



Report Number: TSP/3/11

Strategic Partnership Commissioning Review (including the establishment of the Health and Wellbeing Board)

Torbay Strategic Partnership – 27 January 2011

1. What are we trying to achieve for our communities?

- 1.1 A streamlined, partnership framework which can deliver the aims and objectives of the Community Plan in an efficient, cost-effective manner.

2. Relationship to Community Plan

- 2.1 The Torbay Strategic Partnership and its commissioning architecture delivers the various aims and objectives of the Community Plan.

3. Recommendation for decision

- 3.1 That consideration be given to the options for delivering a streamlined commissioning framework for the Torbay Strategic Partnership taking into account the emerging legislation from Government.
- 3.2 That Torbay becomes an early adopter of the Health and Wellbeing Board.
- 3.3 That the Partnership express a preference for either Option 1 or 2 and that the TSP Executive consider the details of the membership of the Health and Wellbeing Board and its responsibilities taking account of emerging local and national policies.
- 3.4 That partner organisations (including the GP Consortium) take these proposals to their governing bodies and provide feedback to the TSP Executive.

4. Background

- 4.1 In August 2010, the TSP Executive considered a report on a review of the current commissioning arrangements and agreed that a streamlined approach to include a Health and Wellbeing Board and Sub-regional Local Enterprise Partnership and possibly a Stronger Communities Board should be explored.
- 4.2 In the meantime, further information has been provided by the Government on the proposed Health and Wellbeing Boards, the review of the Children's Trust arrangements has been completed and the Ofsted report on Torbay's safeguarding arrangements has been published.
 - 4.2.1 This report put forward further options for streamlining the commissioning arrangements in Torbay.

5. Health and Wellbeing Board

- 5.1 The Health White Paper (entitled “Equity and Excellence: Liberating the NHS”) was published in July 2010 together with a number of associated consultation documents. A briefing note on the proposals contained in those documents in relation to the establishment of Health and Wellbeing Boards was prepared in October 2010 for consideration by the Commissioning Officers Group of Torbay Council. A copy of the briefing note is attached at Appendix 1.
- 5.2 In December 2010, the Government issued its response to the consultation ahead of the Health and Social Care Bill being presented to Parliament (currently scheduled for January 2011). The Government has taken on board the comments received during the consultation, most notably in relation to the health scrutiny powers which will not sit with the Health and Wellbeing Board but will be a function of the Council. In addition, the Health and Wellbeing Board will be responsible for the pharmaceutical needs assessment for the local area.
- 5.3 Having taken account of the Government’s response to the consultation, a draft Article setting out the role and membership of the Health and Wellbeing Board is set out in Appendix 2.
- 5.4 There are a number of points which should be noted:
 - 5.4.1 The Health and Wellbeing Board will be a statutory committee of the local authority (i.e. appointed by the Council). It is hoped that this is a technical point and the previous good partnership working can continue.
 - 5.4.2 Local authorities will have the freedom to delegate additional functions to the Health and Wellbeing Boards in whatever way they think appropriate. Examples given in the Consultation Response include housing, leisure and co-ordinating the commissioning of children’s services.
 - 5.4.3 Beyond the Core Membership (shown in Appendix 2), the local authority will have flexibility to include other members (to take account of the freedom to delegate other functions to the Health and Wellbeing Board).
- 5.5 An option is for the Health and Wellbeing Board to be a sub-board of the Torbay Strategic Partnership (although technically a committee of the Council). There would need to be a relationship between the Children’s Trust, Community Safety Partnership and the emerging Sub-regional Local Enterprise Partnership and this is shown diagrammatically in Appendix 3 and explored further in the following paragraphs.

6. Relationship with Children’s Trust

- 6.1 The Government has stated that health and wellbeing boards will provide a “key forum for public accountability of NHS, public health, social care for adults and children and other commissioned services...directly related to health and wellbeing”.
- 6.2 Whilst the statutory guidance on Children’s Trusts has been withdrawn as it “no longer reflects Government policy”, the requirement for local areas to have a Children’s Trust Board will not be removed until the next parliamentary session (i.e. the session starting in November 2011). Taken together with the current issues facing Torbay in relation to Children’s Services (such as safeguarding,

teenage pregnancy and child poverty), it would make sense for the newly streamlined Children's Trust arrangements to continue as an interim arrangement. However, the Partnership will wish to consider the relationship between the Children's Trust and the Health and Wellbeing Board to enable the links between the two bodies to develop recognising that the issues facing children, adults and families are very much inter-related.

