

Staffing Committee Report

Date of Meeting: 16 August 2016

Report of: Executive Director – People and Deputy Chief Executive

Subject/Title: Director of Public Health Role

Portfolio Holder: Cllr Paul Bates

1. Report Summary

- 1.1 This report outlines the restructure of the line management arrangements for the Director of Public Health, the implications for the current post holder and the proposal of how new arrangements are to be recruited to .

2. Recommendations

It is recommended that Staffing Committee:

- 2.1 Note the rationale for deletion of the current post of Director of Public Health which reports to the Chief Executive and its replacement of a Director of Public Health which reports to the Director of Adult Social Care and Health, within the People Directorate.
- 2.2 Approve the termination of the contract of employment of the current Director of Public Health and for this to be at a date to be agreed.
- 2.3 Approve the costs of a severance package for the current Director of Public Health, up to a maximum level as set out in paragraph 5.1 in this report, provided that the terms shall comply with any regulations in relation to public sector severance that apply to the post holder and are in force at the date of termination.
- 2.4 Approve the job description and person specification for the new Director of Public Health and delegate negotiation to the Executive Director of People and Deputy Chief Executive (in consultation with the Chair of Staffing Committee) with the Faculty of Public Health regarding the final versions.
- 2.5 Delegate authority to the Executive Director of People and Deputy Chief Executive, in consultation with the Chair of Staffing Committee, to agree to the commencement of an appropriately timed recruitment process to the revised role of Director of Public Health (DPH) which gives greater clarity to the role and reporting lines within the Council.

3. Other Options Considered

- 3.1 No Change. This option does not align with the Council's current and future plans to become a more agile, effective and efficient organisation and the revised structure of People, Place and Corporate Services Directorates. It is also unsustainable in light of proposed national reductions to, and removal of, the ring-fence from the Public Health Grant.
- 3.2 To not have a DPH. Under statute each Local Authority must have a DPH (see paragraph 5.2).
- 3.3 For the current postholder to be assigned to the revised role. Due to the significant payscale differences and the change from the role being at tier 2 to tier 4, the new role would not be seen to be a 'reasonable alternative' due to the scale of the changes proposed and as such this is not a viable option.
- 3.4 To defer until the national introduction of the cap on severance payments. In 2015 Government announced that it intended to apply a £95,000 cap on the total value of exit payments made to employees in the public sector. The cap is to include the costs of pension strain payments. In November, the Government stated its intention to have the regulations approved by Parliament in 'summer/autumn 2016'. The necessary changes were made to primary legislation in May 2016, but Government has not confirmed a date when the new regulations will be before Parliament. Implementation of the cap might be delayed as a consequence of the Brexit decision; or if the regulations are subject to legal challenge, and there are several grounds on which this might happen.
- 3.5 Government has published a draft of The Public Sector Exit Payments Regulations 2016. The final form of the regulations may differ, but the current draft exempts from the cap exit payments where the employee's entitlement arises as a result of certain TUPE (Transfer of Undertakings (Protection of Employment) Regulations) transfers. In narrow legal terms the post holder did not transfer under TUPE. However, in 2013 the Council wrote to all transferring Public Health staff informing them that 'the transfer is being handled as a TUPE transfer, which provides you with certain protections in law.' To deviate from that position now could result in legal challenge.
- 3.6 In summary, there is uncertainty that the cap will be implemented quickly and uncertainty whether, if implemented, it would apply to the post holder. Delay in implementing the revised structure of Director of Adult Social Care and Health and the DPH would seriously hinder the work needed to deliver clarity in role and a truly joined up approach to the health and social care agenda.
- 3.7 In these unusual circumstances it is recommended that Staffing Committee approve the costs of a severance package for the current Director of Public Health, up to a maximum level as set out in paragraph 5.1 in this report, provided that the terms shall comply with any regulations in relation to public sector severance that apply to the post holder and are in force at the date of termination. This will give authority to the Executive Director to approve the termination of the contract of employment of the Director of Public Health, by

way of voluntary redundancy, or otherwise as the Executive Director and Director of Public Health agree, and to approve the terms of that package within the approved financial envelope outlined in 5.1 of this report.

- 3.8 In light of the possible publication of regulations implementing a cap on severance costs; it is recommended that the terms of the severance package must comply with any regulations in relation to public sector severance that apply to the post holder and are in force at the date of termination.

