

PUBLIC HEALTH TRANSITION – NHS TO LOCAL AUTHORITIES

FREQUENTLY ASKED QUESTIONS

Section 1: Public Health HR Concordat

Section 2: Director of public health appointments during the transition process

Section 1 - Public Health HR Concordat

Q1.1: What is the Public Health HR Concordat, what does it cover and who has signed up to it?

A: The Public Health HR Concordat (known as “the Concordat”) is focused specifically on the transfer of primary care trust (PCT) public health commissioning functions to local authorities. For any transfers to Public Health England, staff should consult the [Building a PHE People Transition Policy](#) published in February 2012. The Concordat is owned by the partners who signed the document. It was developed in conjunction with all the representative stakeholder groups listed at Annex A of the Concordat, including the NHS, the Department of Health and local authorities, as well as NHS and local authority trade unions.

Q1.2: I’m not clear whether the Concordat applies to me at this stage. Does the Concordat apply or the HR Transition Framework?

A: The Concordat is focused specifically on the transfer of PCT public health commissioning activity and functions to local authorities. If you work in one of those functions at present, it is likely that the Concordat applies to you. It has been developed in partnership between NHS and local government employers and trade unions. The [HR Transition Framework](#) is a national document that sets out key principles in relation to best practice HR during this period of change and reform. These principles apply to the HR and employment processes supporting the potential transfer of functions, roles and appointments to the new and affected national NHS bodies. The Concordat complements the HR Transition Framework in that it is based on that document, but it is specifically written for PCT public health commissioning activity and functions transferring to local authorities. The principles and HR standards outlined in the Concordat have supported the specific development and implementation of the [Local Government Transition Guidance](#) for public health function transfers to local authorities. The Local Government Transition Guidance sets out the issues that local

authorities will need to address in making their local decisions and the options available to them, based on the principles in the Concordat. Produced in March 2012, the HR Transition Guidance and Toolkit for all employers and managers provides details on their role during this process, which includes clear expectations on consultation with staff and trade unions.

Q1.3: Why are there so many different frameworks? I thought there would be one that covered all the changes, as has been the case with previous reorganisations

A: These changes to public health are of a very different nature to those seen across the wider NHS, Department of Health and arms-length bodies (ALBs) in the past. As such, it would be impossible to produce one “catch-all” policy or framework to cover all staff affected in both “senders” and “receivers”. The Concordat has been developed specifically to cover the PCT public health commissioning activity and functions transferring to local authorities.

Q1.4: When will I know if I am likely to be transferred to a local authority as part of the new local public health system changes, and who decides on the transfers?

A: The functions transferring from PCTs to local authorities will be published by the Department of Health, with further information to follow. Information on whether your function is transferring will be made available to you by your employer. Your current PCT employer and local authority will be required to develop transition plans, which will outline what functions and staff will transfer to the local authority. These are expected to be finalised by the end of March. After this, they are obliged to consult with any staff affected through their representatives and set out the timescales involved. This process is complex and we recognise that staff may be anxious about how they will be affected. Your first port of call should be your line manager, your HR department or your trade union representative in your PCT.

Q1.5: NHS terms and conditions

a) If I am transferred, will my current NHS terms and conditions be protected?

NHS staff transferring from PCTs to local authorities as part of a Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) and/or the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector (COSOP) transfer will receive protection of NHS terms and conditions in line with the principles in TUPE and/or COSOP. Therefore, transferring employees will transfer on their current pay, terms and conditions of employment with no break in their continuity of service.

b) What happens to my pay and terms and conditions after the transfer?

If after the transfer, any changes are made which impact on pay, terms and conditions of employment for a reason connected to the transfer, those changes would only be effective if they were made in accordance with TUPE protection principles. This means the change would have to be for an economic, technical or organisational reason resulting in changes in the workforce. However, where local authorities are creating substantially new roles after March 2013 to fulfil their public health responsibilities, then

the terms and conditions will be a matter for local authorities to determine, in consultation with trade unions and subject to any national guidance/agreement.

Q1.6: Will my pension be protected and will I be able to remain in the NHS pension scheme?

