

# HEREFORDSHIRE PUBLIC SERVICE TRUST

## **PUBLIC SERVICE TRUST ARRANGEMENTS CHIEF EXECUTIVE APPOINTMENT**

### **Purpose**

1. This report is produced as an appendix to the main report to be considered by Cabinet and the Primary Care Trust to draw together the consideration that has been given to the proposed appointment of a Chief Executive who would serve as Chief Executive of the Primary Care Trust and Chief Executive of the Council.

### **Scope of the Report**

2. This report covers the history of the consideration of such an appointment, the legal position, the alternatives and the risks and some of the questions that have been raised in the course of the consultation and scrutiny.

### **History and Background**

3. The history of the proposals to form a Public Service Trust has been recorded previously. The salient point is that it has been supported by the Council, the Primary Care Trust, the Health Scrutiny Committee and following the Fitness for Purpose test, the then West Midlands South Strategic Health Authority. From the first presentation of the outline proposal to Cabinet and Council and to the Primary Care Trust in October and early November last year, the combining of the role of Chief Executive has been a key plank of those proposals. Establishing clear, single managerial leadership has been seen as one of the key criteria for success. Indeed, the Audit Commission in seeking to distinguish between successful and less successful public sector organisations identifies this as the single most important factor alongside an appropriate Member or non-Executive commitment. The Council and Primary Care Trust are currently engaged in recruiting to the post of Chief Executive.

### **Legal Position**

4. The Council and the Primary Care Trust have sought independent legal advice and they advise as follows:
  - There is nothing in principle to stop a Primary Care Trust Chief Executive also working as a local authority Director/Chief Executive. Indeed, there are already examples of the Chief Executive of a Primary Care Trust operating as a Director of a local authority.
  - In regard to Primary Care Trusts, the make-up of their Boards are governed by the Primary Care Trust (Membership Procedure and Administration Arrangements) Regulations 2000 and the Primary Care Trust's own Standing Orders. The Chief Executive is classed as an Officer Member of the Board and along with the Director of Finance and Director of Public Health must be on the Primary Care Trust Board. The Chief Executive is responsible for overall

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Further information on the subject of this report is available from  
N.M. Pringle, Chief Executive, on (01432) 260044

performance of the Executive functions of the PCT and acts as Accountable Officer for the Primary Trust being responsible for ensuring the discharge of obligations under Financial Directions in line with the requirements of the Accountable Officer Memorandum for Primary Care Trust Chief Executives. The question of who should employ the Chief Executive is one which the parties would need to determine. One of the partners would have to act as host authority and be responsible for the accounts and audit of any pooled budgets and to monitor the working of that arrangement.

- The Section 75 Board will deal with the governance arrangements in regard to the Partnership normally made up of officers and non-officer members of the partners with the partners agreeing who will act as Chairman.
- In the NHS Act 2006, there is a new Schedule 18 which deals with transfers of staff under Section 75 arrangements and states that the Secretary of State can make an order to transfer staff or an Order to divide the contract of employment between the local authority and Primary Care Trust to allow an employee to be employed by both parties. What is being proposed locally is that the Chief Executive be employed by Herefordshire Council as the host authority and that is entirely consistent with the independent legal advice received.

## **Alternatives and Risks**

5. The alternative would be to join up the organisations at a level beneath that of the respective Chief Executives. It is not unique because there have been a number of dual appointments of Primary Care Chief Executives to local authority posts, generally as a joint post around Adult Services and the Chief Executive of the Primary Care Trust. The commissioning of health services for children and young people is then seen as primarily an adjunct to the children's services functions of the local authority. That would be further reinforced with the formation of a Children's Trust. There is an argument that appointing the Chief Executive of the Primary Care Trust at Director level within the local authority diminishes from the role of the Primary Care Trust within the partnership. The Steering Group has recognised that a decision on the appointment of a CEO is one of the single most important decisions. If the CEO decision is not resolved quickly both the Council and the Primary Care Trust will be under pressure to appoint individual CEOs. As has already previously been mentioned, establishing single managerial leadership at Chief Executive level is seen as an essential component of success.
6. It has been recognised that it is not necessary for the managerial and governance models to be developed on the same timetable – but the governance structures do need to be advanced and will need to be approved before final integration.
7. There is a balance between setting a timetable that is achievable but the longer the timetable the greater the uncertainty for both organisations.
8. There is a reputational risk to both the Council and the Primary Care Trust Board having led with the Public Service Trust proposal if they are seen to revert to the status quo. Neither Chief Executive believes that the status quo is an option for their organisation.
9. There is an agreed statement on the way forward which forms part of the papers elsewhere.
10. The parties also address the possibility that the proposals do not progress to the completion of a Partnership Document with the implication that the organisations

might, in that eventuality, wish to revert to securing the appointment of their own Chief Executive. The post currently advertised is advertised at a modest premium as against the recruitment for a Council Chief Executive and in those circumstances it would be possible to avoid the costs of a potential redundancy. The advice received is that the offer of a post as Chief Executive of one of the organisations is likely to constitute suitable alternative employment. The risk therefore would be that the individual appointed would successfully seek a post elsewhere rather than one of significant cost to either organisation.

## Commonly Asked Questions

11. ***Is the job do-able?*** – The question has been asked both through the consultation process and through scrutiny as to whether the job scope is too large for one person to undertake.

There is no question that the role will be a demanding one. There are, however, equally demanding roles in both the public and private sector. In terms of spend and number of employees, the scope would be significantly less than that of the largest English Counties and largest English Metropolitan authorities. The largest of those authorities have populations of over 1 million and budgets of over £1 billion. The span of activity would, however, be greater than those organisations. There are many very similar roles within the private sector.

12. ***Would it be possible for the Chief Executive to resolve conflicts of interest which might arise between the Council and the Primary Care Trust?*** –Chief Executives are already required to advise on the resolution of those conflicts of interest both within the Council and within the Primary Care Trust. The Local Government White Paper and the Local Government and Public Health Involvement Bill once enacted will both require the Council and Primary Care Trust to resolve those difficulties locally. The new Comprehensive Area Assessment will be a measure for both organisations and it will be essential that those difficult issues are resolved locally. The Audit Commission has been clear in developing the Comprehensive Area Assessment that they would not fail to make public their criticism of organisations that cannot resolve those issues. The governance arrangements that are developed will need to recognise and provide sufficient flexibility for the resolution of those differences.

13. ***What happens if either organisation wishes to achieve an Exit Strategy?*** - Any Exit Strategy will still have to make provision for the closer partnership working which both organisations are expected to achieve under the Local Government White Paper and the Local Government and Public Health Involvement Bill. The practical achievement of that exit prior to the signing of the Partnership Document has been discussed at paragraph 10 above and the Partnership Document would itself have to make such provision if such a re-separation was felt to be desirable after completion of the Partnership Document.

## Conclusion

14. The overall conclusion therefore is that there is no legal impediment to such an appointment. The practical problems that have been raised during the course of consultation and scrutiny are capable of being resolved. The appointment can be made in a way that enables the parties to achieve the flexibilities in the time table that they feel are desirable and the practical issue of the break up of the partnership can also be addressed.