7. Relationship with Community Safety Partnership

- 7.1 The Community Safety Partnership remains a statutory Partnership. Within the current commissioning framework this is a Level 3 Partnership. This could continue with the CSP becoming a sub-board of the Health and Wellbeing Board.
- 7.2 This relationship may well need to be re-visited once further information is known about how the four-way relationship between the CSP, Police Commissioner, Police and Crime Panel and Overview and Scrutiny will operate. How the public fit into this relationship also has to be tested.

8. Relationship with Local Enterprise Partnership

- 8.1 As stated in the preferred option considered in August 2010, the Sub-regional Local Enterprise Partnership would act as a sub-board of the Torbay Strategic Partnership. It is possible that Torbay-based sub-groups of the LEP may be needed.
- 8.2 Issues around culture, tourism and the environment could fall within the remit of the LEP or its sub-groups. However, some of these issues could also fall with the wider remit of the Health and Wellbeing Board (e.g. leisure and open spaces). (Indeed some environmental issues may well fall within the remit of the Community Safety Partnership.) Cross cutting issues would need to be dealt with by the Torbay Strategic Partnership itself or by the TSP clearly identifying which "second tier" board is the lead.

9. An Alternative Proposal – Does Health and Wellbeing link everything we do?

- 9.1 An alternative way of streamlining the existing Strategic Commissioning Framework would be for the Torbay Strategic Partnership to take on the role of the Health and Wellbeing Board with three sub-groups – Children's Trust, Sub-regional Local Enterprise Partnership and the Community Safety Partnership. Between the four bodies, it is expected that all issues facing Torbay could be covered.
- 9.2 This would mean that health and wellbeing would have a high profile which would link to the ongoing work on "Closing the Gap". This would enable the Partnership to continue to work closely together on an issue which is of great and wide ranging importance in Torbay.
- 9.3 This proposal would also address some of the issues of duplication of both work and membership which were flagged up by respondents in the audit of the current partnership arrangements. (Although, the proposal set out earlier in this report would also address this.)

9.4 Careful agenda management would need to be undertaken to ensure that this approach does not lead to an overload of work for one or more of the partnership bodies.

9.5 This proposal is shown diagrammatically in Appendix 4.

10. Implementation Framework

10.1 Subject to parliamentary approval, the health and wellbeing board will become a statutory committee of the local authority at the same time that GP consortia take on responsibility for the NHS budget. However, they will come into existence in advance of this.

10.2 The Government has stated that GP consortia pathfinders will need to work with councils from the outset on setting up health and wellbeing boards. This implies that Torbay, as a pathfinder, should be looking to establish its health and wellbeing board sooner rather than later.

10.3 The Government will be encouraging early implementers of health and wellbeing boards to operate during the remainder of 2010/11 and during 2011/2012. The Government will invite interest in becoming an early implementer and will clarify the key transition milestones as they impact on local government. Early implementers will take the form of non-statutory partnership arrangements.

10.4 During 2012/13, shadow health and wellbeing boards will be established as partnerships without statutory powers and duties. They will have to make preparations to carry out JSNAs, develop Joint Health and Wellbeing Strategies and link these to emerging commissioning plans.

10.5 The table below shows the timetable for implementation.

From January 2011	GP consortia pathfinders to work with councils on setting up health and wellbeing boards
By March 2011	Ensure joint arrangements are in place for local areas to agree priority areas for investment of NHS funding made available in the Spending Review to support social care
From April 2012	Establish "shadow" health and wellbeing boards in every upper-tier authority in the Country
April 2013	Health and wellbeing boards formally assume their powers and duties
From April 2013	Enhanced scrutiny powers come into force

11. Democratic Accountability

11.1 Within any partnership working there needs to be democratic accountability. Consideration will need to be given to the numbers of councillors who sit on the partnership boards together with who they represent (i.e. Cabinet or Opposition or Council as a whole).

