HSC Board item 7

Public Health Reform

Summary and Recommendations

This report provides members with advice from the Public Health Oversight Board (PHOB) on the formation of a new public health body for Scotland, including its proposed legal basis.

A number of options for the legal basis of the new body exist – each with their own complexities, timescales and legislative requirements. However, in considering different options, it has been important to focus on what we want the body to be able to do – how we would want the new body to operate, how it should be led, and how it should support the wider system, irrespective of the legislative model chosen. With this in mind, COSLA officers worked with SOLACE to develop principles for the design of the new body and these are presented at Appendix 1.

The PHOB (co-chaired by COSLA) has considered a range of models, and selected a Special Health Board as their preferred legal basis for the new body. It is our view that the PHOB have given robust consideration to the available options, and, given that the deadline for establishment of the new body has already been significantly extended, a Special Health Board would appear to represent the most pragmatic approach. Moreover, a Special Health Board allows for either the same, or greater, focus on our design principles in comparison to the other options and would therefore seem to be the most advantageous approach for ensuring the new body can deliver our ambitions.

This paper therefore invites Health and Social Care Board members to:

i. Adopt the position that Public Health Scotland should be established as a Special Health Board, with a clear and distinct identity, designed in line with our agreed principles (set out at Appendix 1) and with a primary focus on enabling the whole system to deliver better public health outcomes.
ii. Specify that an MOU or Framework Agreement, designed to ensure meaningful accountability to Local Government, is developed and agreed by Ministers and COSLA Leaders.

References

Previous reports on public health**:**

- COSLA Leaders, 27th April 2018
- Health and Social Care Board, 1st June 2018
  Health and Social Care Board, 6th April 2018

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August 2018

Public Health

Purpose

1. This report provides members with advice from the Public Health Oversight Board (PHOB) on the formation of a new public health body for Scotland. It sets out a proposed legislative basis, along with a set of principles, for members' consideration and endorsement.

Current COSLA Position

2. COSLA and Scottish Government have committed to a joint programme of public health reform, working in partnership with key stakeholders to develop new public health priorities for Scotland, a new national public health body and to consider local partnership approaches to public health. Further details regarding the overall programme of reform, including the recently agreed public health priorities for Scotland, have been the subject of previous reports to the Health and Social Care Board and to COSLA Leaders. This report is concerned with the establishment of a new public health body for Scotland, and in particular, the legal form it should take.

3. COSLA and the Scottish Government's joint programme of public health reform includes a commitment to establish a new single public health body to strengthen leadership for public health, support local public health activity and work across the wider system. At its December 2017 meeting, COSLA's Health and Social Care Board agreed that a new public health body for Scotland will initially comprise NHS Health Scotland (HS), plus Health Protection Scotland (HPS) and Information Services Division (ISD) – both of which are currently part of NHS National Services Scotland (NSS). Members also agreed that, whatever legal basis is selected to form the new body, it must have meaningful accountability to Local Government and be able to operate in a way which allows local partnerships to work with the new body to agree how it will provide support for local agendas.

Public Health Scotland

4. Over the past year, the public health reform team have undertaken work to determine what functions the new body will be responsible for, and how this fits within our broader blueprint for change – i.e. how the body will, in practice, support and enable the wider system. A Programme Board has been established to authorise the key tasks and activities required to create the new national public health body and the means by which it will support national and local partners. Local government is represented on the programme board, and the Public Health Oversight Board (PHOB) which is jointly chaired by COSLA will continue to have oversight of the reform programme overall. The PHOB have agreed that the new body should be named Public Health Scotland (PHS), which provides clarity and continuity with Public Health England and Public Health Wales, and we continue to operate to an extended deadline of later 2019 for the body's establishment.

5. Building on this, the programme team have taken forward formal commissioning of work to inform the Target Operating Model for PHS. These commissions will form the building blocks for the new body and have been developed collaboratively from the outset, co-led by organisations from across the wider public sector, including the Improvement Service

and Integration Chief Officers' group, and also draw on relevant expertise from within local government and beyond. Commissions are considering:

i. Key public health domains which PHS will be responsible for, mainly: improving health; protecting health; improving services (formerly 'healthcare public health'); data and intelligence; and leadership for public health research
ii. Workforce – specifically leadership for the broad public health workforce; and optimising specialist public health workforce arrangements
iii. Supporting arrangements – including IT, finance, human resources, security and assurance etc (these are being undertaken by the public health reform team)

6. Each of these commissions considers the topic area from the national, regional and local perspectives; their outputs will be used to inform proposals for the structure and functions of the new body and the relationships it will need to develop with other parts of the system. The commissions are at various stages of completion and there is a need to turn our attention to the legal basis for PHS, in order that functions can be transferred once the work of the commissions is concluded.

