



Public Health Human Resources (HR) Concordat

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Public Health Human Resources (HR) Concordat

Prepared by the Public Health Human Resources Concordat Steering Group

Signed off by the Department of Health, Local Government Association and NHS

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1. Context

- 1.1 Subject to the passage in Parliament, the Health and Social Care Bill 2011 will provide the statutory basis for local authorities to assume their new public health responsibilities in April 2013, following the abolition of primary care trusts (PCTs).
- 1.2 Public Health England and the other new national bodies will also assume full accountability and financial responsibilities from April 2013 but those organisations are not the focus of this Public Health Human Resources Concordat (known as “the Concordat”). Those new national organisations will use the HR Transition Framework as the basis for guiding principles and HR standards as well as detailed people transition policies (PTPs) for the more specific processes of transition.

2. Audience

- 2.1 The Concordat is aimed specifically at staff and employers in PCTs commissioning public health functions and local authorities who will be affected by the transfer of PCT public health functions and responsibilities in 2013.
- 2.2 Throughout the period of public health transition these staff and employer groups are expected to work to the principles and HR standards outlined in this document.
- 2.3 There are a number of published national HR transition documents and the place this Concordat holds in relation to these is outlined in Sections 3 and 4 below. It is also supported by a set of frequently asked questions, which will be available on the [Department of Health](#) and the [Local Government Association](#) websites (alongside this Concordat). The first set of FAQs will be published in late November and updated on a regular basis.

3. Purpose

- 3.1 The Concordat complements the HR Transition Framework. Specifically, however, it provides guiding principles and HR standards for the transfer of PCT public health commissioning activity and functions (“senders”) to local authorities (“receivers”) and a fair and consistent approach to managing the related detailed HR processes in a local context.
- 3.2 The Concordat outlines the indicative timescales for change and the obligations (set out later in this document) on NHS and local government employers and trade unions in managing the change.
- 3.3 The relevant stakeholder groups recognise that this Concordat will not answer every question on the complex HR issues involved in managing this specific transition, but the document does provide direction in identifying where and when decisions will be made or where further detailed information can be obtained.
- 3.4 The scale of the proposed changes offers a real opportunity for employers to ensure that the advancement of equality and fairness lies at the heart of decision-making and to demonstrate their commitment to diversity. Employers should ensure that all decisions comply with relevant employment law, equality legislation and the public sector equality duty in order that decisions are fair, transparent, accountable and evidence-based, and consider the needs and rights of the public health workforce.
- 3.5 This document has been developed¹ with NHS and local government trade unions in partnership with NHS Employers and the Local Government Association (LGA). We acknowledge that following the earlier development work on the Concordat, we are grateful that the Local Government part of Unison was able to join the Concordat steering group alongside trade union colleagues on the NHS side. A broad range of other stakeholder groups have also been involved in its development and these are listed at Annex A. The Department of Health has overseen its production and publication.

¹ Developed by the Public Health HR Concordat Steering Group, which brings together officials from the NHS, local government, the Department of Health, strategic health authorities, NHS Employers and trade unions representing staff in the NHS and local government.

3.6 This Concordat has been ratified by the DH and Local Government Programme Board, following sign-off at the HR Transition Partnership Forum² and HR Transition Steering Group³, and endorsement at the National Joint Council for Local Government Services.

4. Scope

4.1 It is important that public health staff, trade unions and their managers in commissioning PCTs are clear about the arrangements that have been set in place to support and engage them during this specific period of transition, how these fit together and how they will be engaged at employer level.

4.2 Given the complexity of the public health transition, more detailed local arrangements will also be developed locally alongside employers' existing HR policies and processes. These documents will be critical for staff. The principles and HR standards outlined in this Concordat support the specific development and implementation of more detailed HR transition guidance for public health function transfers to local authorities.

4.3 The main detailed guidance for these transfers to local authorities will be developed by the LGA, NHS Employers, the NHS trade unions and local government trade unions and will be called Local Government Transition Guidance. Other detail related to other public health functions and staff will be found in the Public Health England People Transition Policy and the NHS Commissioning Board People Transition Policy.

4.4 The Concordat is therefore neither a detailed description of the employment, legal or organisational issues faced by local authorities as employers nor a detailed "road map" of how public health professionals will navigate their way through the transition.

² The national HR Transition Partnership Forum brings together officials from the DH, strategic health authorities, NHS Employers and trades unions representing staff in the NHS, arms-length bodies and the DH.