11.2 The Overview and Scrutiny Board has, and continues to have, a role to play in holding the Torbay Strategic Partnership (and a number of its partner organisations) to account. Work will need to be undertaken with scrutiny members (especially following the Local Elections) on the importance of this role

including the links that the Overview and Scrutiny Board should be making with the community at large. The scrutiny landscape is changing with developments such as Police and Crime Panels and wider health scrutiny powers. The role of scrutiny in holding the Partnership to account continues to be an important one.

- 11.3 A further role to be explored is that between the Overview and Scrutiny Board and the Torbay Together Involvement Group to make the links between the community as a whole and the Torbay Strategic Partnership.

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BRIEFING NOTE

Health and Wellbeing Boards – Current Government Proposals and Associated Commentary

Government Proposals – White Paper and Consultation Documents

1. The Health White Paper *“Equity and Excellence: Liberating the NHS”* was published on 12 July 2010. In terms of local democratic legitimacy the White Paper set out the following proposals:
 - a. Establishment of new statutory arrangements within local authorities to join up the commissioning of local NHS services, social care and health improvement.
 - b. Local authorities will be responsible for:
 - Promoting integration and partnership working between the NHS, social care, public health and other local services and strategies.
 - Leading joint strategic needs assessments and promoting collaboration on local commissioning plans, including by supporting joint commissioning arrangements where each party so wishes.
 - Building partnership for service changes and priorities. There will be an escalation process to the NHS Commissioning Board and the Secretary of State, which retain accountability for NHS commissioning decisions.
 - c. These arrangements would be through “health and wellbeing boards” or within existing strategic partnerships.
 - d. Health and Wellbeing Boards would take a strategic approach and promote integration across health, adult social care, children’s services (including safeguarding) and the wider local authority agenda.
 - e. Local authorities will have influence over NHS commissioning.
 - f. NHS commissioners will have influence in relation to public health and social care.
 - g. The aim is to ensure coherent and co-ordinated local commissioning strategies across the NHS, social care and health improvement and to enable local strategic co-ordination.
 - h. These functions would replace the current statutory functions of Health Overview and Scrutiny Committees.
 - i. Elected members, all relevant NHS commissioners, Directors of Public Health, adult social services and children’s services would be involved in carrying out these functions and will be under duties of partnership.
 - j. Local HealthWatch representatives will play a formal role to ensure that feedback from patients and service users is reflected in commissioning plans.

2. *“Liberating the NHS: increasing democratic legitimacy in health”* was published on 22 July 2010. The consultation document built on the proposals in the White Paper to increase democratic legitimacy in health through local authorities:
 - being given a stronger role in supporting patient choice and ensuring an effective local voice;
 - taking on local public health improvement functions; and
 - promoting more effective NHS, social care and public health commissioning arrangements
3. In addition to the proposals set out in the White Paper, this consultation document proposed the following:
 - a. Statutory health and wellbeing boards would have four main functions:
 - To assess the needs of the local population and lead the statutory joint strategic needs assessment.
 - To promote integration and partnership across areas, including through promoting joined up commissioning plans across the NHS, social care and public health.
 - To support joint commissioning and pooled budget arrangements, where all parties agree this makes sense.
 - To undertake a scrutiny role in relation to major service redesign.
 - b. Intelligence and insight about people’s wants and needs would systematically shape and commission decisions.
 - c. The Health and Wellbeing Board could also be a vehicle for taking forward joint commissioning and pooled budgets, where parties agree this makes most sense and it is in line with the financial controls set by the NHS Commissioning Board.
 - d. Health and Wellbeing Boards would sit at the upper tier local authority level. Arrangements could be put in place to discharge at the right level to ensure that the needs of diverse areas and neighbourhoods are at the core of their work.
 - e. Neighbouring boroughs may also choose to establish a single board covering their combined area, should that make sense locally.
 - f. Health and Wellbeing Boards would have a lead role in determining the strategy and allocation of any local application of place-based budgets for health.
 - g. Health and Wellbeing Boards would have an important role in relation to other local partnerships, including those relating to vulnerable adults and children’s safeguarding. Concerns about local safeguarding arrangements should be raised with the Health and Wellbeing Board who would escalate it to the NHS Commissioning Board if they were unable to achieve local resolution.

