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To: Personnel Committee

Date: 19 March 2013

Subject: Terms and Conditions for Public Health Staff

Classification: **Unrestricted**

SUMMARY: This paper makes recommendations to Personnel Committee about the organisational position of the Public Health division and on Terms and Conditions for new recruits to Public Health Specialist and Professional posts.

1. BACKGROUND

On 1 April 2013, responsibilities for Public Health functions will transfer to Local Authorities and to Public Health England (PHE). With the exception of the screening and immunisation team, which will transfer to PHE, Public Health staff from the West Kent and Eastern and Coastal Kent Primary Care Trusts (PCTs) will transfer to the employment of Kent County Council.

The transfer of the Public Health workforce to KCC does not fall within the Transfer of Undertakings (Protection of Employment) Regulations 2006, generally referred to as TUPE, but will be covered by a statutory staff transfer scheme enacted under the Health and Social Care Act 2012.

2. TRANSFER SCHEME

The draft wording of the transfer scheme has now been sent to Local Authorities. This includes the following:

- a) A list of staff to be transferred
This has been agreed between the PCTs and KCC as those who are currently assigned to the Public Health activities that are being transferred.

- b) A clause relating to NHS Pension scheme membership
PCT staff transferring to Local Authorities, who are currently members of the NHS Pension Scheme, will retain their entitlement to continue in the scheme whilst they remain in the same post and, in certain circumstances, will remain eligible when later moving to different posts, including all those in Public Health Specialist and Professional roles.

- c) A 'TUPE-like' clause relating to NHS terms and conditions
Transferees will have a period of protection whereby their terms and conditions cannot be varied for a 2 year period commencing 1 April 2013 unless by dismissal and re-engagement for an 'Economic, Technical or Organisational' (ETO) reason. This would have to withstand the usual ETO tests that would apply in TUPE situations.

3. ORGANISATIONAL POSITION OF PUBLIC HEALTH DIVISION

During the transition to the new public health system, the Director of Public Health (DPH) for Kent has been employed by the Kent and Medway PCT Cluster, notionally reporting to the Corporate Director of Families and Social Care.

The DPH will transfer to the employment of KCC on 1 April 2013 and PHE is confirming, by letter to the DPH, the statutory appointment between the Secretary of State and Local Authority.

Department of Health Guidance is that there should be direct accountability between a DPH and the Chief Executive or Head of Paid Service for the exercise of their Local Authority's public health responsibilities and direct access to elected members. With effect from 1 April 2013, it is therefore proposed that the DPH for Kent will report to KCC's Head of Paid Service, the Corporate Director for Business Strategy and Support.

4. TERMS AND CONDITIONS FOR NEW RECRUITS TO PUBLIC HEALTH

The default position for all new starters to any Division in KCC is that they are appointed to the Kent Scheme Terms and Conditions of Employment (the 'Blue Book'). There are exceptions for professional groups such as Teachers, who are covered by the statutory School Teachers' Pay and Conditions Document, and Educational Psychologists who have 'Soulbury' national pay scales.

Public Health Specialists will, in most cases, need to be recruited from careers within the NHS. There are two routes to qualify as a Public Health Consultant. Both require 5 years post graduate training in Public Health and can be either from a medical or other professional background. Consultants who are medical graduates will be on NHS medical terms and conditions. Public Health Consultants qualifying via a portfolio route are placed on NHS 'Agenda for Change' terms and conditions.

Other Public Health professionals, including for Health Improvement and Public Health Intelligence roles, may also need to be recruited from the NHS and will be on 'Agenda for Change' terms and conditions.

In order to attract those whose careers are likely to move around the Public Health system, it seems likely that KCC will need to be in a position to offer new appointees, to Public Health specialist and professional roles, the same terms and conditions as they would be offered within the NHS so that this is not a barrier to recruitment.

Parity with the NHS will mean that Public Health remains an attractive career option for professionals within the NHS by encouraging free movement in and across Local Government and the NHS. It also avoids pay differentials creating recruitment and retention difficulties.

It is therefore proposed that KCC appoints Public Health Specialists and Professionals on 'Agenda for Change' and medical terms and conditions, as appropriate, for the first 2 years to align with the transfer scheme protections, although Blue Book terms and conditions could still be offered, as an alternative, for those appointed from other backgrounds. This will enable KCC to consider what the market is doing and then take a longer term view on terms and conditions for new starters.

It is accepted that administrative and managerial appointments to Public Health should, in future, be made on Blue Book terms and conditions, as the pool for recruitment to these posts will be broader than from NHS backgrounds.

5. ACCESS TO THE NHS PENSION SCHEME

As previously stated, the statutory transfer scheme provides for continued access to the NHS Pension Scheme for Public Health transferees. There will be no eligibility to join the Local Government Pension Scheme unless voluntarily moving to a post outside of Public Health.

For new recruits after 1 April 2013, as the Department of Health and Local Government Association recognise that it is necessary to facilitate future mobility between the NHS and Local Government, Local Authorities will be able to apply for an NHS Pensions Directions Order. This will allow continued access to the NHS Pension Scheme for Public Health professionals and staff nearing retirement where a Local Authority recruits 'new joiners' to public health roles who have had access to the NHS Pension Scheme in the previous 12 months. It is therefore proposed that KCC applies for a Directions Order to ensure that KCC vacancies for Public Health Specialist and professional posts are attractive to candidates who want to continue to be members of the NHS Pensions Scheme.

6. FUTURE CHANGES TO TERMS AND CONDITIONS

The Court of Justice of the European Union (CJEU) is currently considering whether staff transferring under TUPE must continue to have applied to them any changes made to their terms and conditions following transfer (known as the 'dynamic' approach). Whilst the transfer of Public Health staff is not a TUPE transfer, the draft transfer scheme provides 'TUPE-like' protections for two years and we therefore need to consider what impact the CJEU decision is likely to have. The Advocate General has recently delivered his opinion which is in favour of the dynamic approach.

The Public Health transfer scheme is silent on whether receiving organisations will have to apply future changes that are made nationally to the NHS Terms and Conditions. A number of changes taking effect up to July 2013 have already been incorporated into NHS Terms and Conditions that will need to be applied post-transfer as these form part of the contractual terms at the point of transfer.

KCC's Legal opinion is that, in the absence of any provision in the draft transfer scheme which specifies whether terms and conditions are to be treated as dynamic or static as at the point of transfer, KCC should be able to rely on the Advocate General's opinion and apply future changes for at least the first two years after transfer, during which the transfer scheme has legal effect.

It is therefore proposed that KCC applies future changes for a two year period which, subject to Personnel Committee agreement, will provide parity with any new recruits to Public Health on NHS terms and conditions.

7. RECOMMENDATIONS

Personnel Committee is invited to:

- a) Note the arrangements for the transfer of staff
- b) Agree the reporting line for the Director of Public Health
- c) Agree that Public Health Specialists and professionals can be appointed to KCC on NHS terms and conditions which will be reviewed for new recruits beyond 31st March 2015
- d) Agree that KCC applies for an open directions order for the NHS Pension Scheme
- e) Agree that KCC applies future changes that are made to NHS terms and conditions to the Public Health transferees until 31st March 2015.

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