7. A number of options for the legal basis of the new body exist – each with their own complexities, timescales and legislative requirements. In considering different options, there is a risk that debate focuses on the intricacies of each option, attempting to compare the mechanics of one against the other. While this is important, what we want the body to be able to do – and *how* we want it do it, including in terms of culture and relationships – could arguably be considered of greater importance.

8. With this in mind, COSLA officers worked with SOLACE to develop principles for the design of PHS – i.e. ways in which we would want the new body to operate, irrespective of the legal basis chosen for its establishment. The development of these principles was guided by COSLA's political position on public health reform and they have since been adopted by the PHOB. Principles are provided at Annex A and focus on the need for the new body to have meaningful accountability to local government as well as to Scottish Government; for it to be different to what currently exists; and for the new organisation to genuinely support and enable local areas in pursuit of public health improvement.

Legal Form

9. Having established clear design principles, and the functions and current resources/organisations that would be brought together to establish the new body, our next step is to determine the legal form that the new body will take. The public health reform team have worked with the PHOB, drawing on advice from Scottish Government legal division, to consider our options. Although other organisational models exist, legal advice pointed us to four main options as being the most viable for our purposes; namely:

i. A completely bespoke vehicle, designed from scratch and built through dedicated primary legislation. Such a body would not fall within any of the recognised existing categories of public bodies but would still require to have a direct relationship with either the Scottish Government or the Parliament and operate within a framework set out by Ministers. This model would not allow for COSLA to be represented on its board in the same way that Integration Authorities are comprised of equal numbers of their partner bodies, as COSLA does not have necessary status as a legal entity of the form that would be required.
ii. Executive Agency (EA) – EAs are an integral part of the Scottish Government and generally have a strong focus on the management and direct delivery of public services. They are staffed by civil servants, including the Chief Executive who is

directly accountable to Ministers. Examples of EAs include the Scottish Prison Service, Disclosure Scotland and Social Security Scotland (when it is established).

iii. Non-departmental Public Body (NDPB) – NDPBs perform functions on behalf of Government and operate within a framework set by Ministers. NDPBs employ staff (who are not civil servants) and are accountable to a board whose members are appointed by Ministers. Examples of NDPBs include the Cairngorms National Park, Scottish Enterprise and the Scottish Children's Reporter Administration.

iv. Special Health Board (SpHB) – Special Health Board (SpHB) –Special Health Boards are NHS Health Bodies which provide healthcare services or management, technical or advisory services. Staff are NHS employees and accountable to a Board, which is in turn accountable to Ministers. Examples of SpHBs include NHS Health Scotland, Healthcare Improvement Scotland and the Scottish Ambulance Service.

10. Option one, a bespoke vehicle, was ruled out as unachievable by 2019 due to the requirement for primary legislation. Furthermore, creating something completely new – as opposed to a well-understood model – would by its nature be complex and could give rise to significant risks and difficulties similar to those currently being experienced across the wider health and social care system.

11. Option two, an Executive Agency, was ruled out by stakeholders as being too close to Government to be able to achieve our aspirations for the new body (as set out in the principles at Appendix 1).

12. The PHOB and Programme Board therefore gave detailed consideration to options three and four – NDPB and Special Health Board. Both the PHOB, and the Programme Board, concluded by consensus that the best way forward was to establish PHS as a Special Health Board. There were a number of reasons for this:

- A Special Health Board can be established via secondary legislation, reasonably quickly, and is a well-understood type of corporate model.
- A Special Health Board model will minimise disruption to the workforce – the majority of staff affected are likely to want to remain on NHS terms and conditions, and taking a different approach would be hugely disruptive and would potentially increase total costs.
- The legislative process required will enable us to begin recruitment for a Chair/Board/Chief Executive more quickly than would be the case with an NDPB, which would require an additional Order to allow early recruitment.
- This approach will minimise any complex information governance issues that might come with a different legal form (NHS data being managed in a non-NHS body).
- There is a broad consensus that the legal form of the new body is less important than how it operates, how it is led, and how it supports the wider system.
- A Special Health Board does not need to have an overt NHS brand or identity and PHS can visibly occupy a separate, upstream space from the rest of the NHS.
- Neither a Special Health Board nor an NDPB can, legislatively, provide direct accountability to Local Government. Both approaches would need a non-legislative mechanism to capture this partnership approach (through an MOU / Framework Agreement or similar). As such, an NDPB offers no particular advantage over a Special Health Board, and comes with the above-mentioned disadvantages.

