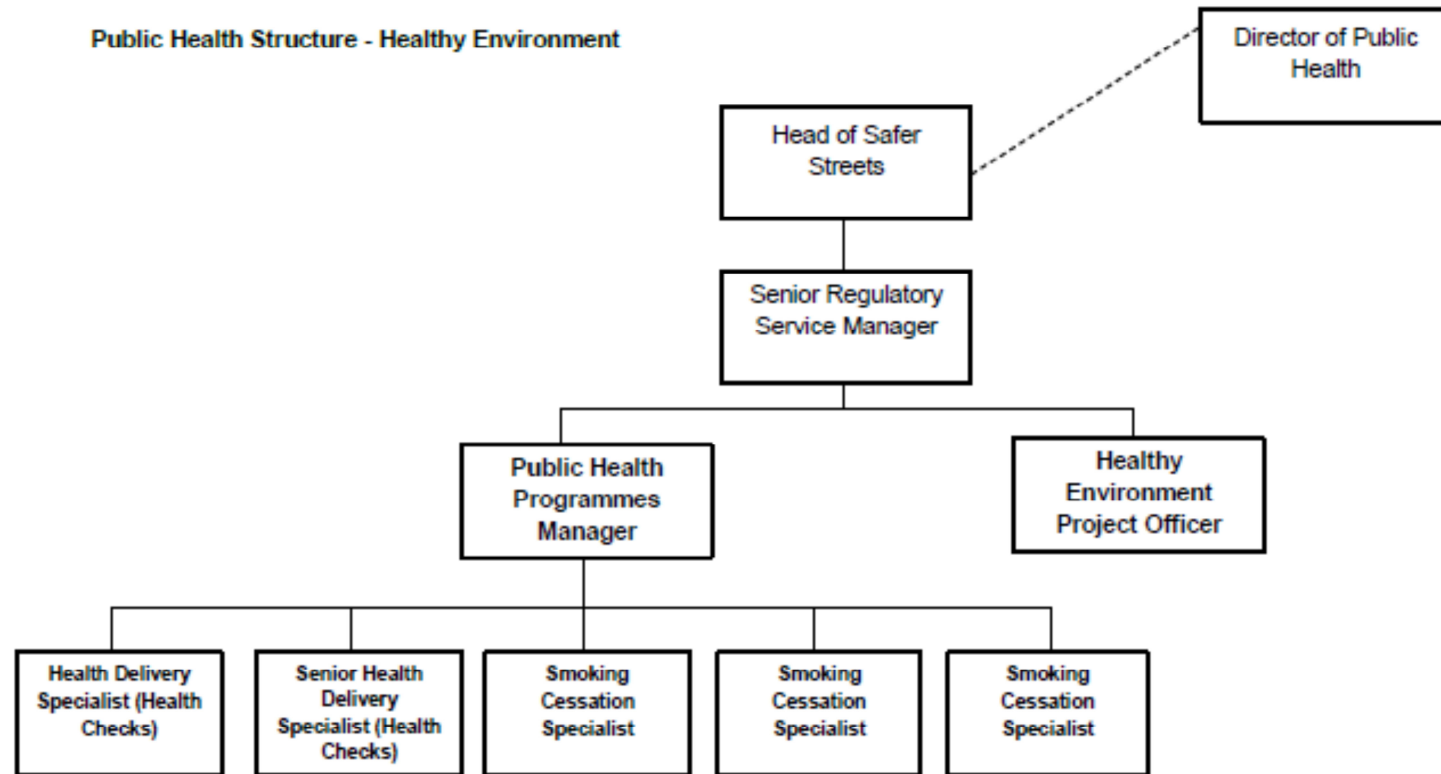
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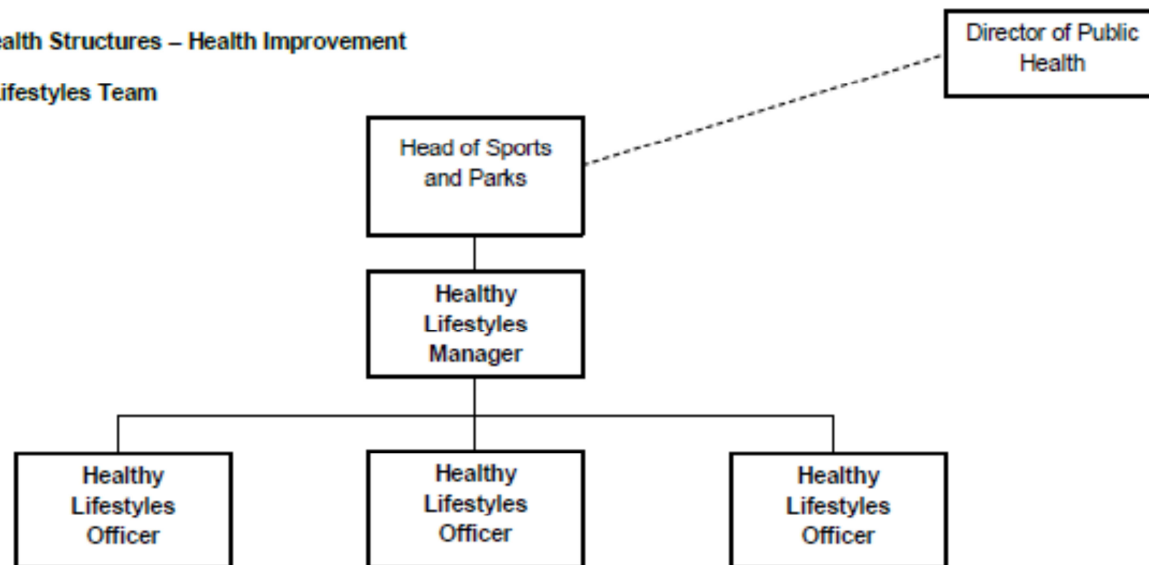
Alison Elliott
Director of Adult Social Care