³ The HR Transition Steering Group includes officials representing HR receiver functions.

4.5 To summarise the relationship between the Concordat and the other key HR framework documents:

- **HR Transition Framework:** This document (published in July 2011) provides generic guidance (for relevant NHS, DH and arms-length bodies (ALB) staff) covering the employment and HR processes throughout the overall transition and sets out specific expectations for the new national receiver organisations. The Concordat is based on and complements this document, and retains key principles set out therein.
- **Local Government Transition Guidance:** This document is being developed by the LGA in consultation with NHS and local government trades unions and will be published shortly. The guidance is being designed to operate within the principles set out in this Concordat.
- **Public Health England People Transition Policy (PTP):** This PTP will not cover the transfer of PCT public health commissioning functions to local authorities. It will cover the transfer of staff and functions from other sender organisations (e.g. the Health Protection Agency, the National Treatment Agency for Substance Misuse, the public health observatories, cancer registries, strategic health authority public health staff and regional public health groups) into a separate body – Public Health England in its capacity as a receiver organisation. Public Health England is being established as an executive agency of the Department of Health in April 2013, subject to the passage of the Health and Social Care Bill. The initial Public Health England PTP is likely to be available in January 2012.

4.6 It is vital that the appropriate and necessary skills are retained wherever possible during public health transition and that the costs of change are minimised, including the costs of redundancy.

5. Objectives

5.1 This Concordat has the following objectives:

- to provide overarching principles to cover the employment process covered by the transfer of PCT public health commissioning activity and functions into local authorities
- to outline the generic HR principles and processes required to support consistency and encourage best practice
- to advance equality and promote diversity
- to promote and ensure effective partnership working and consultation with staff and trade unions across the NHS and local government in order to achieve end state
- to highlight workforce and employment issues
- to clarify sequencing and the system architecture as it emerges
- to signpost for resolution those detailed issues that cannot be resolved by the Concordat.

5.2 This Concordat provides information for employees, managers, trade unions and HR professionals in each of the following areas, which are covered in the following sections of this document:

- the overarching public health HR transition principles
- the responsibilities of NHS and local authority employers
- the transfer of public health commissioning activity and functions to local authorities: timeline and legal milestones
- equality and diversity.

6. Overarching public health HR transition principles

6.1 The agreed HR transition principles that should apply throughout are to:

- consult and engage with employees and their representatives and make sure they are kept fully informed and supported during the change process
- promote transparency, equitability and fairness in all transfer, selection and appointment processes
- ensure professional and respectful behaviour towards all employees moving between organisations
- work with pace to minimise disruption and uncertainty for employees affected by change
- ensure the consistent treatment of employees at all levels
- actively promote equality and diversity standards through all transfer, selection and appointment processes
- highlight necessary compliance with relevant employment legislation
- undertake early engagement with employees and unions to enable effective and sustainable change. There will be partnership working with trade unions at a national, regional and local level
- ensure that there is an equality impact assessment of the proposed changes
- ensure that all reasonable steps are taken to avoid redundancies
- work to ensure that valuable skills and experience are retained
- ensure that employees who leave the NHS and local authorities are supported and treated with dignity and respect
- use the transition process to enable shared learning and career opportunities between the NHS and local authorities wherever possible.

6.2 It will be the responsibility of all employers to ensure that the HR transition principles are applied and adhered to.

6.3 Until the date of transfer, national monitoring of application and adherence to these principles is the responsibility of the HR Transition Partnership Forum and the HR Strategy Group. With regard to the receiver employers (see Section 7.10 below), monitoring will be set out in the Local Government Transition Guidance.

