

CHESHIRE EAST COUNCIL

COUNCIL

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| Date of Meeting: | 15 th May 2013 |
| Report of: | Executive Director of Strategic Commissioning Interim Monitoring Officer and Head of Legal Services |
| Subject/Title: | Health and Wellbeing Board's Terms of Reference |

1.0 Report Summary

- 1.1 At the meeting of Council held on 28th February 2013 it was resolved that the current Health and Wellbeing Board's Terms of Reference be approved, until such a time as the draft Terms of Reference could be reviewed by the Health and Wellbeing Board, in light of the recently published Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013.
- 1.2 This report makes proposals for some amendments to the existing Terms Of Reference in the light of the Regulations and guidance published by the Local Government Association.

2.0 Decision Required

- 2.1 That Council consider the proposals contained in this report and agree the modifications.

3.0 Reasons for Recommendations

- 3.1 To ensure that the Health and Wellbeing Board operates effectively and that the Council is compliant with the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013.

4.0 Wards affected

All

5.0 Local Ward Members

All

6.0 Policy Implications

- 6.1 The health and wellbeing of the residents of Cheshire East is everyone's business, and as such implications for future policy development, service redesign and budget setting should account for the impact on the health and wellbeing of the population and indeed the future priorities of the Health and Wellbeing Board from April 2013.

- 6.2 The NHS Operating Framework for 2012/13 described the Health and Wellbeing Board's primary responsibility as to '....provide local systems leadership across health and social care and public health...'
- 6.3 The collaborative decision making approach of this Board is essential to achieving whole system accountability for the improvement of the health and wellbeing of Cheshire East citizens. This requires the delivery of integrated care services and effective integrated commissioning approaches to achieve maximum benefits for people, families and communities within the collective resources of the health and social care economy.
- 6.4 Importantly local leaders and commissioners will need to establish new relationships with others such as – the Police and Crime Commissioner, and the regional representative of the NHS Commissioning Board, and Public Health England. The importance of system wide leadership with others can also not be underestimated e.g. Housing Providers, Acute and Specialist Health providers, Voluntary Community Faith Sector, local businesses, and other patient and public voices.

7.0 Financial Implications

- 7.1 None to note in respect of the terms of reference themselves.
- 7.2 The Health and Wellbeing Board has no formal delegated authority from any of the statutory bodies in respect of resource decision making. Therefore the process for making decisions around resource allocation remains within Board members' respective individual organisation's governance, powers and duties.

8.0 Legal Implications

- 8.1 The Health and Social Care Act 2012 requires the Local Authority to establish a Health and Wellbeing Board for its area. Core membership includes at least one local Councillor (nominated by the Council's Leader) the Directors of Adult Social Services, Children's Services and Public Health, a representative of the Local Healthwatch Organisation and a representative of each Clinical Commissioning Group and the NHS Commissioning Board. The Local Authority may also nominate such other individuals as they consider appropriate.
- 8.2 Once established in April 2013 the Board will be a Committee of the Local Authority but the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 modify some of the normal requirements of the Local Government Act 1972 and the Local Government and Housing Act 1989 and these are outlined in Section 10 of the report. The Board has a number of duties under the Act but specifically is tasked with a duty to encourage integrated working in the provision of health and social care services.

9.0 Risk Management

- 9.1 Corporate risks have been determined in respect of Health Partnerships, and this is reported to the Corporate Risk Management Group. Failure to establish a strong collaborative Board could impact negatively on the health and wellbeing of Cheshire East citizens and indeed on the Councils own objectives set out the Sustainable Communities Plan and Business Plan for 2013-2016.
- 9.2 The Health and Wellbeing Board has established an initial Risk Register. The Board will review these quarterly.