Public Health Structure - Healthy Environment

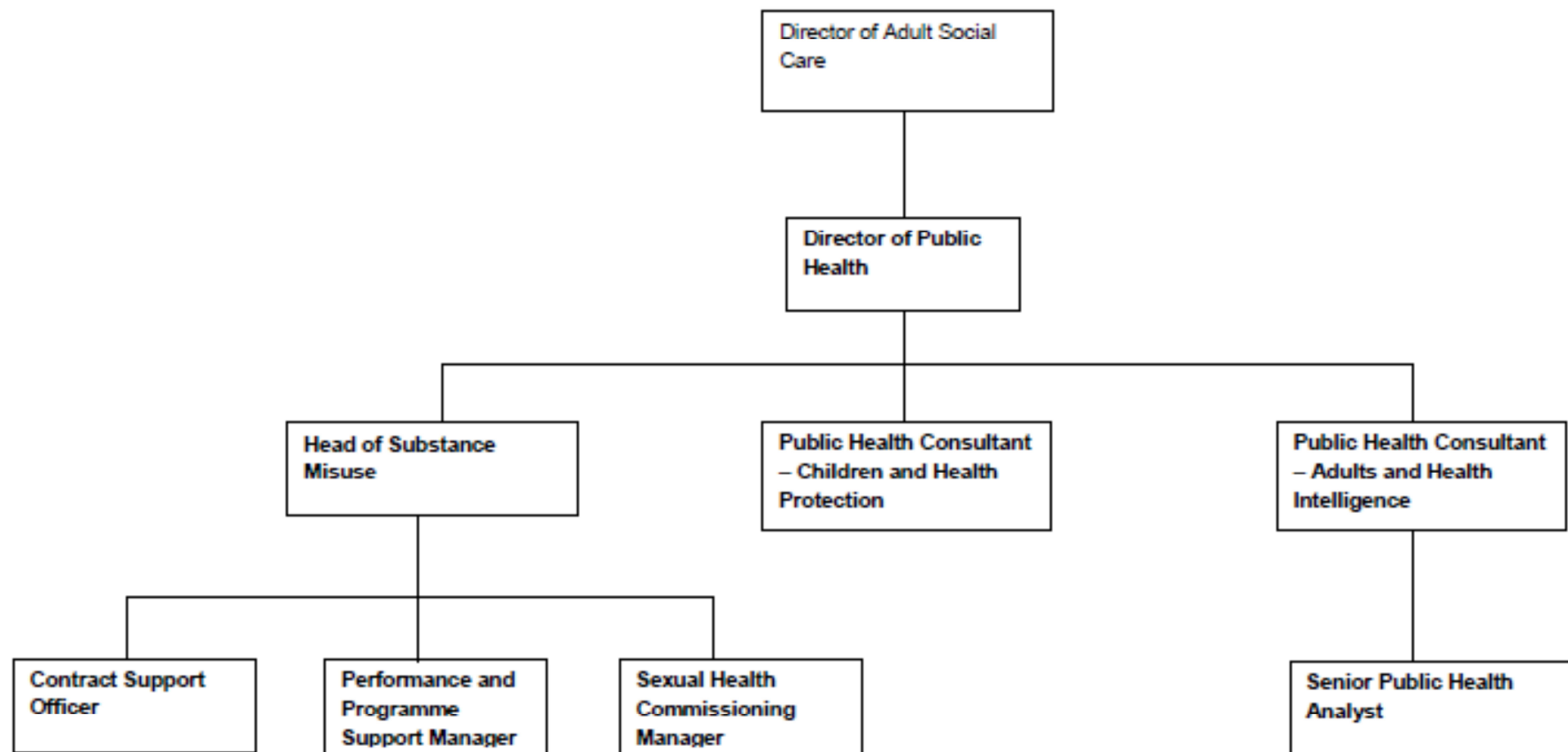


Public Health Structures – Health Improvement

Healthy Lifestyles Team



Public Health Structures – Public Health Commissioning and Intelligence



Appendix 4 – Public Health Contracts List

Provider	Service
NHS Ealing Hospital Trust	Infection control in care homes – this is a small element of a larger infection control service specification, but the council is only required to cover the care home element.
Central and North West London NHS Foundation Trust	Clinical prescribing substance misuse services
Compass via NHS Harrow	Alcohol Brief Interventions
Addaction	Substance misuse - treatment and recovery
Young Addaction	Substance misuse services for young people
LIFT	Service user involvement for substance misuse clients
CRI	Substance misuse outreach and engagement
EACH	Counselling and abstinence based substance misuse programmes
WDP	Substance misuse services
Central and North West London NHS Foundation Trust	Contraceptive services
NW London Hospitals	GUM Services
NW London Hospitals	Chlamydia screening services
Ealing Hospital Trust	School nursing and National Child Measurement Programme
Ealing Hospital Trust	LAC Nurse
SHOC	Sexual health primary care development
CHAT	HIV Prevention
The African Child	Teenage Pregnancy and sexual health services for young people
Naz Project London	HIV Prevention
SHOC	Teenage Pregnancy – condom distribution
Therapy Audit	Web based distribution and stock ordering system for condoms
The Doctors Laboratory	Sexual health pathology services
Sonar	IT support for condom distribution
General Practices	Chlamydia screening LES
General Practices	IUCD – long acting contraception
Pharmacies	Emergency Hormonal Contraception
Pharmacies	Stop Smoking (Local Enhances Services) LES
General Practices	Stop Smoking LES
community providers	Stop Smoking LES
General Practices	Primary care pregnancy stop smoking LES
CHAT	Health Trainers
Ealing Hospital Trust	Intensive Lifestyle Advice
General Practices	Oral Health LES
General Practices	Health of the Population (Breast Feeding) LES
General Practices	Health checks LES
Slimming World	Community Weight Management Service
LPC	Pharmacy Mentoring Scheme
Sonar	Stop Smoking Specialist IT Provision

