

Health & Wellbeing Boards – KONP briefing April 2013

What are Health & Wellbeing Boards (HWBs), and do they matter?

Note: KONP groups are advised to read the briefing for Councillors in conjunction with this briefing.

New Health & Wellbeing Boards are being created in every local authority (they came into full effect in April 2013¹).

They have duties in relation to public health and some (limited) opportunity to influence the decisions of local health commissioners. They also may commission (ie, buy) some health services in their own right, especially where health and social care overlap, or in relation to 'wellbeing' and health advice.

Health Overview & Scrutiny Committee [HOSC]

Note particularly that HOSCs continue to have a key role – see section near the end. It is important that you do all you can to ensure they continue to remain in place. Many HOSCs did an effective job in the recent past and should be encouraged to use their powers in conjunction with HWBs, given their role of influencing CCGs.

What are their new responsibilities?

1. Public Health

Councils have always had a duty to take account of the interests including the health of their residents, but under the Health & Social Care Act 2012, they take on new responsibilities and liabilities for Public Health, which were previously the responsibility of the NHS (ie of central government). These responsibilities will be exercised through the new Health and Wellbeing Boards.

Public Health includes health promotion, wellbeing, and the control of infectious diseases. The Director of Public Health becomes an employee of the council, and sits on the Health & Wellbeing Board.

In theory these new responsibility should encourage councils to pursue joined up thinking – however it remains to be seen how effectively the councils can pursue this, in the current climate of severe budget cuts on councils. Clearly, there will be a pressure to reduce any areas where spending overlaps, but campaigners will need to watch closely to ensure that this doesn't reduce in further fragmentation or reduction in services. There is also a concern that, as they become employees of the local authority, Public Health directors will be less free than previously, to speak out about the public health impacts of council decisions.

It will be important to ensure that the councils have adequate funding for this essential role and that the Director of Public Health is given full responsibility to carry out the role effectively supported by a fully competent team. Remember that Public Health covers a wide

¹ Under the Health & Social Care Act 2012

range of issues across all council services including housing and the environment. You may wish to find a sympathetic public health doctor to advise you on this area of interest.

2. Influence over the new health bosses (Clinical Commissioning Groups)

Health and Wellbeing Boards have been sold as one of the few democratic safeguards in the new NHS system, and they *could* be useful in **resisting cuts and privatisation**. **Though note that** if the government succeeds in forcing through new regulations under section 75 (which prohibit anything that meets a very sweeping definition of ‘anti-competitive’ behaviour²) this will severely limit any influence Health & Wellbeing Board could have in terms of privatisation.

The main way they can exercise this influence is in their ‘**Health & Wellbeing Strategy**’, **setting priorities for the health of the local population**. This strategy will, in theory, guide the plans of the local Clinical Commissioning Groups (CCGs) who took over most health budgets on 1 April 2013, becoming ‘commissioners’. Health & Wellbeing Boards can challenge and slow down the CCG’s plans if they breach the Strategy.

You should press the HWBs to co-opt delegates from trade unions, community groups, patient groups, pensioners and campaigners, meet consistently in public and be supported by dedicated research – and must challenge cuts in council provision of social care as well as cuts in hospitals and mental health. It is essential that HWBs work jointly with HOSCs.

3. Joint commissioning

One task of the HWBs is to encourage (or even take responsibility for) **joint commissioning** (joint buying of services by councils and the NHS), and to ensure that all health & social care providers in an area work in an integrated manner. Whilst this *sounds* sensible, and certainly more integrated working between different parts of the NHS is desirable, it is important for campaigners to ensure that ‘integration’ (particularly between health and social care) and ‘innovation’ strengthens, rather than waters down, NHS principles (paid for from universal taxation, non-means tested, publicly run for patients not profit).

Also be aware that councils are under pressure to outsource to the private sector *all* the services they buy - this trend is accelerating, though it has been challenged by campaigners, most notably in Barnet.

What can campaigners can do to influence Health & Wellbeing Boards?

Step 1 – find contact details - search online for “Health & Wellbeing Board” plus the name of your local authority (county council, or metropolitan borough) – or call your council and ask³.

Step 2 – get information – ask:

- Who is on the Health & Wellbeing Board? (In particular – what councillors?)

² In the regulations (at time of writing, law but subject to annulment) anti-competitive is defined as ‘anything Monitor says it is’, broadly.

