

**Decision Maker:**        **General Purposes & Licensing Committee**

**Date:**                    **17th September 2014**

**Decision Type:**        Non-Urgent                    Non-Executive                    Non-Key

**Title:**                    **NHS PENSIONS DIRECTIONS ORDER FOR  
PUBLIC HEALTH STAFF**

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**Chief Officer:**        Director of Human Resources  
Director of Finance

**Ward:**                    Borough Wide

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1. Reason for report

The Health and Social Care Act 2012 transferred responsibility for certain Public Health functions from Primary Care Trusts to Local Authorities from 1<sup>st</sup> April 2013. This report seeks the approval of the General Purposes and Licensing Committee for an application to be made to the Secretary of State for Health for an NHS Pensions Directions Order.

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2. **RECOMMENDATION(S)**

**The General Purposes and Licensing Committee is asked to:**

- 2.1. **Agree that an application be made to the Secretary of State for Health for an NHS Pensions Directions Order to enable newly recruited public health professionals to have access to the NHS Pension Scheme (NHSPS).**

### Corporate Policy

1. Policy Status: Existing policy
  2. BBB Priority: Excellent Council
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### Financial

1. Cost of proposal: Estimated cost The cost of employer contributions for existing public health staff in the NHSPS is approximately £150k per annum
  2. Ongoing costs: Recurring cost.
  3. Budget head/performance centre: Public Health
  4. Total current budget for this head: £1,576k (Public Health staffing budget 2014/15)
  5. Source of funding: Public Health Grant
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### Staff

1. Number of staff (current and additional): Currently 34 staff in Public Health, of which 26 employees are in the NHSPS and 5 in the LGPS.
  2. If from existing staff resources, number of staff hours: N/A
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### Legal

1. Legal Requirement: Non-statutory - Government guidance.
  2. Call-in: Call-in is not applicable.
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### Customer Impact

1. Estimated number of users/beneficiaries (current and projected): N/A
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### Ward Councillor Views

1. Have Ward Councillors been asked for comments? N/A.
2. Summary of Ward Councillors comments: Council Wide

### 3. COMMENTARY

- 3.1 The Health and Social Care Act 2012 transferred responsibility for certain Public Health (PH) functions from Primary Care Trusts (PCTs) to Local Authorities (LAs) from 1<sup>st</sup> April 2013 when PCTs ceased to exist.
- 3.2 In line with the provisions of the Act, 32 Public Health staff were transferred from Bromley PCT to the Council on 1st April 2013. The transfer was confirmed by way of a Statutory Transfer Scheme approved by the Secretary of State for Health. The Transfer Scheme confirmed that all 32 staff who were employed as at 31st March 2013 would transfer with their existing NHS terms and conditions and with continuity of employment protected. This decision was in line with the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector. As part of this protection all transferring staff were allowed to remain in the National Health Service Pension Scheme (NHSPS) following the transfer, provided they met certain criteria as set out in paragraph 3.3 below.
- 3.3 On 20th December 2012 the Department of Health (DH) and the Local Government Association(LGA) issued a joint statement confirming that:
- i. all transferring staff would retain access to the NHSPS if they were then compulsorily moved to another post within the same local authority and remained in direct local authority employment;
  - ii. transferring public health professionals (as defined in paragraph 3.7.ii below) and staff in the 1995 section of the Scheme within 10 years of their normal pension age of 55 or 60 as at 1st April 2012 and those covered by tapering protection would retain access to the NHSPS if they were to make a voluntary move to another public health post within the same local authority;
  - iii. all other transferring staff who do not fall within the categories above would join the LGPS if they were to move posts voluntarily after the transfer.
- 3.4 Any newly recruited staff who have been employed in Public Health since 1<sup>st</sup> April 2013 have been employed on Bromley's terms and conditions, including automatic enrolment into the Local Government Pension Scheme (LGPS).
- 3.5 As set out in paragraph 3.7 below LAs can apply for an "open" NHS Pensions Directions Order which would enable the Council to offer membership of the NHSPS to any public health professionals recruited to work in Bromley. The roles that are covered by the Order are largely NHS facing, such as consultants and nurses.
- 3.6 The Order has been made available to LAs to enable the easy movement of staff around the public health system and assist LAs in recruiting specifically qualified public health staff. The Order offers the flexibility and leverage in a competitive labour market for highly specialised public health professionals.
- 3.7 The joint statement from the DH and LGA, which was also restated in a document from the Public Health Transition Team in July 2013: "Public Health Transfers from the NHS to Local Authorities Pension provision update" confirmed:
- i. the Transfer Scheme did not apply to new recruits recruited post April 2013 to local authorities. Local authorities may apply for an open NHS Pension Directions Order that would provide continued access to the NHSPS for staff recruited to public health roles who are registered public health professionals, or who are members of the 1995 section of the Scheme and nearing retirement. These staff could be recruited from the NHS, another local authority or elsewhere;