- h. Health and Wellbeing Board will work with the local strategic partnership to promote links and connections between the wider needs and aspirations of local neighbourhoods and health and wellbeing.
 - i. The membership of the Health and Wellbeing Board would include:
 - Elected Mayor and elected members
 - Social care
 - NHS commissioners
 - Local government – Directors of Social Care, Public Health and Children’s Services
 - Patient champions
 - GP consortia
 - NHS Commissioning Board (where relevant issues are being discussed)
 - HealthWatch
 - j. Local authorities may choose to invite local representatives of the voluntary sector and other relevant public service officials.
 - k. The scrutiny and referral function of the current Health Overview and Scrutiny Committee (in relation to substantial variations/developments) would be subsumed within the Health and Wellbeing Board. (NB. This proposal was subsequently dropped in the Consultation Response.)
4. In relation to health scrutiny the consultation document sets out the following:
- a. A formal health scrutiny function will continue to be important within the local authority and the local authority will need to assure itself that it has a process in place to adequately scrutinise the functioning of the Health and Wellbeing Board and health improvement policy decisions.
5. A further consultation document “*Liberating the NHS: commissioning for patients*” was published on 22 July 2010. This document set out how the proposals for putting GP consortia in charge of commissioning services should be implemented. In relation to health and wellbeing boards, the consultation paper stated:
- a. The proposed new local authority health and wellbeing boards would enable consortia, alongside other partners, to contribute to effective joint action to promote the health and wellbeing of local communities, including combined action on health improvement, more integrated delivery of adult health and social care, early years’ services and safeguarding of children and vulnerable adults.
 - b. The GP consortia (alongside other partners) would draw on the advice and support of the proposed health and wellbeing boards in relation to population health.

Associated Commentary and Responses

6. The LGiU in its Essential Policy Briefing on the Local Democratic Legitimacy in Health consultation said:
 - a. The proposals for local health and wellbeing boards are ... important, since they will be vehicles for bringing together all the local bodies which impact on health, both “upstream” and “downstream”. There may be some concern about the expectations of these partnerships. The current health and wellbeing partnerships which sit under local strategic partnership boards have struggled in many areas to develop a strategic role and make their mark on the quality and direction of services. It is a moot question whether new powers would be sufficient to enable health and wellbeing boards to become genuinely strategic and influence bodies, rather than the somewhat tokenistic “talking shops” which they are judged now to be, with the real decisions continuing to be made elsewhere in the partner organisations.
 - b. Local authorities may also be concerned about the proposal to transfer statutory health scrutiny powers to the proposed health and wellbeing boards while retaining the expectation that a separate health scrutiny function will be carried out without those powers. It is generally recognised that health scrutiny has, in many areas, been one of the more successful and influential forms of local authority scrutiny and many health overview and scrutiny committees will not be happy about the loss of their statutory powers and the potential confusion of roles between the proposed health and wellbeing boards and health scrutiny committees. (NB. This point was taken on board by the Government in its Consultation Response.)
7. The LGiU in its Essential Policy Briefing on the Commissioning for Patients consultation said:
 - a. A close working relationship between GPs and local authorities would, in many areas, involve a huge cultural change, since most GPs are not used to the idea of mutual accountability or responsibility with local councils.
 - b. At the same time as playing a leadership role in developing working partnerships with commissioning consortia, the health and wellbeing boards will also take over the statutory health scrutiny functions from health overview and scrutiny committees. This dual role might prove difficult to play, particularly as, at the moment, GPs (being independent contractors with the NHS) are not covered by any of the requirements of the health scrutiny legislation.
8. In relation to Health and Wellbeing Boards, the Local Government Group’s response to the White Paper was as follows:
 - a. The LG Group strongly supports the creation of health and wellbeing boards with clear and sufficient legal powers to provide local leadership and a strategic framework for coordination of health improvement and addressing health inequalities in local areas, based on local health needs identified by the Joint Strategic Needs Assessment.

