Report for:	Corporate Committee 22nd January 2012	Item Number:	

Title:	Public Health Staff Transition

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Ward(s) affected: All	Report for Non Key decision

1. Describe the issue under consideration

1.1 In accordance with regulations under the Health and Social Care Act 2012, public health responsibilities (detailed in Appendix 1), together with a ring fenced grant, will transfer from the Department of Health to local government on 1st April 2013. Local authorities will have a duty to promote the health of their population and will also take on key functions requiring that robust plans are in place to protect the local population and to provide public health advice to NHS commissioners.

1.2 In order to ensure an appropriately skilled workforce is available within the local government to fulfil new statutory duties, public health teams across the country will be transferring to local authorities. The Health and Social Care Act 2012 makes provision for staff transfers between statutory bodies (including the council and the NHS). The Act provides the power to the Secretary of State for Health to effect transfers by way of a Transfer Scheme (a TUPE like process).

1.3 This report details, for information, the arrangements for the local staff transfer. The full report on the overall Public Health Transition was approved by Cabinet on 18th December 2012.

2. Cabinet Member introduction

2.1 Report to Cabinet on transfer of function and the overall public health transition was approved on 18th December. This report gives the background and information concerning the transfer of the staff to the council from the NHS North Central London in April 2013. Work has been ongoing locally since April 2012 to facilitate the transfer of staff, budget and functions.

3. Recommendations

3.1 To note that the legal framework for public health staff transfer is drafted by the Department of Health.

3.2 To note that local agreement between the receiver and sender organisation is a 'lift and shift' of all the functions and staff from the NHS North Central London to the council.

4. Other options considered

4.1 The transfer of the public health function to the council will be required by the regulations made under the Health and Social Care Act 2012 - as a legal requirement; there are no other options for consideration.

5. Background information

5.1 The Health and Social Care Act 2012 creates the legislative framework for the council's new duty to promote the health of their population, ensure that robust plans are in place to protect the local population and provide public health advice to NHS commissioners.

5.2 In accordance with regulations under the Health and Social Care Act 2012, public health responsibilities (detailed in Appendix 1), together with a ring fenced grant and staff, will transfer from the NHS North Central London to the council on 1st April 2013.

5.2 Haringey's Public Health Directorate was subject to re-organisation and management cost saving during 2010/11 as part of the overall NHS North Central London restructure that resulted in 30% reduction in the management cost.

5.3 In January 2011, the Rethinking Haringey report set out the arrangements for setting up the public health function within the council from April 2011 (agreed by Cabinet on 25 January 2011). As a result public health staff have been located in the council since March 2011 and the Director is part of the council's Corporate Board. The service has taken on additional management and strategic responsibilities on behalf of the council such as emergency planning and business continuity.

5.4 The Directorate is structured as a borough level public health operating model that supports the full range of current and additional public health functions.

5.5 Currently, the Haringey Public Health Directorate establishment consists of 28 staff (22.6 FTE) with a good skill-mix to deliver the public health function. The team includes the Drugs and Alcohol Team (DAAT) and the council's Emergency Planning and Business Continuity Team.

5.6 The 19 staff (12 FTE) in the public health team will transfer from the NHS to the council on 1st April. The team has a strategic role in shaping the effective delivery of health and wellbeing improvement by the council, NHS and other partners. For example, the team leads on the Health and Wellbeing Strategy and the Drugs and Alcohol Harm Reduction Strategy, production of the Joint Strategic Needs Assessment (JSNA), support the NHS in evidence-base commissioning and leading on commissioning of specific programmes such as Health Checks and sexual health.

5.7 The remaining members of the team are either already employed by the council, or facing transfer to different organisations.

5.8 Two members of staff who run Active for Life, the exercise referral and healthy walks programme, are proposed to transfer to Fusion, the new provider of leisure services in Haringey. This change to the Leisure Services contract is currently being negotiated. If this does not take place before the end of March 2013 then these staff will be part of the Public Health transfer to the council.