7. Responsibilities of NHS and local authority employers

- 7.1 In discussions about the transfer, an individual's current employer is known as a "sender" organisation and his/her new employer is known as a "receiver" employer.
- 7.2 The current employer has a number of important responsibilities in terms of making the move to a new employer as smooth as possible. They should talk to individuals regularly and honestly about the developing situation and what each person's options are. They should provide the individual with the support designed to help them take control of the situation, manage their career and cope with change. There is further detail for sender organisations in sections 7.4 to 7.9 below.
- 7.3 The new employer also has some important responsibilities that will grow as the time for the move gets nearer, concluding with the transfer of employment in April 2013. New employers are expected to have a clear policy in place designed to make the move as smooth as possible. Once it is clear where the individual's function is likely to transfer, this policy will be shared with the individual, their current employer and their trade union. There is further detail for receiver organisations in sections 7.10 to 7.12 below.
- 7.4 **Sender** organisations will be expected to provide practical and timely support to their employees throughout the transition period in order to enable them to best prepare and position themselves for opportunities that may arise. In addition, they should:
- continue to ensure that regular opportunities are provided for employees to discuss the changes and the impact they may have
 - ensure that practical support is provided to employees, as detailed in sections 7.6 to 7.9 below
 - ensure that employees are provided with the necessary time to enable them to access this support
 - ensure that data on their current workforce, and any movement of employees, is collected throughout the transition period
 - ensure that arrangements are in place to support the redeployment as necessary of displaced employees
 - supply necessary information about transferring employees to receiver organisations in a comprehensive and timely way.

7.5 Where functions are transferring, both the receiver and sender organisations have a responsibility (a statutory responsibility where the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) applies) to inform and consult representatives of employees affected by transfer or potential transfer situations, and the organisations should cooperate fully to ensure that the responsibilities can be complied with in full. Equally, in any potential redundancy situations, employers have obligations (in some cases statutory) to inform and consult employees and trade unions. In some cases, these information and consultation duties may take place simultaneously. Each employer should take independent legal advice on these matters.

7.6 Information, support and advice should be provided to employees by sending organisations in an accessible form under three key headings as follows:

7.7 “Taking control” – helping employees to help themselves

- using one-to-one meetings, reviews and appraisal to identify key skills that may be in demand
- personal development – identifying areas of need and opportunities to address these
- preparing employees for change, including information on pensions and benefits
- providing opportunities to discuss the guidance to employees and managers outlined in Appendix A to the HR Annex⁴ and providing support to employees to take these forward wherever possible
- providing a map of organisational changes, which are likely to impact on employees during transition and into potential new organisations.

⁴ Additional annex to Sir David Nicholson’s letter on “Equity and Excellence: Liberating the NHS” – Managing the transition and the 2011/12 Operating Framework, 15 December 2010. Gateway Reference 15383. “Appendix A: Influencing your own future”

7.8 “Managing your career”

- developing and using networking arrangements – supporting employees to develop and make use of formal and informal networks
- developing CVs and successful job applications
- accessing alternative employment opportunities
- accessing job search arrangements
- preparing for interviews.

7.9 “Dealing with change”

- understanding personal responses to change
- identifying future opportunities
- grievance and appeal arrangements.

7.10 **Receiver** organisations have a unique opportunity to define a new public health organisational culture and to establish best practice HR arrangements from the outset, paying due regard to legislative requirements. Receiver organisations should work quickly, in partnership with trade unions that represent employees in sender and receiver organisations, to finalise and publish their proposed structures and produce their own policies to cover the relevant new organisational arrangements post transfer.

7.11 While the NHS has management and employment responsibility for NHS staff to the point of transfer or redundancy, it will be for individual local authorities in accordance with the principles of the Concordat and Local Government Transition Guidance to finalise their own arrangements involving trade unions through their existing consultative processes. Where these changes have an impact on staff roles, the numbers of staff employed, ways of working or terms and conditions of employment, then NHS staff and trade unions will be consulted on these changes. NHS employers must ensure that the transition arrangements for employees affected by the transfers of functions to local authorities accord with their own established arrangements and employment regulations, as well as working in the spirit of the Local Government Transition Guidance. They should be able to point to clear statements that show:

- how employment issues will be handled in accordance with best HR practice post transfer
- if they are able to offer pre-transfer shadowing arrangements to help staff become familiar with new organisations and colleagues

- how clear information will be provided to affected employees on developing issues prior to the transfer and how they and their trade unions will be consulted on any relevant issues
- transfer arrangements in line with the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) and/or the Cabinet Office 'Staff Transfers in the Public Sector Statement of Practice' (COSOP) guidance, as appropriate (see 8.1 below)
- employee and trade union engagement and formal consultation arrangements
- support for employees in the future
- grievance and appeal mechanisms.

7.12 After starting work with the receiver organisation, transferring employees should receive an appropriate induction to the new organisation that should include a discussion on their initial objectives and development needs, along with any reasonable adjustments required. In due course, these should be finalised to form the basis on which appraisal and regular one-to-one discussions should be conducted. They will be dealt with under the new employer's arrangements for all staff, as appropriate.

