Health and Wellbeing Boards (England)

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Section Social Policy Section

This note provides information on Health and Wellbeing Boards (HWBs) which were introduced as statutory committees of all upper-tier local authorities under the *Health and Social Care Act 2012*. HWBs, which came fully into effect on 1 April 2013, are intended to; improve the health and wellbeing of the people in their area; reduce health inequalities; and, promote the integration of services.

The primary responsibility of HWBs is to produce Joint Strategic Needs Assessments (JSNAs) to identify the current and future health and social care needs of the local community, which will feed into a Joint Health and Wellbeing Strategy (JHWS) setting out joint priorities for local commissioning. Local authority, CCG and NHS England commissioning plans are then informed by these documents.

The note also provides information on the role of Healthwatch England and the local Healthwatch organisations which have replaced Local Involvement Networks (LINks) and which aim to represent the views of the local population in the reformed health service.

HWBs do not themselves hold a budget and allocating funding for public health remains the responsibility of the local authority in line with its commissioning plan. The Library note, *Local authorities' public health responsibilities (England)*, contains information on the role of local authorities in public health since the 2012 Act.

The separate Library note, *Local authorities' public health responsibilities (England)*, (SN06844), sets out the main statutory duties for public health that were conferred on local authorities by the 2012 Act. The note includes information on public health funding; how local authorities have been spending their ring-fenced public health grants; and on accountability arrangements.

Contents

1 Health and Wellbeing Boards (HWBs)

The *Health and Social Care Act 2012* established HWBs as statutory committees of all upper-tier local authorities to act as a forum for key leaders from the local health and care system to jointly work to:

- improve the health and wellbeing of the people in their area,
- reduce health inequalities, and
- promote the integration of services.[1]

The Government's 2010 White Paper *Equity and Excellence: Liberating the NHS* said that, as part of the wider changes it was proposing to the health service:

> The Government will strengthen the local democratic legitimacy of the NHS. Building on the power of the local authority to promote local wellbeing, we will establish new statutory arrangements within local authorities – which will be established as "health and wellbeing boards" or within existing strategic partnerships – to take on the function of joining up the commissioning of local NHS services, social care and health improvement. These health and wellbeing boards allow local authorities to take a strategic approach and promote integration across health and adult social care, children's services, including safeguarding, and the wider local authority agenda.[2]

In its subsequent 2010 consultation paper, *Liberating the NHS: Local democratic legitimacy in health*, included more detail about the proposals. It said that:

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1 See section 197 to 199 of the 2012 Act

2 Department of Health, *Equity and Excellence: Liberating the NHS*, p34

> If health and wellbeing boards were created [rather than relying on local arrangements], requirements for such a board would be minimal, with Local Authorities enjoying freedom and flexibility as to how it would work in practice.[3]
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> [...] The primary aim of the health and wellbeing boards would be to promote integration and partnership working between the NHS, social care, public health and other local services and improve democratic accountability. The local authority would bring partners together to agree priorities for the benefit of patients and taxpayers, informed by local people and neighbourhood needs.[4]

The consultation paper said that the role of HWBs would be to influence rather than hold commissioning budgets directly:

> Whilst responsibility and accountability for NHS commissioning would rest with the NHS Commissioning Board and GP consortia, the health and wellbeing board would give local authorities influence over NHS commissioning, and corresponding influence for NHS commissioners in relation to health improvement, reducing health inequalities, and social care.[5]

Each unitary or upper-tier local authority had to have a HWB in place by 1 April 2013, though many shadow boards were in operation before then. Lower-tier local authorities may create a HWB either as a subcommittee of a unitary or upper-tier local authority's HWB or as a local committee, though they are not required by statute to do so. HWBs can decide to jointly carry out their functions with one or more other HWBs. They may, for example, choose to set up a joint subcommittee.

A primary responsibility of each HWB is to provide public health commissioning support and guidance to the clinical commissioning groups (CCGs) in their area. This NHS England (previously known as the 'NHS Commissioning Board') document sets out the duties and powers of HWBs in more detail as well as their core statutory membership.[6]

1.1 Local needs assessments and commissioning plans

HWBs are responsible for carrying out Joint Strategic Needs Assessments (JSNAs) to identify the current and future health and social care needs of the local community. In doing so they must involve their local Healthwatch, people living or working locally and, where relevant, district councils. Additionally the HWB may consult any person it thinks is appropriate. Based on their findings they must develop a Joint Health and Wellbeing Strategy (JHWS) to set out joint priorities for local commissioning to meet local needs identified by the JSNA. The JSNA and JHWS must have regard to the NHS England mandate from the DH. Local authority, CCG and NHS England commissioning plans would then be informed by these documents.