- b. The Group supports the proposal for health and wellbeing boards to be a statutory requirement for all upper-tier local authorities. Though unitary or upper-tier authorities should be the basic building block for the boards, they will need the flexibility to join together to work in sub-regional and supra-regional groupings and break down into smaller areas – neighbourhoods, parishes and districts – to more effectively engage with local communities.
 - c. Although it believes that the composition of boards should be for local determination, membership will need to include chief officers, senior lead members, GP commissioning leads and representatives of patient and user groups as a minimum. Furthermore, they must have the statutory powers to be able to take decisions rather than being required to report back to nominating bodies. This will ensure that health and wellbeing boards are agents of change and health improvement rather than ‘talking shops’.
 - d. The LG Group supports the functions proposed for health and wellbeing boards outlined in the White Paper. It also proposes additional powers and responsibilities: to sign off GP commissioning plans; for GP consortia to be required to contribute to the JSNA; for boards be required to publish an annual joint commissioning plan; and for local boards to have equality in statute with the National Commissioning Board.
 - e. The White Paper clearly envisages the health and wellbeing board as an executive body. As such it cannot also scrutinise its own commissioning function and should, therefore, not have scrutiny powers.
9. The Centre for Public Scrutiny, in its response to the White Paper, made (inter alia) the following points:
- a. We welcome a greater co-ordination role for councils. Relationships between Health and Wellbeing Boards, GP Consortia and the NHS Commissioning Board should facilitate local decision-making. It will be important to get the governance arrangements for these new bodies right.
 - b. Health overview and scrutiny committee functions should not be transferred to Health and Wellbeing Boards. Existing “health scrutiny” legislation should be amended to reflect new arrangements for planning and delivering healthcare, social care and health improvement.

Prepared by Kate Spencer
25 October 2010

References:

[Equity and excellence: Liberating the NHS](#)
[Equity and excellence: Local democratic legitimacy in health](#)
[LGiU Essential Policy Briefing - Local Democratic Legitimacy in Health](#)
[LGiU Essential Policy Briefing - Commissioning for Patients](#)
[Local Government Group Response to the White Paper](#)
[CfPS Response to White Paper](#)

Article [x] – Health and Wellbeing Board

(References: [Download Liberating the NHS: Legislative framework and next steps](#) (Department of Health, December 2010))

[x].01 Establishment of the Health and Wellbeing Board

The Health and Social Care Bill will require the establishment of a health and wellbeing board in every upper tier local authority.

[x].02 Role of Health and Wellbeing Board

The Council will appoint a committee known as the Health and Wellbeing Board to provide a key forum for public accountability of NHS, public health, social care for adults and children and other commissioned services that the Health and Wellbeing Board agrees are directly related to health and wellbeing.

[x].03 Membership of Health and Wellbeing Board

Core Membership
Relevant GP Consortia
NHS Commissioning Board (attending when appropriate)
At least one local elected representative
Director of Adult Social Services
Director of Children's Services
Director of Public Health
HealthWatch

Torbay Council will have flexibility to include other members.

Additional Members
Voluntary Sector?
Other relevant public service officials
Police?
Fire?
Probation?
South Devon Healthcare Trust?
Private Sector?

[x].04 Specific functions of the Health and Wellbeing Board

- (a) To oversee the undertaking of the Joint Strategic Needs Assessment by Torbay Council and the GP consortium¹².
- (b) To oversee the undertaking of the Pharmaceutical Needs Assessment by Torbay Council.

1.1.1 _____

1 Torbay Council and the GP Consortium will each have an equal and explicit obligation to prepare the JSNA and to do so through the Health and Wellbeing Board.

2 The NHS and local authority commissioners will have an obligation to have regard to the JSNA in exercising their relevant commissioning functions.

(c) To develop a high-level Joint Health and Wellbeing Strategy.

[x].05 Joint Health and Wellbeing Strategy

The Joint Health and Wellbeing Strategy (JHWS) will span the NHS, social care and public health and could potentially consider wider health determinants such as housing or education.

The JHWS will provide a concise summary of how partner organisations will address the health and wellbeing needs of a community and help reduce inequalities in health.

The JHWS will be made public.