5.9 NHS North Central London has agreed with the council that the transfer of public health functions will be on the basis of the transfer of existing functions.

5.10 In accordance with the national policy governing this transition, the nature of the transfer is therefore a "lift and shift". No job matching or pre-transfer selection process will be required. The council has agreed these arrangements in December 2012.

5.11 The legal mechanisms for this staff transfer are being developed and agreed at the national level between the Department of Health, Public Health England and the Local Government Association.

5.12 A Transfer Scheme will be used where there is a power to do so to effect the transfer of staff – including where there is a TUPE transfer. The Transfer Scheme will set out the terms of transfer including that the current pay and conditions of employment of the transferring staff will remain the same. The transferring group will need to understand what impact (if any), the transfer will have on their employment. At the moment the key change will be to the pay date. Other changes that could be considered in the future will be set out in writing to the current employers in line with transfer requirements. The council will start working with NHS North Central London and its recognised trade unions in order to agree the process and exchange of relevant information.

5.13 Whilst the detail of the transfer is still to be worked through, Haringey Local Authority has confirmed its intention that the transfer be conducted in accordance the Cabinet Office 'Staff Transfers in the Public Sector Statement of Practice' (COSOP) which means that employees identified as transferring will do so in accordance with TUPE principles.

6. Comments of the Chief Finance Officer and financial implications

6.1 Members will note from paragraph 5.10 that the transferring staff will remain on their current pay and conditions of employment when they join the Council in April 2013. The key financial implications of this are around the pension and redundancy.

6.2 Transferred employees can remain within the existing NHS pension scheme and from April, Haringey will be responsible for the employer contribution. The council is currently waiting for confirmation of the rates. This will be an on-going cost.

6.3 The redundancy package for NHS staff is more generous than the current Haringey offer however it is unlikely that in the short to medium term redundancies will take place so the risk to the council is low.

6.4 The Council has received one-off transition funding from the Department of Health in 2012/13 which should be sufficient to cover any one-off costs such as updating payroll systems and contracts.

7. Head of Legal Services and legal implications

7.1 It is likely that transfer of public health functions from the NHS to the Council will be a transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"). Although TUPE does not apply to "An administrative reorganisation of public administrative authorities or the transfer of administrative functions between public administrative authorities" this exception has been interpreted narrowly by the courts and is unlikely to be found to apply in this case. In any event through a Transfer Scheme the Government is likely to require the transfer of NHS staff assigned to the transferring public health functions to the Council.

7.2 Whether as a result of TUPE or as a result of a Transfer Scheme the relevant NHS staff would transfer to the Council's employment on their existing terms and conditions,. The Government have confirmed that these staff will retain access to the NHS Pension Scheme post- transfer, although the precise mechanism by which this will be achieved is currently unclear. Certain statutory rights which they have as a result of being NHS employees would also transfer e.g. entitlements to injury benefits where the injury was sustained in the course of employment.

7.3 Any liabilities incurred by the NHS to the transferring employees pre-transfer in connection with their employment (such as personal injury or discrimination

claims) would transfer to the Council. It is not clear whether the NHS will give local authorities indemnities against such claims.

7.4 Under TUPE the NHS will have to give certain information about the transfer to the trade unions it recognises for the transferring staff. If it failed to do so then the Council would be jointly and severally liable with the former NHS employer if the trade unions brought claims for breach of this information obligation.

8. Equalities and Community Cohesion Comments

8.1 This is an information report, and as such has no specific equality implications in itself. However, Members should be aware that in exercising its new responsibilities for public health in Haringey from April 2013, the Council will have a public sector equality duty to so with due regard to Section 149 of the Equality Act 2010 (duty of due regard to the need to eliminate discrimination, harassment and victimisation based on any of the 'protected characteristics' specified under Section 4 of that Act; advance equality of opportunity between people who share a protected characteristic and those that do not and; foster good relations between groups in society).