CCGs are required to include relevant HWBs in the preparation of their commissioning plans and when making significant revisions, including providing HWBs with a draft plan. The HWBs opinion on the final plan must be published within the commissioning plan. HWBs can refer plans to NHS England if they do not think the JHWS is being taken into proper account by the CCG or the local authority. NHS England is also required to consult each relevant

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3 Department of Health, *Liberating the NHS: Local democratic legitimacy in health,* p8

4 Department of Health, *Liberating the NHS: Local democratic legitimacy in health,* p8

5 Department of Health, *Liberating the NHS: Local democratic legitimacy in health,* p9

6 Department of Health, *The general duties and powers relating to health and wellbeing boards*. The Local Government Association also provides a database for HWBs which includes guidance on their membership: Health and Wellbeing Board Information Resource.

HWB when drawing up its annual performance assessment of each CCG, including on how well it has met its duty to have regard to the relevant JSNA and JHWS.

The Government produced *Statutory guidance on joint strategic needs assessments and joint health and wellbeing strategies*, in March 2013. The guidance sets out the ways in which HWBs will be accountable and transparent:

- Through elected representatives on the board;
- Through local authority scrutiny procedures;
- Through the publication of JSNAs and JHWSs; and
- Through information on local health outcomes in the Adult Social Care and Public Health Outcomes Frameworks. [See section 1.5 of this note for further details].

1.2 Additional powers of Health and Wellbeing Boards

In relation to the duty to promote integrated working, HWBs can encourage bodies involved in the wider determinants of public health, such as housing, to work closely with those commissioning health services as well as with the HWB itself.

HWBs also have the power to request information which is necessary for the performance of their functions. Information can be required from the local authority and any bodies or individuals represented on the board (such as the local Healthwatch organisation).

Although HWBs are not themselves allocated a budget, a local authority can delegate some of its functions (excluding scrutiny) and the associated funding to its HWB.

1.3 Recent debate on the role of Health and Wellbeing Boards

Some have argued that HWBs should have a more significant role in commissioning services. The *Health Service Journal* reported in June 2013 on a proposal by shadow Secretary of State for Health, Andy Burnham, that CCGs should have their commissioning powers removed and transferred to HWBs.[7] For reaction to the proposals see: *GP magazine* article, 'GP walkout fears over Labour plans for CCGs' from 1 February 2013. In a speech about the NHS on 12 February 2013, Labour Leader Ed Miliband, suggested that CCGs would retain their commissioning role. He said that:[8]

> No change could be proposed by a Clinical Commissioning Group without patient representatives being involved in drawing up the plan.
>
> Then when change is proposed, it should be an independent body, such as the Health and Wellbeing Board, that is charged with consulting with the local community.[9]

On 12 February 2014, the Health Committee published *Public expenditure of health and social care*, in which it said:

> We have recommended in previous reports that Health and Wellbeing Boards (HWBs) should be encouraged to develop their role to provide an integrated commissioners' view of the transformative change which is necessary in the health and care system.

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7 'Relegate CCGs to advisory role, says Burnham', *HSJ*, 13 June 2013

8 'Miliband's CCG vision at odds with Burnham plan', *HSJ*, 12 February 2014. See also: 'Miliband's CCG vision at odds with Burnham plan', *Local Government Chronicle*, 12 February 2014.

9 'Ed Miliband's Hugo Young Lecture – Full Text', *Labourlist*, 10 February 2014

> We repeat that recommendation in this report and further recommend that NHS England and the Local Government Association should commission a review to establish the best practice method of consolidating the commissioning process through HWB's with minimum disruption of ongoing activity.[10]

> [...] Health and Wellbeing Boards were established by Parliament to enable commissioners to take a view across the whole of a local health and care economy. In the light of the urgent need to increase the pace and scale of service reconfiguration in the health and care system, the Committee repeats the recommendation it has made in earlier reports that the role of Health and Wellbeing Boards needs to develop to allow them to become effective commissioners of joined-up health and care services.[11]

1.4 Performance and accountability of Health and Wellbeing Boards

Just before the new HWBs took on their statutory responsibilities the Communities and Local Government Committee published its report on *The role of local authorities in public health issues*, which assessed the duties, powers, and make-up of HWBs.[12] The Committee warned that there was a danger of HWBs becoming "expensive talking shops" and said that their membership and resulting influence would be key to their effectiveness.[13] The Committee also requested clarification on the accountability arrangements for HWBs.[14] The Government explained in its response to the report that:

> Health and wellbeing boards are committees of local authorities and as such they are subject to overview and scrutiny committees of their local authority. Overview and scrutiny committees are able to review the decisions and actions of health and wellbeing boards, and make reports and recommendations to the authority or its executive. The involvement of local councillors and local Healthwatch on boards will further enhance their transparency and accountability to local people.