- ii. Public Health professionals are defined as Public Health Specialists or Practitioners whose job role involves them wholly or mainly undertaking public health practice or activity either in relation to prevention, health protection, healthcare public health, or health promotion programmes for individuals from particular population groups or in relation to the whole population within a certain geography. They should be registered on one or more of the GMC, GDC, UKPHR, HCPC or MNC registers or be carrying out a public health role as defined by the Public Health England -Transition Team.
- 3.8 The decision to continue to provide NHS pensions access for public health staff as part of the Transfer Scheme was driven by the need to support workforce mobility between health and local authorities. This decision recognised that labour market factors would be an ongoing consideration in the new public health system.
- 3.9 The provision of a pension is still a key factor in recruitment and selection processes and applicants/candidates for health related positions in local authorities are more likely to be members of the NHSPS. Currently any newly recruited Public Health professionals employed by the Council would not have access to the NHSPS. This has the potential to impact on the Council's ability to attract good quality public health professionals currently working in the health sector who are reluctant to lose their membership of the NHSPS. For example recent recruitment campaigns for vacant vascular nurse posts within Bromley have not attracted a wide field of candidates and not being able to provide an NHS pension may have been an influencing factor.
- 3.10 An "open" scheme means that the applying authority does not have to specify the names of the people the Order will apply to. Any new recruits in qualifying posts would be automatically enrolled into the NHSPS instead of the LGPS upon commencing employment with the Council. This would be the only difference as all other terms and conditions would be based on Bromley terms and conditions. Currently 26 public health staff are in the NHSPS compared to 5 staff in the LGPS. 3 employees are currently in neither scheme as one is over the eligible age for membership and two have chosen to opt out.
- 3.11 Any new Public Health employees who are not considered to be "Public Health Professionals" as specified by the Public Health England - Transition Team, would not be covered by the Directions Order and would still be required to be automatically enrolled in the LGPS upon commencing employment with Bromley.
- 3.12 In the event that the Council is successful in applying for an open NHS Directions Order for Public Health professionals it will mean that those staff will not be able to choose whether they join the LGPS or the NHSPS, their only option would be the NHSPS. The LGPS rules specify that if an employee is entitled to contribute and be a member of a different pension scheme they will not be eligible to join the LGPS. Therefore, any future staff with access to the NHSPS through a Directions Order cannot opt to join the LGPS instead.

### **Business Case**

- 3.13 There are financial and service advantages for the Council having access to the NHSPS for future Public Health professionals.
- 3.14 Having access to the NHSPS will assist the Council in maintaining delivery of quality service provision as it will support the recruitment and retention of good quality public health professionals in the future.
- 3.15. There are also financial advantages as set out in Section 5 below.

#### **4. POLICY IMPLICATIONS**

- 4.1. The NHSPS is a defined benefits scheme operated under the provisions of the National Health Service Pension Scheme Regulations 1995 and the National Health Service Pension Scheme Regulations 2008, all of which were made under section 10 of the Superannuation Act 1972 for the purpose of providing pension benefits for eligible employees.

#### **5. FINANCIAL IMPLICATIONS**

- 5.1 The 2013 actuarial valuation set an employer contribution rate of 15.3% for employees in the LGPS. This relates to future service costs only and excludes the cost of meeting past deficit liabilities for which the Council currently contributes £5.9m per annum. This compares to an employer contribution rate of 14% for employees who are members of the NHSPS.
- 5.2 The Government Actuary's Department carries out an actuarial valuation on the NHSPS every 4 years and the next valuation will affect contribution rates from April 2015. The latest available information suggests that the employer contribution rate will increase slightly to 14.3% but this has not yet been confirmed.
- 5.3 Of the 32 staff who transferred under the initial Transfer Scheme, 26 are in the NHSPS with employer pension contributions of £150k per annum (14%). If these same staff were in the LGPS, the equivalent employer contribution would be £164k per annum (15.3%).
- 5.4 The NHSPS is an unfunded Scheme which is likely to result in even lower costs in the longer term compared to the LGPS as the Council is not required to underwrite any deficit liabilities that may arise.

#### **6. LEGAL IMPLICATIONS**

- 6.1 These are covered above and in particular paragraph 4 refers.

#### **7. PERSONNEL IMPLICATIONS**

- 7.1 These are covered above and paragraphs 3.4 to 3.8 and 3.14 in particular refer.

<b>Non-Applicable Sections:</b>	None
Background Documents: (Access via Contact Officer)	National Health Service Transfer Scheme – Bromley Signed by authority of Secretary of State for Health 28 March 2013