



Full Council
24 June 2013

**Report from the Assistant Director of
Strategy, Partnerships and Improvement**

For Action

Wards Affected:
ALL

Establishment of the Brent Health and Wellbeing Board

1. Summary

- 1.1 The Health and Social Care Act 2012 requires that the Council appoints a Health and Wellbeing Board, the membership of which is largely set out in statute. The purpose of the Board is to assess the health needs of the Brent population and produce a strategy to address those needs and to encourage the provision of integrated health and social care services.

2. Recommendations

2.1 Full Council is recommended to:

- (i) Agree that the Health and Wellbeing Board be established as a Committee of the Council with the Terms of Reference and Membership set out in paragraphs 3.7.1 and 3.5.2 below.
- (ii) Agree that the proportionality rules are dis-applied to the Health and Wellbeing Board.
- (iii) Agree that the Health and Wellbeing Board be consulted on the proposed voting arrangements for the Board set out in paragraph 3.3.6.
- (iv) Agree that the consequential amendments to the Council's constitution arising as a result of this report be made by the Director of Legal and Procurement upon the final decision being made regarding voting arrangements.

3. Details

3.1 Policy Context

- 3.1.1 Section 194 of the Health and Social Care Act 2012 requires that every upper-tier local authority establish a Health and Wellbeing Board ('HWB').

Collaboration is at the heart of Health and Wellbeing Boards; they provide new opportunities for local government to work in partnership with the NHS and communities to understand local need and develop a shared strategy to address the issues that matter most to local people.

3.1.2 Brent's shadow Health and Wellbeing Board has been meeting since February 2011. In developing the Board, the Council has followed the spirit of the original NHS White Paper, "Liberating the NHS" and subsequent Health and Social Care Act 2012. Existing terms of reference reflect the Government's ideas around the roles of Health and Wellbeing Boards, that they should be forums of collaboration and partnership working. Brent's approach has been informal, focussing on building relationships between councillors and GPs. However, it has overseen the development of a new Joint Strategic Needs Assessment for Brent and a Joint Health and Wellbeing Strategy, two of the board's statutory functions.

3.1.3 The main functions of Health and Wellbeing Boards are to:

- Assess the needs of the population through the Joint Strategic Needs Assessment (JSNA)
- Agree and produce a Health and Wellbeing Strategy to address needs, which commissioners will need to have due regard to in developing commissioning plans for health care, social care and public health. Commissioning plans can be referred to the Clinical Commissioning Group (CCG), local authority executive or NHS Commissioning Board if they do not reflect the JSNA and Health and Wellbeing Strategy
- Promote joint commissioning between health and social care
- Promote integrated provision, joining up social care, public health and NHS services with wider local authority services
- Participate in the development of CCG commissioning plans including commenting on the CCGs readiness to take on commissioning responsibilities and become authorised
- Provide advice to the NHS Commissioning Board in authorising and assuring CCGs

3.1.4 Health and Wellbeing Boards need to move out of their "shadow" form and become properly constituted by 1st April 2013. Regulations on the operation of Health and Wellbeing Boards were published in February 2013. As a result it has only been possible to bring this report to Full Council at this time. The relevant regulations are The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013.

3.2 Legal Context

3.2.1 In order to fit Health and Wellbeing Boards within local authority structures, the Government has used section 102 of the Local Government Act 1972 as their legislative framework which governs the Council's ordinary Committee arrangements. By using this established legislation there are consequences that have become apparent regarding the operation of this Board and the recent Regulations seek to address the various issues which arise. For

example, under normal circumstances a section 102 committee only permits elected members of the council to vote on decisions and requires committees to be proportional in line with the overall proportionality of the council. It has always been the explicit policy intention that Health and Wellbeing Boards will, as a forum for collaborative local leadership, be very different to a normal local authority committee. The regulations permit a move away from these ordinary rules in relation to Health and Wellbeing Boards.