> The internal management structure of local authorities is a matter for local authorities themselves. In its guidance on the role and responsibilties of the director of public health (DPH) the Department of Health made clear its view that there needs to be a direct line of accountability between the DPH and their chief executive (or other head of paid services) for the exercise of the authority's public health function. This may or may not mean that the DPH should be a standing member of their authority's most senior corporate management team.[15]

GP magazine reported in March 2013 that the Local Government Association (LGA) saw HWBs forming in two distinct ways:

> One is characterised by a large board with many stakeholders, including providers and voluntary sector organisations Many of these boards see their role as providing the momentum for large-scale change and as 'influencers' of commissioning.

> However, the danger for such boards is that they could descend into talking shops, where very little is actually achieved. Many HWBs are forming 'task and finish' sub-groups to counteract this.

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10 Health Select Committee, *Public expenditure of health and social care*, p4
11 Health Committee, *Public expenditure of health and social care*, para 80
12 Communities and Local Government Committee, *role of local authorities in public health issues*, March 2013
13 Communities and Local Government Committee, *role of local authorities in public health issues*, March 2013, para 22
14 Ibid, para 31
15 Department for Communities and Local Government, *Government response to the House of Commons Communities and Local Government Select Committee Eighth Report of Session 2012-13: The role of local authorities in public health issues*, p5

> The second form of HWB is a much smaller, leaner board, usually made up of just the minimum required membership [...]. These boards see their role as commissioning in partnership with CCGs.[16]

On 31 October 2013 the King's Fund published its report, *Health and Wellbeing Boards: One year on*, to explore how HWBs were functioning. The key conclusions of the report were:

- Local authorities have shown strong leadership in establishing the boards, with most being chaired by a senior elected member. There is an emerging pattern of vice-chairs coming from CCGs, which augurs well for the partnership between CCGs and local authorities that is at the heart of an effective board.

- The highest priorities in the health and wellbeing strategies of most boards concern public health and health inequalities. Although this shows that public health is having a real influence and impact on local authorities, there is little sign as yet that boards have begun to grapple with the immediate and urgent strategic challenges facing their local health and care systems. Unless they do, there is a real danger that they will become a side show rather than a source of system leadership.

- Most boards want to play a bigger role in commissioning services for their local populations. The requirement that boards sign off local plans for the Integration Transformation Fund will be an important test of their readiness to take on a stronger commissioning role across all services. Strong and purposeful relationships between CCGs and their respective local authorities – based on partnership not takeover – offer the best prospects for boards to lead the integration and transformation of local services effectively.

The LGA provides information about HWBs including a regional map of HWBs. A geographical directory containing details and contact information for each HWB is also being maintained by the King's Fund.

1.5 Public Health Outcomes Framework (PHOF)

Public Health England has produced a Public Health Outcomes Framework (PHOF), which is updated quarterly and provides data for available indicators at England and local authority levels against which local authorities should measure their performance. These indicators are grouped into several 'domains':

- Improving the wider determinants of health;
- Health improvement;
- Health protection;
- Healthcare public health and preventing premature mortality, and,
- Overarching indicators.

This *Introduction to the Public Health Outcomes Framework for England, 2013-2016*, provides further information on the framework.

The PHOF is not designed as a management tool for the performance of local authorities or HWBs but it can provide an indication over time of public health needs and any

[16] 'How will health and wellbeing boards work?', *GP magazine*, 15 March 2013

improvements or problems within an area. Current performance against the PHOF indicators for each local authority area can be found on the PHOF website (scroll to the bottom of this webpage to browse indicators by domain). The tool uses a traffic light system to indicate whether a local authority area is performing below, at, or above the base level for each of the above domains. It allows local authorities to measure their outcomes in comparison with other authorities in their area and against the national average.

2 Healthwatch

Healthwatch England—which describes itself as the 'independent consumer champion for the health sector'—has a duty set out in the 2012 Act to provide advice to NHS England, English local authorities, Monitor and the Secretary of State. It is a committee of the Care Quality Commission (CQC) and has the power to recommend that action is taken by the CQC where it has concerns about health and social care services. Healthwatch is intended to provide local communities with a way of influencing local healthcare provision.