4. Reasons for Recommendations

- 4.1 Cheshire East Council is in the process of modernising and transforming its way of working and is seeking to enhance collaboration, remove internal silos and streamline functions. As such, a structure of three Directorates has recently been established – People, Place and Corporate Services.
- 4.2 The redesign of the reporting arrangements for the DPH has been subject of discussion since late 2015 and is part of the realignment of adult social care and health and the creation of a high performing and cost effective People Directorate, whilst maintaining due regard for the Council's legislative duties.
- 4.3 Cheshire East Council has already made reforms in its delivery of Children's Services. The agreed appointment of a Director of Adult Social Care, with responsibility for health, and line management of the Public Health team, allows us to address the radical changes needed to reduce demand and improve the health of our adult and particularly our older residents. The proposed new management arrangements are set out in the attached structure chart.
- 4.4 The recommendations contained in this report allow Cheshire East Council to continue to build on the opportunities afforded following the significant work already undertaken to bring all 'peoples' services together. Proposals seek to establish clarity in both responsibility and accountability for the interface with health economy at an officer level, together with the recent retendering and rationalisation of services to support improvements in local health.
- 4.5 There are additional benefits, in that this new line management and reporting structure will allow us to streamline our interactions with local and sub-regional NHS partnerships and initiatives, reduce duplication and provide clarity of response. The Council is also seeking to reduce the multiple interactions we currently have with our two integration programmes and the Cheshire and Merseyside Sustainability and Transformation Planning process. This will allow us to enhance, and bring clarity to, our role as local leaders in this field and ensure that health and social care reforms are aligned.
- 4.6 The current Public Health budget comes directly from central government (from the Department of Health through Public Health England), with a ring fence currently in operation until the end of March 2018. It is suggested that if the ring fence is removed, Public Health services may be funded from local

Business rates income. The current Public Health budget is being proactively managed to accommodate this change, so the impact on local services and tax payers is minimised. As part of these plans, a contingency for the proposed redundancy payment has been made in year (2016/17) from the ring fenced Public Health budget. Payment sum entitlements comply with the current requirements of the post holders NHS contractual terms and conditions.

5. Background

5.1 The recommendation to the Staffing Committee is that we approve the termination of the contract of employment of the current Director of Public Health. This is to be via **voluntary redundancy**, or otherwise and at a date to be agreed. The rationale is as follows:

- As part of the realignment of Services and the inclusion of Public Health into the new People Directorate, the new DPH will be reporting to the new Director of Adult Social Care and Health. This has resulted in a move from a tier 2 to a tier 4 post and necessitated a review of the DPH job description/role and subsequent grading onto Cheshire East Council terms and conditions.
- The present DPH has indicated that the new DPH post is not a suitable alternative to the present post in terms of its reduction from a tier 2 to a tier 4 position and the reduction in proposed salary from the present salary of £183,328 pa including on costs (on Medical and Dental Consultant terms and conditions) to a salary of £86,636 pa including on costs. No other suitable alternative roles are available in the Council and as a result the current post-holder has requested to be allowed to leave the Council on voluntary redundancy terms.

- The VR costs would be as follows:

Actual Salary	£146,970
Salary with on-costs	£183,328
Max redundancy costs (including pension costs)	£293,814*

(* estimates provided by NHS Pensions)

- The vast majority of the redundancy costs relate to pension cost entitlements under NHS pension scheme rules, with approx. 20% as a severance payment.
- The cost of VR would be met from within the Public Health Grant. The present Public Health budget is ring fenced to Public Health and provision for this one off redundancy payment has been factored into the financial projections for Public Health this year. In addition, the severance payment costs for the DPH will increase as the current post-holder will be eligible for a pay rise to the top of the Medical and Dental Consultant grade.
- The savings generated by this proposal are as follows:

Savings Yr 1	6/12 th of current salary less	£91,664 - £43,318
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	6/12 th of new post	= £48,346
Savings each year from Yr 2	Full cost of current salary less full cost of new post	£183,328 - £86,636 = £96,692

- The costs of VR would therefore be recouped within a 4 year period.
- In addition, the appointment of the new Director of Public Health, reporting into the Director of Adult Social Care and Health, will enable a further review of the Public Health team to take place and it is fully expected that further savings will be made by a restructuring of the service, resulting in a quicker payback of severance costs and an appropriate fit with local need.