³ Alternatively, some contact details are here <http://www.kingsfund.org.uk/projects/health-and-wellbeing-boards/hwb-map>

- Will the public have any say over who is on the HWB? (they can have who they like, though by law must include the council leader, a CCG representative, a HealthWatch representative, & various council directors).
- What stage is the Health & Wellbeing Strategy at? Can you see it? If not, why not?
- What is the HWB doing to involve the public in the development of the Health & Wellbeing Strategy, *at a formative stage*? Can you attend their meetings as a member of the public, and see their minutes? If not, why not?
- How is the Health & Wellbeing Board accountable to the council as a whole – does it report formally to the Scrutiny committee, to full council? When? Can you have copies of the reports?

Step 3 – assess what you’ve found out. Are you satisfied that your Health & Wellbeing Board, in particular its Strategy, is going to properly hold your CCG to account on behalf of the public?

Step 4 – push for change, if necessary. You may well feel that the Health & Wellbeing Board needs to strengthen both its Strategy (perhaps especially, if it’s still secret!) and its working practices. If this does not happen, ask why. You may need to work closely with councillors (see Step 5, below).

What should a good Health & Wellbeing Strategy look like?

Strategies should include commitments that commissioners (both the CCG and the council) are expected to:

1. Ensure patient care is the paramount consideration in all decision making.
2. Ensure value for money by not accepting claims of benefit (in terms of safety, effectiveness, quality, impact on inequality or efficiency) from potential providers of healthcare, health advice, and social care, unless these are properly demonstrated, with transparency and public accountability paramount.
3. Ensure that any provider has a duty to be fully transparent on key indicators that are meaningful to the public, such as numbers of skilled staff.
4. Ensure that local people are fully consulted before undertaking any process that may result in a change in the manner in which services are provided – particularly a change in the location of where they are provided.
5. Fully explore in-house provision (and ‘service improvement’ where necessary) and fully consult the public, before taking any decision to that may result in a change of service provider (through tendering or Any Qualified Provider) in the interests of safety, effectiveness, quality and public involvement. *NOTE, these rights could be effectively demolished by Section 75 regulations, that councils may be anticipating – but should be fighting.*
6. Not push for social care integration, the extension of personal budgets, asset-based or co-production approaches or co-payments / charges without first fully examining the potential impact on universal, non-means-tested provision of healthcare and on inequalities.

Councils may well tell you that they will meet their legal duties, for example on consultation requirements, but if they cannot promise point (4) above, local people are unlikely to have any say in whether services are privatised or not.

If they cannot make these perfectly reasonable promises try and pin them down as to why – what specific bit of legislation stops them? In particular, at the moment the government is trying to force through section 75 regulations in the face of stiff opposition. Ask councillors if they understand the impact of these regulations and will join you in kicking up a huge fuss about them if (as seems likely) they prevent proper considerations of patient care, integrated services, and the exercise of effective local consultation in this way.

What should Health & Wellbeing Strategies *not* look like?

Health & Wellbeing Strategies should *not* focus too heavily on ‘personal responsibility’ and ‘services closer to the community’. Whilst this may *sound* sensible in a climate of cuts, if this is the *main* focus of the Strategy, it could be used to allow the CCG to get away with cutting services under the rhetoric of ‘empowerment’.

Campaigners will also need to be alert to the risk that some councils may even try and push the boundaries of the Act as giving them powers to use ‘sticks’ rather than ‘carrots’ to improve the health of local people, for example through the parts of the benefit system they have responsibility for.

Similarly, the Health & Wellbeing Strategy should not contain an over-emphasis on ‘innovation’ and ‘competition’/‘diversity of providers’ nor on integrating health & social care without clear commitments to protecting NHS principles and arrangements. (Remember that social care / long term care is often provided by the private sector, by low paid staff, and (under-)funded via means-testing. Watch out for attempts to brush this under the carpet or assertions that ‘personal budgets’, ‘asset-based approaches’ or ‘co-production’ are the solutions. This kind of jargon must be carefully and openly analysed, else it *could* lead to cuts, rationing, and ultimately means-testing/top-up payments for healthcare).

How should Health & Wellbeing Boards work?