8.2.1 In addition, the specific duty to develop equality objectives every four years and to report on performance on these will be extended to include the Council's new public health functions. The planning and design of the local public health function in the transition phase and beyond, aims to establish effective public health services, based on an understanding of the needs of the different sections of the population through the Joint Strategic Needs Assessment (JSNA), with the aim of improving and protecting the health of people in Haringey and reducing the health inequalities between communities and the more and less deprived areas of the borough.

9. Head of Procurement Comments

9.1 Not applicable.

10. Policy Implication

10.1 Haringey Council wants its residents to live healthier lives and the council is committed to tackling health inequalities, childhood obesity and teenage pregnancy. (The Council Plan 2012-15). The new public health arrangements will play a key part in delivering the council priorities to drive local health improvements in Haringey.

11. Use of Appendices

Appendix 1: Overview of the public health function

12. Local Government (Access to Information) Act 1985

Appendix 1: Overview of the public health function and new responsibilities

1. What are the main public health priorities for Haringey?

Haringey is the 4th most deprived borough in London and the 13th most deprived in the country. An estimated 21,595 (36.4%) children live in poverty, largely in the east of the borough. High levels of deprivation, low educational attainment and unhealthy lifestyles (high smoking, low physical activity, high alcohol misuse), primarily in the east of the borough, are all interrelated determinants of poor health outcomes and the considerable health inequalities in the borough. Key priorities are:

- Only 53% of children show satisfactory development at age 5
- Highest teenage pregnancy rate in England
- High child obesity (1 in 3 children aged 10-11 are overweight or obese)
- Inequality in male life expectancy (men in the east die up to 9 years younger than men in the west)
- High smoking (contributes to 50% of the male life expectancy gap) and physical inactivity
- High levels of alcohol and drug misuse
- High levels of common and severe (3rd highest in London) mental health problems

These public health priorities are reflected in the key outcomes of the shadow Health and Well Being Strategy: 1) Giving every child the best start in life; 2) Reducing the life expectancy gap; 3) Improving mental health and well being

2. What are the new responsibilities for public health?

The Health and Social Care Act 2012 is a key step towards the establishment of a new public health system. Local authorities already have important and wide ranging public health functions that will continue. Local authorities will be taking on significant new public health functions. The Director of Public Health (DPH) is the lead officer for delivering the new functions and a statutory member of the Health and wellbeing board. Public Health in Local Government (Department of Health, 2012) sets out the functions:

2.1 Health improvement

A new duty to take appropriate steps to improve the health of the people in its area. Examples include giving information, providing services to promote healthy living or incentives to live more healthily.

2.2 Health protection

The Secretary of State will have a core duty to protect the health of the population in the new system. However local authorities are seen as having a critical role at the local level in ensuring that all the relevant organizations locally are putting plans in place to protect the population against a range of threats and hazards. This is linked to but different from the local authorities' statutory responsibilities for public health

aspects of planning. The DPH should lead initial response with Public Health England to local public heath incidents and outbreaks. They would also provide strategic challenge, escalate concerns and receive local information on incidents and outbreaks (surveillance).

2.3 Healthcare public health

The government intends to make a regulation to require local authorities to provide public health advice to commissioners. There is an opportunity to build and maintain close links with clinical commissioners, complementing health and wellbeing boards. The DPH would have responsibility and funding for a "core offer" of public health advice to the NHS locally. Examples are the Joint Strategic Needs Assessment, evidence based strategies, pathways and service specifications.

Central to these three core areas are new local authority duties to take steps to ensure that it is aware of and has considered what the health needs of its local population are and what evidence suggests the appropriate steps would be to take to address those needs. The DPH and their specialist teams would need access to appropriate information and evidence functions. The DPH would be required to produce an annual report.

Local authorities will have considerable freedom in terms of how they chose to invest their grant to improve their health although they will have to have regard to the Public Health Outcomes Framework and should consider evidence regarding public health measures. It is intended that there will be four mandatory areas: protect the health of the local population, ensure NHS commissioners receive the public health advice they need, appropriate access to sexual health, National Child Measurement Programme and NHS Health Check Assessment.

Figure 1 represents the three public health functions as they apply in Haringey.

Figure 1: Public health in Haringey