5.2 The recommendation to the Staffing Committee is that the **process of recruitment to a revised role of Director of Public Health (DPH)** be agreed to ensure that the statutory requirements for the role and the recruitment process are met. The rationale is as follows:

- The formal transfer of responsibility for the local delivery of public health to local government in April 2013 created a new context for the appointment of Directors of Public Health (DsPH) after that date. The opportunities afforded by this change for whole-organisation engagement in improving the health and wellbeing of local populations and for a more direct relationship with the strengths of local democracy, underline the importance of the role to local government, and the breadth and depth of impact that DsPH can achieve. Any new appointment would be made in this context.
- The Health and Social Care Act 2012, makes clear that each Local Authority must, acting jointly with the Secretary of State for Health, appoint an individual to have responsibility for its public health functions under the Act, known as the 'Director of Public Health'.
- The Act sets up the DPH as the officer champion for health within the local authority. She or he is responsible for all public health functions of local authorities defined by the Act, including any conferred on local authorities by regulation. The Act made it a statutory requirement for the DPH to
 - produce an annual report on the health of the borough
 - be a statutory member of the Health and Wellbeing Board, and work with the Board to promote integrated, effective delivery of services.
 - be a statutory Chief Officer, as set out in the Local Government and Housing Act 1989, as amended.
 - Provide statutory advice and guidance to CCG's and NHS bodies.
- The guidance on appointing DsPH is part of statutory guidance in relation to the responsibilities of the DPH, (in the same way that guidance is currently issued for the responsibilities within the statutory roles of Director of Children's Services and Director of Adult Services).
- Because of the prescribed nature of the process of appointing a DPH, there are a number of specific features of the appointment process:

- Public Health England (PHE) on behalf of the Secretary of State, should be involved in all stages of the recruitment and appointment process
 - The recruitment and selection process should include organising an advisory appointments committee in line with the joint guidance from the Faculty of Public Health, Local Government Association and Public Health England. This provides a robust, tried and tested method for providing assurance of technical and professional skills of DsPH [http://www.fPublic Health.org.uk/seniorpublichealthappointments](http://www.fPublicHealth.org.uk/seniorpublichealthappointments)
 - This process is that which is proposed to be followed locally.
- A job description, person specification and advert have been drafted and are attached. These drafts have been shared with the Faculty of Public Health. All documents are based on the national templates. Feedback and final approval of the documentation is awaited. The Executive Director of People and Deputy Chief Executive therefore requires delegated authority to approve minor amendments to these documents in line with Faculty of Public Health expectations.
 - The draft job description and person specification have been evaluated to comply with and maintain the integrity of the local HAY scheme. The outcome is that the grade for the role is the top of SMG1 ~ salary £72,114 with £5,000 performance related pay (£86,636 pa including on costs). There is an opportunity to apply a market supplement, at appointment if necessary, whilst maintaining a robust business case for this proposal.
 - DPH Advisory Appointments' Committees normally include: the Chief Executive of the appointing local authority or his/her nominated deputy, the Public Health Regional Director, or another senior professionally qualified member of PHE acting on his or her behalf, an external professional assessor appointed after consultation with the Faculty of Public Health and a senior NHS representative.
 - The proposed panels below are in line with this recommendation and mirrors the process used in other senior management appointments within Cheshire East Council.

Panel1

- Executive Director, People and Deputy Chief Executive
- Public Health England regional director or representative
- Faculty of Public Health Advisor
- Senior NHS representative
- Director of Adult Social Care and Health

Panel 2

- Portfolio Holder – Health & Communities
- Portfolio Holder – Adult Social Care

Panel 3

- Staffing Committee Members
- The proposal is to consider recruitment later in the year as the level of expertise within the team negates the need for immediate recruitment.

6. Wards Affected and Local Ward Members

6.1 All ward members

7. Risk Management & Implications of Recommendation

7.1 There are no major risks to the proposal, providing due process in the appointment of the DPH is followed (as stated above).

8. Legal Implications

- 8.1 Under the Council's Constitution, the authority to appoint and dismiss the Director of Public Health is delegated to the Staffing Committee. The Committee also has authority to undertake the recruitment process for senior officers, including the Director of Public Health. Staffing Committee also has authority to approve severance packages with a value of £100,000 or more. The Committee may delegate any or all of these powers to an officer of the authority.
- 8.2 Before any offer of employment is made to the new post of Director of Public Health in due course, all the Members of the Cabinet must be notified of the proposed appointment and allowed a period in which to object (in accordance with the Local Authorities (Standing Orders)(England) Regulations 2001 (as amended)).
- 8.3 The legal implications of the Government's proposal to apply a £95,000 cap on the total value of exit payments made to employees in the public sector are discussed in the body of this report. Independent external legal advice has been taken and this endorses the recommendations set out in the report.

9. Access to Information

9.1 Further information is outlined in the document: 'Directors of Public Health in Local Government Guidance on appointing Directors of Public Health produced by Public Health England in partnership with the Faculty of Public Health and the Local Government Association; October 2013.

10. Contact Information

- 10.1 Contact details for this report are as follows:
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