7.13 Throughout the transition period, employees, with support from their managers, will be expected to avail themselves of opportunities to prepare and develop themselves for the future, and to request such support when it is not immediately available.

7.14 Although this is largely a local process it will be monitored at a national level by a group including local authority representatives, trade unions and the LGA.

8. Transfer of functions: timeline and legal milestones

- 8.1 Transfers between sender and receiver organisations will be guided by the legal requirements of TUPE and/or COSOP guidance, as appropriate. It should be noted that the Health and Social Care Bill contains general powers to effect TUPE-like transfer schemes. These powers support the principle expressed within COSOP of using a transfer scheme when COSOP applies. Any scheme would not displace the appropriate application of the TUPE regulations and both sender and receiver organisations would be likely to be involved in the development of any scheme.
- 8.2 The law relating to transfers is complex. Each transfer is different and decisions are taken depending on the particular circumstances of the transfer. The broad legal principle underpinning transfers is that TUPE applies when there is a 'relevant transfer'. This may include:
- a transfer of an undertaking, business or part of an undertaking or business; or
 - a service provision change, where a contractor takes on a contract to provide a service for a client from another contractor.
- 8.3 When such a relevant transfer or service provision change takes place, employees who are substantially performing the duties that are to be transferred in the undertaking or business, or delivering the service immediately before the transfer, would normally transfer to the new organisation, with their contractual terms, including continuity of service, protected (other than occupational pensions). More detail regarding TUPE and pensions can be found in the separate frequently asked questions document. Employers should take independent legal advice as to the nature and scope of the possible application of TUPE and/or COSOP for each potential transfer that may occur.
- 8.4 The basis for determining which functions and employees are in scope to move between organisations will depend on the degree of fit between current and future functions and roles.

8.5 Transfers should normally be managed as follows:

- At a high level, local authorities will work with PCTs on developing a Functions and People Map. This will be used to inform the planning process and establish where current functions, roles and employees lie within sender organisations to help to identify the pattern of movement from sender to receiver organisations. The geographical location of current employees and organisations will also be provided in the mapping exercise with implications for employees identified.
- Detailed scoping between sender and receiver organisations will be used to finalise the transfer of functions and employees followed by confirmation by receiver and sender organisations that the functions are substantively the same and therefore potentially in scope for a TUPE or TUPE-like transfer.
- Timely notification of information about the transfer and its effect to the employees affected and their representatives, and consultation with the relevant trade unions at the earliest opportunity.

8.6 What employees can expect at the point of transfer:

- Prior to the transfer to the new employer (receiver organisation) the receiver organisation should confirm the individual's current contract of employment, policies and processes as part of the consultation process. At the point of the transfer, the new employer should also confirm the practical arrangements of the individual's employment. There should be a comprehensive induction process, which should focus on the core purpose of the new organisation and its ways of working.

Timeline

8.7 The following is an indicative timeline for the transition of PCT public health commissioning activity and functions to local authorities.

By November 2011

- Public Health HR Concordat published.

By end of December 2011

- Autumn 2011 policy documents published covering the public health outcomes framework; the Public Health England operating model; the public health role in local government and the Director of Public Health; public health funding; and the public health workforce strategy consultation.

By end of January 2012

- PCT clusters are expected to produce first drafts of transition plans covering all transition issues in 2012/13 including transition plans for public health developed with local government
- in addition a toolkit is being developed to support transition describing best practice and new opportunities for transformed public health function and to inform sector-led improvement and support needs for 2012/13 (alongside, and part of Health and Wellbeing Board development)
- Local Government Transition Guide to be published.

From January 2012 onwards

- development of vision and strategy for new local public health system (linked to Health and Wellbeing Boards)
- system preparation including new public health commissioning and contracting development, clinical and corporate governance, communications with stakeholders, providers and the public
- agreement on support functions for public health in new role (HR, IT, estates, finance support)
- agreement on HR transfers, and financial issues
- development and testing of critical functions including new emergency planning arrangements and response
- relationship with new local/national stakeholders developed, including clinical commissioning groups, health and wellbeing boards, Healthwatch, shadow Public Health England and the NHS Commissioning Board.