A: We know that pensions are important to staff. The Concordat Steering Group has identified pensions as a priority and we have asked the NHS and local government pensions experts to explore the options available for staff regarding their pension provision. This will result in an options appraisal including a clear process for consultation with trade unions. We will provide more information to you on this as soon as it is available.

Q1.7: What happens if I do not want to transfer to the local authority?

A: If the function in which you work transfers to a local authority, then it is very likely that you will be expected to transfer, too. You can “object” to a transfer, but in practice this will be deemed in effect to be a resignation and you may then forfeit your rights to any redundancy payment due, should that situation occur. This is a serious step to take and you should consider this very carefully and take advice from your trade union and/or your employer.

Q1.8: When will the transfers take place and will I be consulted on the changes? Will there be a fair process?

A: Your employer remains the PCT until 31 March 2013. Clearly work on the transfer will be continuing during 2012/13 and will be dependent on local progress with transition plans and assurance from strategic health authority (SHA) clusters. A consultation on TUPE transfers has no time limits, but must take place in good time. This will be initiated to engage staff and their representatives in a consultation process in which all questions and considerations are recorded and discussed. During this time, your PCT will ensure that information is made available to you on a regular basis and that you have an opportunity to ask questions about the transfer to local authorities and the impact this will have on your job and ways of working. The consultation process will begin at an early stage and will be supported by the existing partnership working arrangements within your PCT, which includes consulting with you and your trade union representatives on matters related to the transfer. Please ask your manager or trade union representative how you can be engaged.

Q1.9: What is the difference between being designated as “affected by change” and “at risk”?

A: The “affected by change” designation should be used where it is known that organisational change will take place that will have a direct impact on the numbers and/or type of staff employed, but where the overall timescales and milestones are not yet clear, or where there is a significant gap before changes are finalised and staff are formally declared to be at risk of redundancy. In this context it is important that staff are given early support and have the opportunity to influence plans through formal consultation. The “at risk” designation should be used for the affected staff where a formal process of consultation on actual staff redundancies is about to begin or a

consultation on a change that is likely to lead to redundancies. Staff will normally have been already declared as “affected by change” in advance, where the lead-in time has been sufficient to allow for this. If you are at risk of redundancy now, you will be provided with information and support to help you seek out and obtain a suitable post.

Q1.10: What role are the trade unions playing in the transition process?

A: The NHS and local government trade unions are integral partners in the transition process and have been involved, in partnership at the national level, throughout the process of drafting, discussing and finalising the Concordat. Trade unions are also involved at the local level in discussing the changes with PCTs and local authorities. The Local Government Transition Guidance recommends setting up a joint working group, which includes employer and trade union representatives from the PCT and local authority.

Q1.11: What kind of public health roles will be available in local authorities?

A: The first stage in the transition of public health roles to local authorities will be determined by the current NHS roles and functions undertaken by the public health workforce. The second stage as indicated below will be based on the development of public health roles and functions which will support and reflect the future agenda for public health as it is progressed. The role of local government in public health has been set out in a series of [policy factsheets](#) published by the Department of Health in December 2011. This is likely to vary from locality to locality, but transition plans which will influence and establish public health roles and workforce will need to meet the requirements set out in the [Public Health Outcomes Framework](#), published in January 2012. As part of the local transition plan, the PCT cluster will work with staff, their trade unions and the local authority to agree the way in which the public health function will work in future and the role the public health workforce will have in delivering the public health function. Many local areas have already done some of this work and it will be finalised in the transition plan.

Q1.12: Who is making the decisions on which functions are affected?

A: The Health and Social Care Bill sets out local authorities’ new roles. The policy factsheets set out in more detail the roles and commissioning responsibilities. Each PCT and local authority is expected to develop a transition plan, which outlines how functions will be taken forward through 2012 and 2013. The plans will outline how staff are affected by the change process and will describe how the workforce issues will be taken forward. Locally, each PCT is currently pulling together information on its current workforce. This is called the people and functions map. The people and functions map will describe where staff are currently employed in the PCT.

Q1.13: I am a public health trainee. What do these changes mean for me – what’s going to happen to me?