2.1 Local Healthwatch

Healthwatch also works at the local level through local Healthwatch organisations (set up by local authorities) which have taken over the role of Local Involvement Networks (LINks)—set up in 2008 in each local authority area to involve local people in decisions about how local services are run. Local Healthwatch organisations will:

- represent the views of people who use services, carers and the public on the Health and Wellbeing boards set up by local authorities.
- provide a complaints advocacy service from 2013 to support people who make a complaint about services.
- report concerns about the quality of health care to Healthwatch England, which can then recommend that the CQC take action.[17]

The LGA and Healthwatch published, *Delivering effective local Healthwatch: Key success factors* in September 2013, which sets out the purpose of local Healthwatch organisations and the role of local authorities.

Powers of local Healthwatch

Part 4 of the Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations 2012 imposes a duty on certain service providers to allow entry to their premises by local Healthwatch representatives (or its contractors[18]) for the purpose of observing services and gathering views from people who use them. During the debate in the Lords on the regulations Parliamentary Under-Secretary of State for the Department of Health, Earl Howe, said:

> We are clear that local Healthwatch is not an inspectorate. It does not have the status of a regulator—that is the role of the Care Quality Commission. We need to avoid duplication of roles and confusion among service users or service providers as to the various roles and responsibilities within the system. We are giving local Healthwatch a

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17 CQC, Healthwatch, [as at 5 February 2014]. The Department of Health *Healthwatch Transition Plan*, published in March 2011, includes a diagram which illustrates the role of Healthwatch following the changes brought about by the 2012 Act: See page 11. The Department of Health website (archived) provides further information about the role of local Healthwatch.

18 This provision in the regulations was intended to allow local Healthwatch organisations the flexibility to use the existing knowledge and experience of LINks members when inspecting premises.

> role that is different from and complementary to that of the regulator. It is there to listen to the voice of patients, service users and residents on how their services can be improved.[19]

Earl Howe also clarified the interface between local Healthwatch and the regulator (the CQC) and service providers saying that:

> If local Healthwatch representatives observe anything that might be unsafe or poor care of any kind, they can report those matters directly to the Care Quality Commission to investigate. I hope that that addresses an issue also raised by the noble Lord, Lord Collins, because it is clearly very important for local Healthwatch not only to have a hotline to the CQC where necessary but to co-ordinate its work, where relevant, with that of the CQC—exactly as LINks do at the moment.[20]

Political activities

Part 6 of the NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012 (SI 2012/3094)[21] provides for the operation of local Healthwatch organisations. Section 36 of the regulations sets out certain activities which "are to be treated as not being activities which a person might reasonably consider to be activities carried on for the benefit of the community in England".[22] These include the promotion of or opposition to changes to laws or central or local government policy and providing support to any political party or campaigning organisation. These activities would not be allowed unless "they can reasonably be regarded as incidental to other activities, which a person might reasonably consider to be activities carried out for the benefit of the community in England".[23]

When they were debated in the House of Lords on 5 February 2013 concern was raised that the regulations would restrict local Healthwatch's ability to conduct campaigns.[24] An article in the *Health Service Journal* (HSJ) on 11 January 2013 said:

> Local branches of the new "consumer champion" for health and social care will be left "bound and gagged" by government regulations restricting their campaigning activity, it has been claimed.
>
> […] a regulation to the Health Act, published before Christmas and due to be discussed by the House of Lords secondary legislation scrutiny committee on Tuesday, appears to limit campaigning activity.
>
> […] The Department of Health says the regulation is designed to make sure local Healthwatch organisations do not become political.
>
> However, the National Association of LINks Members claims this will prevent them from challenging policies of clinical commissioning groups and local authorities.
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> It believes the regulation would limit local Healthwatch in how well its branches represent local views in issues like the recent children's heart surgery services consultation or plans for commissioning of specialised services.

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19 HL Deb 7 February 2013, Col 102GC
20 HL Deb 7 February 2013, Col 113GC
21 laid before Parliament in December 2012.
22 The NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012 (SI 2012/3094), 36(1)
23 The NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012 (SI 2012/3094), 36(2) (a)
24 HL Deb 5 February 2013, Col 210ff

> Association chair Malcolm Alexander said the regulations placed "unreasonable limits on the freedom of the community to campaign for legislation and local policies that will improve the quality of care".
>
> He added: "The government appears fearful of a proactive public and is denying it the right to challenge effectively."
>
> A subsection of the regulations says local Healthwatch could take part in campaigns if it is "incidental" to other activity. However, NALM describe the distinction as "confusing" and say it will be incomprehensible to most people involved in Local Healthwatch with the effect that they will have to consult a lawyer before beginning any activity which could be viewed as campaigning.
>
> A spokesman for the DH said: "The regulations aim to ensure that, in their role as a consumer champion, local Healthwatch's activities are not influenced by political considerations, but are based on robust evidence".[25]

In March 2013, DH and the LGA published *Local Healthwatch Regulations Explained – lay and volunteer involvement and restrictions on activities of a political nature*, (now archived) which explains the regulations in more detail.