By end of March 2012

- as part of their overall plans for the transition year, PCT clusters will have completed their local public health transition plan covering delivery and transition activity and governance for 2012/13, agreed with local authorities. SHAs with local government stakeholders are aiming to provide supporting guidance to PCTs and local authorities on the development of public health transition plans
- assessment of transition plans and feedback by the end of April 2012 including the impact on current workforce evaluated
- development of interface with Public Health England in shadow form from April 2012.

Monitoring and assessment in 2012/13

8.8 The following outlines the proposed monitoring and assessment during 2012/13 (subject to agreement):

- PCT cluster monthly milestone reporting as part of combined strategic health authority (SHA)/local government assurance process
- October 2012 – formal assessment of progress with transfer from PCT to local authorities
- by end March 2013 (subject to passage of the Health and Social Care Bill) PCTs and SHA clusters will be abolished and all PCT responsibilities for public health ceased. From April 2013 local authorities will receive direct grant allocation to carry out public health functions.

8.9 This will be supported by an NHS, DH, local authority and trade union stakeholder group, which will be responsible for developing HR and employment frameworks to support staff affected by transfers. This stakeholder group will consider the process of staff assignment to transition roles; monitor the implementation of agreed processes and frameworks; consider the workforce impact of the proposed changes; partnership working; and pensions, pay, terms and conditions.

9. Equality and diversity

9.1 As stated earlier in 3.4, employers must comply with all relevant employment and equality legislation, and be expected to follow best employment practice when implementing the proposed changes. Any decisions in respect of appointments to jobs, identification of employees as 'affected by change' or 'at risk' and selection for redundancy must be fair, transparent and made with reference to justifiable, objective criteria.

9.2 Procedures should be designed to support diversity and pay due regard to equality legislation and ensure that there is no unlawful direct or indirect discrimination, victimisation or harassment against any particular individual or group of employees. All proposed changes should be accompanied by an analysis on the impact on equality, which should include an analysis of the equality and rights impact any changes will have on the workforce.

9.3 All key decision-makers, including interview panel members and senior managers, should have received training in diversity on equality

- 9.4 Where changes occur, employers must keep records of decisions they take during this period that affect the employment of groups and individuals. Employers should use these records to monitor the decisions being made to ensure that they were not directly or indirectly discriminatory and to report on those decisions.

10. Further advice and information

- 10.1 As explained earlier in this document, given the complexity of the public health transition, a number of frameworks have been developed. The principles and HR standards outlined in this Concordat support the implementation of the detailed Local Government Transition Guidance for PCT public health commissioning activity and functions transfers to local authorities.
- 10.2 Other operational guidance relevant to the transfer of PCT public health commissioning activity and functions to local authorities may also become available during the transition period.
- 10.3 This Concordat does not relate to the transfer or movement of public health staff to Public Health England. That detail can be found in the Public Health England PTP, underpinned by the guiding principles and HR standards outlined in the HR Transition Framework.
- 10.4 These individual documents should be consulted for more specific guidance, as appropriate. In addition, any specific queries from employees about the application of this Concordat should be raised with their employer or trade union representative.
- 10.5 Where the Concordat has not been able to answer specific points about a particular detail of the transition, the separate frequently asked questions document should provide useful practical answers and/or signposting.

Annex A

Stakeholder groups involved in the development of the Public Health Human Resources (HR) Concordat

Blackburn and Darwen Borough Council
British Medical Association
Department of Health (Integrated Programme Office, Public Health England Transition Team)
Department for Communities and Local Government
Directors of Public Health (regional and local)
Faculty of Public Health
Health Protection Agency
Herefordshire Council / NHS Herefordshire
Kent County Council
Lewisham Council
Liverpool PCT / Liverpool City Council
Local Government Employers North West
Local government representatives (Local Government Association and trade unions)
London Councils
Managers in Partnership
National leads (NHS, social care, local government)
NHS South Birmingham
NHS Bolton and Bolton City Council
NHS Confederation / NHS Employers
NHS Devon
NHS East of England
NHS Humber PCT Cluster
NHS Islington
NHS London
NHS North East
NHS North Lincolnshire
NHS Peterborough
NHS South East Coast
NHS Stockport
NHS Yorkshire and Humber
Public Health Engagement Group
Royal College of Nursing
Sheffield City Council
Social Partnership Forum (HR Transition Partnership Forum – HR, policy leads and trade unions)
UNISON
Unite

Annex B

Current sender and receiver organisations

Senders:

- Primary care trusts

Receivers*:

- Local authorities

* This list will be amended if and when new bodies are established that will be covered by this Concordat.