3.2.2 As a section 102 committee, Full Council needs to take the decision to formally establish the Health and Wellbeing Board. There are some membership requirements that are statutory. The statutory members of the health and wellbeing board are:

- At least one elected member (appointed by the Leader)
- Director of Adult Social Care
- Director of Children's Services
- Director of Public Health
- A representative of the local Clinical Commissioning Group
- A representative of Health Watch

3.2.3 Section 194(2)(g) of the Health and Social Care Act 2012 allows additional members beyond the statutory minimum to be appointed to the Board by the Local Authority and Section 194(8) enables the board itself to appoint additional members.

3.2.4 It is worth reinforcing the key underlying issue facing councils that are establishing Health and Wellbeing Boards - the need to strike a delicate policy balance between utilising the local accountability that is expected by establishing a Health and Wellbeing Board as a statutory committee, with the objective of providing the flexibility and support needed to empower local authorities to shape boards that are focused and effective, which work for them and really make a difference. The Health and Wellbeing Board may be delegated other functions but it cannot be responsible for overview and scrutiny functions.

3.3 Health and Wellbeing Board Regulations and choices for the Council

Establishment of Sub Committees and Delegations

3.3.1 Current legislation enables the Council to arrange for the discharge of functions by a committee, sub committee, officer or another local authority. The Department of Health is clear that Health and Wellbeing Boards are being established to bring together key health and social care commissioners and they want the core functions of the boards to remain within the collective ownership of the whole board. The Regulations allow the Health and Wellbeing Board, unless the Council directs otherwise, to establish a sub committee and delegate functions to a sub committee, if it wishes to do so. It is not suggested that the Council direct otherwise.

Political proportionality requirements

- 3.3.2 The Local Government and Housing Act 1989 imposes political balance requirements on Section 102 committees. In essence this means that not all seats are allocated to the same party group but that the majority of seats are given to the majority group. The Health and Wellbeing Board regulation 7 dis-applies this provision, meaning that the Board does not have to be politically proportional.
- 3.3.3 Councils are able to delegate executive functions to Health and Wellbeing Boards and the Boards will have their own statutory responsibilities such as developing the borough's health and wellbeing strategy. It is important that the board has stability and that it is able to lead this agenda with colleagues from the NHS without decision making or activity being compromised. For this reason it is recommended that proportionality rules are not applied to the Board. It is proposed that four Executive members will be nominated by the Leader of the Council to sit on the Board and a fifth place will be available for an opposition councillor.

Voting restrictions

- 3.3.4 Ordinarily S102 of the Local Government Act 1972 prevents non members of the Council from voting at section 102 committees except in relation to a specified set of committees. However, regulation 6 of the Regulations provides that unless the Council chooses to restrict voting rights to certain members of the Health and Wellbeing Board, all members of the Health and Wellbeing Board will have voting rights.
- 3.3.5 Although Health and Wellbeing Boards have a unique role and membership requirement, the voting regulation presents a problem to local authorities. It is highly unusual to have officers of the council and (potentially) external partners voting on a council committee since this goes against the principles of local democracy and decision making by elected representatives.
- 3.3.6 That said, Health and Wellbeing Boards are supposed to act as the leaders of health and social care services in their area. Health and Wellbeing Boards were intended to be collaborative groups that work to implement a shared agenda for health and social care in each council area. If a collaborative board is to be established, setting up a board where only elected members can vote would seem to go against the original intention. It is recommended that representatives of the Council and the Clinical Commissioning Group should be at the table as equals if the Board is to work and genuinely improve health and wellbeing through its strategic influence and powers. For this reason, it is appropriate to give the three CCG representatives voting rights on the Board, as well as elected councillors. However, other members of the Board, including officers of the Council, Health Watch representatives, and any others appointed to the Board (including any additional CCG members), should not be given voting rights.

3.3.7 The regulations require councils to consult with Health and Wellbeing Boards before making any direction on voting rights at the board. The Brent Health and Wellbeing Board will be consulted on this proposal and its views reported back to Council in order that a decision on Health and Wellbeing Board voting arrangements can be taken.

3.4 Disqualification for membership

3.4.1 Currently persons who are disqualified from being councillors are disqualified from being a member of the local authority or committee or joint committee. The grounds of disqualification include being an employee of the Council. The regulations have amended these restrictions to allow officers to become members of the board.