Funding of local Healthwatch

On 3 January 2012 the Government announced additional funding of £3.2 million for local authorities to use to set up and run local Healthwatch organisations on top of the £27 million that local authorities had received for LINks in 2011/12.[26] The Department also announced funding for a set of Healthwatch pathfinders[27]:

> In addition, more than £370,000 will also be made available until the end of the 2011/12 financial year for 75 HealthWatch pathfinders, who are pioneering and testing out plans ahead of the full establishment of local HealthWatch across the country.
>
> This money can be used in any part of their development, including spreading best practice, engaging more in the community, and financially supporting volunteers.[28]

In February 2013 the Francis report into failures of care at Mid Staffordshire NHS Foundation Trust highlighted the importance of local Healthwatch organisations and recommended that local authorities should be required to transfer the funding allocated to them to their local Healthwatch, which would then be accountable for its expenditure to the local authority.[29] The Government accepted the recommendation in part but said that:

> We believe that local authorities are best-placed to make decisions about funding services that meet the needs of their local communities – including local Healthwatch. We expect local Healthwatch organisations to have sufficient funding to deliver against their local priorities, but we do not believe it is for the Government to dictate what this level should be.[30]

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25 'Local Healthwatch 'bound and gagged'', *HSJ*, 11 January 2013
26 Department of Health, *Patient champions receive funding boost*, 3 January 2012
27 See the National Association of LINk Members website for further details.
28 Department of Health, *New start date and more funding announced for local HealthWatch bodies*, 3 January 2012
29 Francis Report, recommendation 146, February 2013, p100
30 Department of Health, Recommendation 146 – Local Healthwatch Funding, 19 November 2013

Following the Government's response Healthwatch England published its 'position on funding for local Healthwatch' on 19 November 2013. The Chair of Healthwatch England, Anna Bradley, said:

> "It is absolutely crucial that local Healthwatch have adequate funding to fulfill the ambitions that have been set out for them and that all decisions about funding are transparent and open.
>
> "The first stage is for us to understand, not anecdotally, but with the hard facts, exactly what Healthwatch have been given. That is why we will publish before Christmas our analysis of the funding situation for all 152 local Healthwatch.
>
> "However, we are concerned about reports of some Healthwatch already having their budgets cut for next year by cash strapped councils. Sadly these cuts risk gagging the consumer voice just as it's starting to make a difference."

Following its analysis of local Healthwatch funding Healthwatch England published an article, 'Local patient voice short changed £10m', in which it said:

> Healthwatch England analysis shows around a quarter of the £43.5 million made available by the Department of Health to fund local Healthwatch has failed to materialise in local Healthwatch accounts.
>
> Collectively the 148 local Healthwatch organisations have received £10 million less than was outlined in the budget by the Health Secretary, before the network has even got off the ground.
>
> If local Healthwatch are to succeed in giving people a stronger voice in health and care, what they need is a commitment from central and local government to invest in the network and multi-year settlements to provide consistency for long-term planning.
>
> Healthwatch England is therefore calling for those involved to provide clarity about where the money has gone and ensure the network is able to achieve what it was set up to do - to give local people a strong voice and help put patients at the heart of the health and social care sector.[31]

During a debate on 5 March 2014 Liz Kendal MP said:

> national Healthwatch has nowhere near the same power, authority or levers to change services as NHS England, the Care Quality Commission or Monitor.
>
> Local Healthwatch bodies are also weak. They were late out of the starting blocks and are woefully understaffed. Last week, we heard that £10 million of the £40 million budget that was promised for local Healthwatch has gone missing, despite the explicit recommendation in the Francis report that
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> "Local authorities should be required to pass over the centrally provided funds allocated to its Local Healthwatch".
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> If Ministers are serious about giving patients a strong voice locally, they must look again at the support that Healthwatch is getting on the ground.[32]

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31 Healthwatch, 'Local patient voice short changed £10m', 13 February 2014. See also 'Exclusive: £10m of Healthwatch cash 'goes missing'', *HSJ*, 13 February 2014

32 HC Deb 5 March 2014, col 981-982. See also HC Deb 5 March 2014, col 919-920.