



# Directors of Public Health in Local Government

*i) Roles, responsibilities and context*

## Directors of Public Health in Local Government: Roles, responsibilities and context

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<b>Contact Details</b>	Public Health Policy and Strategy Unit Wellington House 133-155 Waterloo Road London SE1 8UG publichealthpolicyandstrategy@dh.gsi.gov.uk  www.healthandcare.dh.gov.uk	
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# Directors of Public Health in Local Government

## *i) Roles, responsibilities and context*

**Prepared by the Public Health England Transition Team**

Part 1 of this guidance will be republished and updated in April 2013 under section 73A(7) of the NHS Act 2006 (inserted by section 30 of the Health and Social Care Act 2012) as guidance that local authorities must have regard to.

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# 1. Introduction

- 1.1 Public health practice made huge strides during the 20th century, transforming the living standards of millions and saving countless lives in the process. Yet real threats still linger and new ones emerge. Dealing with the avoidable mortality caused by, say, smoking or obesity as conclusively as cholera and typhoid were dealt with requires different ways of thinking and acting.
- 1.2 The 2010 white paper *Healthy Lives, Healthy People* set out an ambitious vision for public health in the 21st century, based on an innovative and dynamic approach to protecting and improving the health of everyone in England. The test that the white paper sets is clear – we will have succeeded only when we as a nation are living longer, healthier lives and have narrowed the persistent inequalities in health between rich and poor.
- 1.3 As the white paper proposed, and after a gap of almost 40 years, the Health and Social Care Act 2012 returned a leading public health role to local government. With it comes a sizeable proportion of the responsibility for rising to these challenges. In April 2013 unitary and upper tier authorities take over a raft of vital public health activity, ranging from cancer prevention and tackling obesity to drug misuse and sexual health services. Just as significantly, the reformed public health system gives local authorities an unprecedented opportunity to take a far more strategic role. They can now promote public health through the full range of their business and become an influential source of trusted advice for their populations, the local NHS and everyone whose activity might affect, or be affected by, the health of the people in their area.
- 1.4 Local government is ready, willing and able to take this on. To support it, every local authority with new public health responsibilities will employ a specialist director of public health (DPH) – appointed jointly with the Secretary of State for Health – who will be accountable for the delivery of their authority's duties. The post is an important and senior one. The DPH is a statutory chief officer of their authority and the principal adviser on all health matters to elected members and officers, with a leadership role spanning all three domains of public health: health improvement, health protection and healthcare public health.
- 1.5 Local authorities must take the action to improve public health that they decide is appropriate – it is not the job of central government to look

over their shoulders and offer unnecessary advice. Nevertheless, the statutory basis of the DPH role, its transfer to local government and the involvement of the Secretary of State mean that there is value in clear, informative guidance that establishes a shared understanding of how this vital component of the reformed system should work. This guidance is issued in that spirit.

- 1.6 It describes both the statutory and non-statutory elements of the DPH function, and sets out principles critical to their appointment, to delivery of an effective public health strategy and to other aspects of their relationship with their employer and the Secretary of State.

## 2. The role of the director of public health

2.1 The most fundamental duties of a DPH are set out in law and are described in the next section. How those statutory functions translate into everyday practice depends on a range of factors that will be shaped by local needs and priorities from area to area and over time.

2.2 Nevertheless, there are some aspects of the role that define it in a more complete way than the legislation can, and that should be shared across the entire DPH community. All DsPH should:

- be the person who elected members and senior officers look to for leadership, expertise and advice on a range of issues, from outbreaks of disease and emergency preparedness through to improving local people's health and concerns around access to health services
- know how to improve the population's health by understanding the factors that determine health and ill health, how to change behaviour and promote both health and wellbeing in ways that reduce inequalities in health
- provide the public with expert, objective advice on health matters
- be able to promote action across the life course, working together with local authority colleagues such as the director of children's services and the director of adult social services, and with NHS colleagues
- work through local resilience fora to ensure effective and tested plans are in place for the wider health sector to protect the local population from risks to public health
- work with local criminal justice partners and police and crime commissioners to promote safer communities
- work with wider civil society to engage local partners in fostering improved health and wellbeing.

2.3 Within their local authority, DsPH also need to be able to:

- be an active member of the health and wellbeing board, advising on and contributing to the development of joint strategic needs assessments and joint health and wellbeing strategies, and commission appropriate services accordingly
- take responsibility for the management of their authority's public health services, with professional responsibility and accountability for their effectiveness, availability and value for money

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- play a full part in their authority's action to meet the needs of vulnerable children, for example by linking effectively with the Local Safeguarding Children Board
- contribute to and influence the work of NHS commissioners, ensuring a whole system approach across the public sector.