Application of a code of conduct and declaration of interest

3.4.2 Part 1, Chapter 7 of the Localism Act 2011 sets out provisions on the new standards regime for local authorities. This includes provisions in relation to the Code of Conduct and the disclosure of pecuniary interests. The Act requires co-opted members of committees to disclose pecuniary interests. A co-opted member is a person who is not a member of the authority but who is a member of any committee or sub-committee and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee. These provisions will therefore apply to all voting members of the Health and Wellbeing Board. Accordingly arrangements will need to be made for the disclosure of pecuniary interests and training and guidance will be provided to members regarding the Code.

Application of transparency provisions

3.4.3 The Health and Wellbeing Board is subject to the same access to information rules as other council committees.

3.5 Membership of the Board

3.5.1 Given the points made above about membership (both statutory and non-statutory), Full Council is advised to agree the membership of the Board as set out below in order to ensure it is able to properly fulfil its functions as a leader of the health and social care system in the borough.

3.5.2 The recommended membership of the Health and Wellbeing Board is:

Statutory members

- Five elected councillors, with voting rights, to be nominated by the Leader of the Council. Four councillors will be Executive members from the majority party. The fifth member will be from an opposition party. An elected councillor will chair the Health and Wellbeing Board
- Director of Adult Social Care
- Director of Children's Services

- Director of Public Health
- A representative of Brent CCG, with voting rights
- A representative of Health Watch

Non-statutory members

- Chief Executive, London Borough of Brent
- Director of Environment and Neighbourhood Services
- Two additional representatives from Brent Clinical Commissioning Group with voting rights
- Brent Clinical Commissioning Group Borough Director

At least one of the Brent CCG members shall be a GP

- 3.5.3 As well as nominating five members to the Board, the Leader of the Council will also nominate five alternate members. The members of the Health and Wellbeing Board should not be members of the Health Partnerships Overview and Scrutiny Committee.

3.6 Quorum

- 3.6.1 Although the membership of the Board is wider than just councillors and CCG representatives, as it is proposed they be the only voting members, the Health and Wellbeing Board will only be quorate if three elected members and one CCG representative from the Brent Clinical Commissioning Group is present.

3.7 Terms of Reference

- 3.7.1 The proposed terms of reference for the Health and Wellbeing Board are set out below. They recognise that operational activities sit with the individual organisations represented on the Health and Wellbeing Board. The Board's role is to set the strategic direction and influence commissioning processes prior to operational decisions being taken.

Brent's Health and Wellbeing Board will:

- Lead the improvement of health and wellbeing in Brent, undertaking duties required by the Health and Social Care Act 2012
- Lead the needs assessment of the local population and subsequent preparation of the borough's Joint Strategic Needs Assessment and Joint Health and Wellbeing Strategy and ensure that both are updated at regular intervals
- Oversee the implementation of the priorities in the borough's health and wellbeing strategy and other work to reduce health inequalities in Brent
- Develop initiatives between the council and health service partners to improve health and wellbeing, focussing on tackling Brent's health inequalities
- Promote integration and partnership working between health, social care and public health by developing joined up commissioning plans

- Provide steer and oversight to CCG and social care commissioning plans to ensure they meet the borough's health needs and the wider strategic plans for health and social care
- Consider the wider determinants of health including (but not limited to) housing, education, and the environment to ensure that there is an integrated response to tackling health and wellbeing priorities and health inequalities in Brent
- To oversee the borough's plans to respond to a health related emergency
- Oversee the development of the borough's pharmaceutical needs assessment, which requires updating every three years
- Agree an annual work programme for the Board

4. Legal Implications

4.1 The legal implications are included in the body of the report.

5. Finance Implications

5.1 None

6. Diversity Implications

6.1 None

7. Staffing/Accommodation Implications

7.1 There are no specific staffing implications. The Shadow Board has been provided with administrative support including that from Democratic Services and the policy unit and this will continue.

Contact Officer:

Andrew Davies, Policy and Performance Officer
Tel – 020 8937 1609
Email – Andrew.davies@brent.gov.uk

Cathy Tyson
Assistant Director of Strategy, Partnerships and Improvement