Local authorities (ie, councillors) have a responsibility to ensure that Health & Wellbeing Boards conduct themselves in an open and democratic fashion and that proper scrutiny, monitoring, measurement and reporting takes place. In particular:

- Strategies should be developed in an open and democratic way, not behind closed doors:
 - Draft strategies and minutes of the shadow Health & Wellbeing Boards should be shared openly with the public, or at least be available on request.
 - Consultation on the Strategy should take place at a formative stage (in line with the Gunning principles on consultation) and not wait until the Strategy is almost a done deal.
 - Consultation on the Strategy should be well publicised and include public meetings (not just stage managed ‘drop in’ sessions and handpicked ‘stakeholder’ events).
 - Consultations should ask meaningful, not leading, questions. If increased ‘personal responsibility’ is really seen as a way of delivering fewer services within budget constraints, then the consultation should be honest about that.
- Councillor members on the HWB should commit to feedback the board's decisions to the council they represent, and to the public. The council should ensure it receives and discusses reports from the HWB and can put forward items for the HWB agenda.

- The **HWB** should have access to external auditors in the situation of commissioners making claims (for example, of cost savings) they cannot substantiate.

5. Ask the right people to help you take action

Whilst the public can ask questions via emails or in some meetings these rights are sometimes limited (call before a meeting to check). It is always helpful to have sympathetic councillors working with you to keep pushing for straight answers.

WHO?

Contact councillors on the shadow Health & Wellbeing Board. They are the only ones on the Board who are directly accountable to (elected by) the public and so should be answerable to you – though they may not agree with you!

Always copy in your own county or metropolitan borough councillor, who is the person with the most responsibility to take action on your behalf about all of this. www.theyworkforyou.com helps you find them. Use the points above to explain the background to them.

Health Overview & Scrutiny Committee [HOSC]

It is essential that you maintain contact the councillors on your local Health Overview & Scrutiny Committee. Councils have a duty to provide a Scrutiny function to oversee health-related decisions by health bosses and the council. The Scrutiny committee can ask questions, make recommendations, require relevant bosses to attend their meetings to explain their actions, and even (currently) refer matters to the Secretary of State if they are not satisfied. It also has an important role in telling commissioners when it considers changes to specific services are significant enough to require full public consultation. Find out who is on your HOSC by searching online or calling the council's helpline.

WHAT? Ask councillors:

- For answers to your questions under Step 2, above.
- Do they agree with your concerns and aims, for example the changes suggested under Step 4 above? If not, why not?
- If they do agree, will they help address them? Will they for example raise your concerns and questions, and push for your aims, at meetings open to the public? And in private in meetings with the people involved in the Health & Wellbeing Board? Will they report back to you?
- Will they help you raise awareness by supporting your calls in public, eg in the media? Will they call a public meeting to raise awareness and hold decision makers to account?
- Even if your councillor is in a political minority on the council they can still do all the above and also get council decisions 'called in' for proper democratic debate in full council (procedures vary - but there should be a council employee in 'democratic services' whose job it is to explain all of this to you).

What if councillors don't respond?

1. Remind them that, ultimately, councillors are responsible for the decisions made by the Board, so this is very important.
2. It's often effective to write an open letter to the councillor in question, copying in the press. Keep it brief but explain the background using the points above.
3. Most councils have a customer care policy that councillors should respond to queries within 2 weeks – check yours and remind them of this. It is not unusual to have to keep chasing councillors – to be fair, there are many who are excellent but just rather busy.
4. Write again, pointing out that councillors have a legal duty⁴ to promote understanding of NHS decision making and how local people can get involved in it.
5. Lobby them - go to their surgeries – with others if you like - and tell the press about it.

Other people you can ask to help –

Your local Healthwatch – this is the body which (from April 2013) has been set up to provide 'patient involvement' (replacing the old LINKs). They will have a seat on the Health & Wellbeing Board but little other real power. LINKs varied in their willingness to criticise decision makers and, unfortunately, new regulations have made it very difficult or even impossible for Healthwatch to publicly criticise local CCG decisions, themselves. However, they do have power to inspect local health and social care providers, so if they work closely with Scrutiny and HWBs they could be effective.

Your district councillors and MP will also have influence and could be helpful.

Finally, whilst you are asking questions about the way the system is being set up, you (and/or your councillors) can also ask questions about the commissioning decisions that are being made *now*. KONP has produced a separate '**councillors briefing**' to help, and see also our **briefing on CCGs** – due out shortly.

⁴ Local Democracy, Economic Development and Construction Act 2009 - s2