10.0 Background and Options

- 10.1 The Health and Social Care Act 2012 has initiated a number of significant changes that will affect the local health and social care landscape. This includes the establishment of the Cheshire East Health and Wellbeing Board, the Clinical Commissioning Groups and the transfer of Public Health responsibilities from the Primary Care Trust to the Local Authority. The Authority has a greater role to play now in setting policy, providing system leadership and in connecting commissioning activity that will contribute to improved health outcomes for the population of Cheshire East.
- 10.2 The regulations relating to Health and Wellbeing Boards have been published as Statutory Instrument 2013 No. 218 entitled, The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013
- 10.3 The regulations modify certain legislation as it applies to Health and Wellbeing Boards and disapply certain legislation in relation to the Boards. The provisions which are modified or disapplied are in the Local Government Act 1972 and the Local Government and Housing Act 1989.
- 10.4 Under section 194 of the Health and Social Care Act 2012, a Health and Wellbeing Board is a committee of the council which established it and for the purposes of any enactment is to be treated as if appointed under section 102 of the Local Government Act 1972. It is therefore a 'section 102 committee', as it is sometimes called within local government. However, the regulations modify and disapply certain provisions of section 102 and other sections of the Local Government Act 1972 and also provisions of the Local Government and Housing Act 1989.
- 10.5 The modifications and disapplications which apply to Health and Wellbeing boards within the regulations generally also apply to sub-committees and joint sub-committees of the Boards.
- 10.6 The guidance from the Local Government Association deal with both constitutional and governance matters. This report deals predominately with constitutional matters.
- 10.7 Councils and their partners on Health and Wellbeing Boards can take advantage of the flexibility allowed by the regulations to develop ways of

working that genuinely reflect the wishes of their members and the needs of the communities they serve. It is recommended that these wider issues of governance are considered at a later date when the Health and Wellbeing Board has had a period of formal operation.

- 10.8 The current terms of reference are broadly compliant with the Regulations but there are some constitutional issues that can be clarified at this time are:-

Purpose of the Board

The statutory purpose of the Health and Wellbeing Board is:-

- To prepare Joint Strategic Needs Assessments (JSNAs) and Joint Health and Wellbeing Strategies (JHWSs), which is a duty of local authorities and clinical commissioning groups (CCGs).
- A duty to encourage integrated working between health and social care commissioners, including providing advice, assistance or other support to encourage arrangements under section 75 of the National Health Service Act 2006 (ie lead commissioning, pooled budgets and/or integrated provision) in connection with the provision of health and social care services.
- A power to encourage close working between commissioners of health-related services and the Board itself.
- A power to encourage close working between commissioners of health-related services (such as housing and many other local government services) and commissioners of health and social care services
- Any other functions that may be delegated by the council under section 196(2) of the Health and Social Care Act 2012. Such delegated functions need not be confined to public health and social care.

Membership and Political Balance

- The councillor membership is nominated by the Executive Leader but approved by Council. Under the regulations (Regulation 7) Sections 15 to 16 and Schedule 1 of the Local Government and Housing Act 1989 disapply the political proportionality requirements for section 102 committees in respect of health and wellbeing boards. This means that Councils can decide the approach to councillor membership of Health and Wellbeing Boards and enables the council to include other members as it thinks appropriate but must consult the Health and Wellbeing Board if doing so any time after a Board is established

Voting

- The Local Government Act 1972 does not allow officers to be members of local authority committees. Regulation 5(1) removes this restriction in

relation to Health and Wellbeing Boards by disapplying section 104(1) of the 1972 Act to enable the local authority directors specified in the 2012 Act to become members of Health and Wellbeing Boards.

- Regulation 6 modifies the Local Government and Housing Act 1989 (section 13(1)) to enable all members of Health and Wellbeing Boards or their sub-committees to vote unless the council decides otherwise. This means that the council is free to decide, in consultation with the Health and Wellbeing Board which members of the Health and Wellbeing Board should be voting members.

Codes of conduct and conflicts of interest

- The regulations under section 194 of the Health and Social Care Act 2012 do not modify or disapply any legislation relating to codes of conduct and conflicts of interest. This means that legislation in relation to these issues will apply to Health and Wellbeing Boards. Additional information is required in the terms of reference to ensure that Members of the Board are working to the same rules as other Council decision making bodies

Transparency and openness

- The regulations under the Health and Social Care Act 2012 do not modify legislation in relation to transparency requirements in relation to Health and Wellbeing Boards. This means that they are subject to the same requirements of openness and transparency as other section 102 committees. Therefore the normal access to information provision and rules will apply and provision should be made for a public question time session.

- 10.9 In considering the draft Terms of Reference, Council agreed that the Health and Wellbeing Board should consider a suggested addition to the wording of the last bullet point at paragraph 2 – The Board's Vision, to refer to "Achieving **improved** evidence-based **public** outcomes within a holistic vision of health and wellbeing".

The Shadow Health and Wellbeing Board, at its meeting on 26 March 2013, agreed the Terms of Reference.

The Shadow Health and Wellbeing Board considered the suggested additions from Council to the wording of the last bullet point at paragraph 2, as set out above and agreed that the word "improved" should be included, but that the word "public" should not.

- 10.10 In the light of the above, suggested revisions to the terms of reference have been made and these are shown as tracked changes, at Appendix 1.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writers:

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