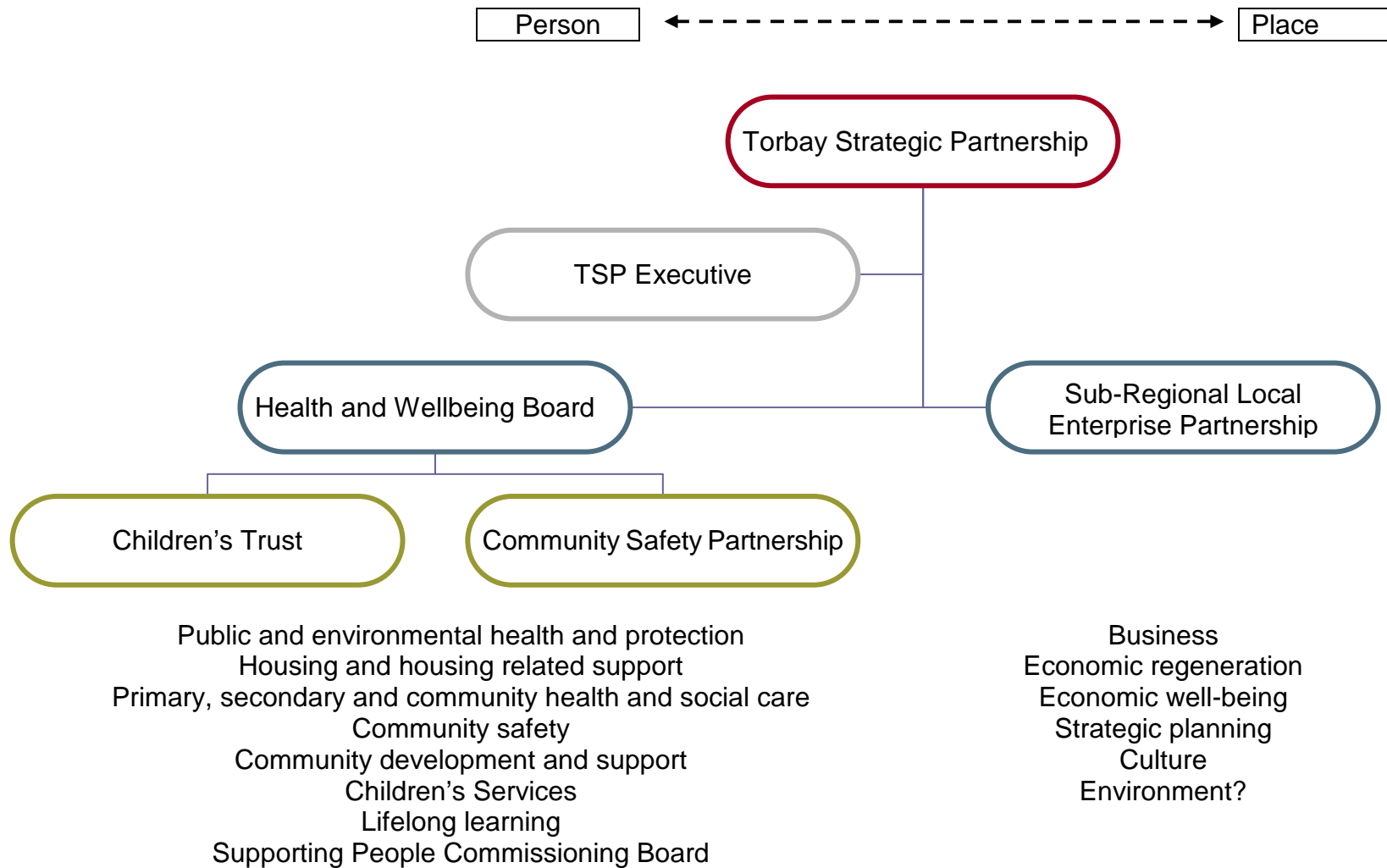
The Health and Wellbeing Board has a duty to have regard to the NHS Commissioning Board mandate in preparing the JHWS.

In drawing up the JHWS, Torbay Council and the GP Consortium will consider how to make best use of the flexibilities they have at their disposal, such as pooled budgets.

[x].06 Proceedings at overview and scrutiny committees

Meetings of the Health and Wellbeing Board will generally be in public.

TSP STRUCTURE – OPTION 1
(Lead responsibilities shown)



TSP STRUCTURE – OPTION 2
(Lead responsibilities shown)