A: The public health workforce strategy is clear that specialist skills will be needed in the future public health system. All training contracts agreed will be honoured. Although there is the expectation that on completion of training, there will be a job for you to apply for, your training contract does not guarantee a job on completion of training.

We are exploring how public health trainee contracts will be managed in the future. We will be working with a wider stakeholder group of professional bodies, trade unions, deaneries, Department of Health policy, and employers to develop a framework for supporting public health trainees.

Q1.14 When the clinical commissioning group and commissioning support organisation structures come out will public health staff be able to apply for any job opportunities linked to commissioning or otherwise?

As part of the HR Transition Framework that governs all staff in the NHS, the Department of Health and its ALBs, Section 7.6 of that guidance states: Any outstanding vacancies not filled through the steps of transfers or limited ring-fencing should be ring-fenced for all other employees in the Department of Health, its ALBs and the NHS to apply for through the agreed employer selection process. This will ensure that such potential opportunities for progression or development are brought to the attention of other Department of Health, ALB and NHS staff before open competition takes place.

Q1.15. Will flexible working be available as it is currently?

The principles of transfer are designed to reflect those in the recently published Public Health HR Concordat, which sets out the overarching requirements for conduct of the transfer. If flexible working is contractual, it will be protected. If other arrangements exist, these will need to be considered with your new employer.

Section 2: Director of public health appointments during the transition process

Q2.1: Can we appoint to a vacant director of public health post?

A: Yes. They should be appointed and employed by the NHS using a joint appointment process for senior public health appointments set out by the Faculty of Public Health. The Faculty of Public Health has developed a job description setting out the technical, professional and strategic leadership skills required for the new role in local government. The job description should reflect the policy for the new role in local government including the expectation that the director of public health will be of chief officer status with direct accountability to the chief executive for the delivery of local authority public health functions. Appointments to vacant posts should be carried out in line with the [advice letter](#) from the Chief Medical Officer and chief executive of the Local Government Association published on 4 January 2012.

Q2.2: Can we appoint a director of public health within a local authority before 1 April 2013?

A: No. The Health and Social Care Bill has not yet received Royal Assent and PCT clusters continue to have statutory responsibilities for public health until 1 April 2013. Directors of public health should continue to be appointed and employed by the NHS using the joint appointment process for senior public health appointments set out by the Faculty of Public Health. Existing partnership and HR arrangements provide a way of developing the role more fully within the local authority as part of preparations for implementation of the Bill.

Q2.3: Will directors of public health transfer to local government if the Health and Social Care Bill is enacted?

A: Yes. The Health and Social Care Bill is clear that directors of public health will be employed as officers within local authorities. The Public Health Human Resources Concordat provides the principles and standards for moving forward with planning for 2012-2013. It outlines the responsibilities of current employers of directors of public health ("sender" organisations) and their new employers ("receiver" employers) and that transfers of staff will be guided by the legal requirements of 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. It states that 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.

Q2.4: Who will have oversight of transfers and transition plans and provide advice on managing issues locally?

A. Each PCT cluster is required to have an integrated plan by early April 2012, which reflects the outcomes of the local Joint Strategic Needs Assessment, and ensures the public health transition elements have been developed and agreed with local authorities. SHA clusters are responsible for assuring PCT cluster plans and were required to produce submissions to the Department of Health based on early drafts by the end of January 2012 with final submissions by the early April deadline.

The SHA HR lead will take forward the workforce issues related to the transfer, working with the trade unions and the regional director of public health on managing the range of processes, including those where there is more than one director of public health transferring to a local authority. This process will involve working with individual local authorities and with other SHA cluster social partnership forums to manage limited competition where appropriate across geographical boundaries.

Q2.5: How will directors of public health be appointed by local authorities, acting jointly with the Secretary of State for Health, after 1 April 2013?

A: Guidance is being developed on the process for appointing directors of public health from 1 April 2013. It will build on the existing system for senior public health appointments based on external professional assessment and advice and the use of advisory appointments committees. Directors of public health in post at end of March 2013 will transfer under TUPE or COSOP. Guidance will outline the mechanism for confirming their appointment by the local authority, acting jointly with the Secretary of State for Health.