13. The PHOB (which is co-chaired by COSLA and includes representation from SOLACE and Integration Authorities) is therefore advising both COSLA and Scottish Ministers, that Public Health Scotland should be established as a Special Health Board. The PHOB was also of the view that the savings this option offers in terms of opportunity costs, should be invested in designing the new body in line with the principles outlined at Appendix 1.

Proposed COSLA Position

14. It is our view that the PHOB have given robust consideration to the available options, and, given that the deadline for establishment of the new body has already been significantly extended, a Special Health Board would appear to represent the most pragmatic approach. Moreover, a Special Health Board allows for either the same, or greater, focus on our design principles in comparison to the other options and would therefore seem to be the most advantageous approach for ensuring PHS can deliver our ambitions in terms of how the new body operates, how it is led, and how it supports the wider system.

15. Board members are therefore invited to adopt the position that Public Health Scotland should be established as a Special Health Board, with a clear and distinct identity, designed in line with our agreed principles (set out at Annex A) and with a primary focus on enabling the whole system to deliver better public health outcomes. Board members may wish to further specify that an MOU or Framework Agreement, designed to ensure meaningful accountability to local government, is developed and agreed by Ministers and COSLA Leaders.

Next Steps

16. Ministers are currently considering the PHOB's advice and will be advised of COSLA's position immediately following our August Health and Social Care Board meeting. Assuming Ministers and COSLA politicians are of the same view, officers will commence the detailed legislative process and appointment of Chief Executive and Chair positions, seeking every opportunity to progress the principles outlined at Annex A.

17. Should there be any difference in preferences, COSLA's Health and Social Care Spokesperson will seek at meeting with the Minister to explore potential solutions with any alternative proposals being brought back to the Health and Social Care Board for consideration.

August 2018

Appendix 1

Public Health Scotland – design principles

The key design principles agreed with stakeholders can be summarised as follows:

- PHS should be jointly accountable to Scottish Ministers and Local Government for the delivery of its strategic objectives as far as possible. However, national and local government also recognise that there may be some key current or future functions (for example, around health protection and contingency planning at the national level) where accountability will need to continue to rest with Scottish Ministers alone. Scottish Ministers are inherently accountable for the performance of the statutory public bodies and health bodies that they fund, so some of this joint accountability may need to be achieved administratively via cooperation, consultation and agreements, rather than defined in legislation.

- A general principle should exist of seeking opportunities to undertake processes jointly between national and local government. This should be the preferred approach at all times. Examples might include the selection of the Chief Executive and Chair roles and final agreement of PHS's strategic objectives. Where processes, such as appointments, are attached to a Ministerial power and so sit with Scottish Ministers in a legal sense, this should not preclude making joint decisions with local government around how those powers are exercised.

- Partnership working must sit at the very heart of PHS, recognising their role in supporting the multi-dimensional system of public health. In other words, it is crucial that PHS's primary focus is on enabling the whole system to deliver better public health outcomes and that it is able to work with partners to coalesce around the new public health priorities as they relate to community planning across Scotland.

- PHS should co-design its strategic objectives with relevant partners across the whole system that influences the public's health. This principle conceives of the public health system in its widest sense, and so is multi-dimensional and underpinned by transparency and collaboration.

- Performance reporting should link with existing frameworks and serve to improve transparency and strengthen relationships with communities. This will require some re-orientating of performance reporting to ensure it is more local-facing.

- PHS must have a clear and distinct identity. This will include stand-alone branding and an overt focus on establishing a unique culture and identity as a vehicle for public sector partnership in the widest sense, as part of a multi-dimensional system of public health.

- With the above point in mind, PHS should have the capability to employ non-NHS staff, in addition to NHS staff, and cater for the employment requirements of non-NHS staff (for example, providing continuous service to local government employees with related pension

entitlements). It would be desirable for the Executive Team to include cross-sector expertise, including representation from the third sector.

- PHS staff should be located and deployed in a way that helps re-orient the public health system to be more local-facing and support collaboration across the wider system. Over the medium-term, this could include at least a partial move from NHS premises and the identification of co-location collaborative spaces at community, local and national levels, comprised of PHS staff and relevant partners from other parts of the wider public health system.

- PHS must be able to share services with both NHS and non-NHS public bodies and this needs to be done in a way that embraces the whole of the public sector and beyond i.e. the third sector.

- PHS should support innovation by identifying and promoting national and international best practice both within and beyond Scotland, including within the fields of data science and behavioural science.

- PHS should be a distinct organisation with the operational autonomy to advise and support government, local authorities and the NHS in a professionally independent manner. These freedoms and obligations should be described in the Memorandum of Understanding.