## 3. Statutory functions of the director of public health

- 3.1 A number of the DPH's specific responsibilities and duties arise directly from Acts of Parliament – mainly the NHS Act 2006 and the Health and Social Care Act 2012 – and related regulations. Some of these duties are closely defined but most allow for local discretion in how they are delivered. This section summarises and explains the main legal provisions in effect from April 2013.
- 3.2 In general the statutory responsibilities of the DPH are designed to match exactly the corporate public health duties of their local authority. The exception is the annual report on the health of the local population – the DPH has a duty to write a report, whereas the authority's duty is to publish it (section 73B(5) & (6) of the 2006 Act, inserted by section 31 of the 2012 Act). The content and structure of the report is something to be decided locally.
- 3.3 Otherwise section 73A(1) of the 2006 Act, inserted by section 30 of the 2012 Act, gives the DPH responsibility for:
- all of their local authority's duties to take steps to improve public health
  - any of the Secretary of State's public health protection or health improvement functions that s/he delegates to local authorities, either by arrangement or under regulations – these include services mandated by regulations made under section 6C of the 2006 Act, inserted by section 18 of the 2012 Act
  - exercising their local authority's functions in planning for, and responding to, emergencies that present a risk to public health
  - their local authority's role in co-operating with the police, the probation service and the prison service to assess the risks posed by violent or sexual offenders
  - such other public health functions as the Secretary of State specifies in regulations (more on this below).
- 3.4 As well as those core functions, the Acts and regulations give DsPH some more specific responsibilities from April 2013:
- through regulations made under section 73A(1) of the 2006 Act, inserted by section 30 of the 2012 Act, the Department intends to

confirm that DsPH will be responsible for their local authority's public health response as a responsible authority under the Licensing Act 2003, such as making representations about licensing applications (a function given to local authorities by sections 5(3), 13(4), 69(4) and 172B(4) of the Licensing Act, as amended by Schedule 5 of the 2012 Act);

- if the local authority provides or commissions a maternity or child health clinic, then regulations made under section 73A(1) will also give the DPH responsibility for providing Healthy Start vitamins (a function conferred on local authorities by the Healthy Start and Welfare Food Regulations 2005 as amended)
- DsPH must have a place on their local health and wellbeing board (section 194(2)(d) of the 2012 Act).

## 4. Other relevant statutory provisions

4.1 The 2012 Act makes a number of other provisions that take effect from April 2013 and are directly relevant to DsPH. DsPH are made statutory chief officers of their local authority, and therefore holders of politically restricted posts, by section 2(6)(zb) of the Local Government and Housing Act 1989, inserted by Schedule 5 of the 2012 Act.

4.2 Under section 73A of the 2006 Act, inserted by section 30 of the 2012 Act:

- DsPH must be appointed jointly by their local authority and the Secretary of State (in practice Public Health England), although their subsequent employment relationship is with the local authority exclusively. There is more detail below on how the joint appointment process should work, and further information on best practice will be available is set out in part 2 of this guidance
- if the Secretary of State believes that a DPH is not properly carrying out any Secretary of State function that has been delegated to the local authority s/he can direct the authority to review the DPH's performance, to consider taking particular steps, and to report back. This power does not extend to the DPH's performance of the local authority's own health improvement duties
- a local authority must consult the Secretary of State before dismissing its DPH. The authority may still suspend its DPH from duty (following its standard rules and procedures) and the Secretary of State cannot veto its final decision on dismissal. An authority proposing dismissal for any reason should contact Public Health England for advice on how to proceed with the consultation. Public Health England will normally provide the Secretary of State's formal response within a maximum of 28 days.

## 5. Corporate and professional accountability

### Corporate accountability

- 5.1 The DPH is an officer of their local authority and shares the same kind of corporate duties and responsibilities as other senior staff. To discharge their responsibility to their authority and deliver real improvements in local health the DPH needs both an overview of the authority's activity and the necessary degree of influence over it.
- 5.2 This may or may not mean that the DPH is a standing member of their local authority's most senior corporate management team. That should be determined locally, not least because the scope of the DPH role can also vary locally – for instance, where it is agreed that a DPH's role will extend beyond its core statutory responsibilities.
- 5.3 However, it does mean that there should be direct accountability between the DPH and the local authority chief executive (or other head of paid service) for the exercise of the local authority's public health responsibilities, and direct access to elected members.
- 5.4 DsPH should also have full access to the papers and other information that they need to inform and support their activity, and day to day responsibility for their authority's public health budget – although formal accountability will rest with the authority's accounting officer (usually the chief executive).

### Professional accountability

#### Regulation and registration

- 5.5 Medical and dental public health consultants are regulated by the General Medical Council or the General Dental Council. Nurse, health visitor and midwife public health consultants are regulated by the Nursing and Midwifery Council. All public health consultants can also register with the voluntary UK Public Health Register.
- 5.6 To assure themselves of the continuing competence of their DPH, local authorities should ensure that s/he:

- undertakes a Faculty of Public Health continuing professional development programme
- maintains a portfolio of training that demonstrates competence with all aspects of public health accepted by the UK Public Health Register.

### Revalidation

5.7 Medical revalidation is the process by which licensed doctors, including medical DsPH, regularly demonstrate that their skills are up to date and that they are fit to practise. Responsible officers in Great Britain (see below) make fitness to practise recommendations to the General Medical Council in respect of individual doctors. The Nursing and Midwifery Council has an equivalent process for nursing revalidation, and the UK Public Health Register is also establishing a revalidation process for its members.

### Professional appraisal and continuing professional development

- 5.8 Continuing professional development (CPD) is an essential feature of the revalidation process for public health specialists. The overall aim of CPD is to ensure that those who work in the field develop and maintain the necessary knowledge, skills and attributes to practise effectively and work towards improving the health of the population. Local authorities should consider how best to meet these aims in respect of their DPH.
- 5.9 CPD is a professional obligation for all public health professionals and protected time for CPD is a contractual entitlement for directors transferring into local government on medical and dental contracts. In order to comply with the Faculty of Public Health's minimum standards for CPD all Faculty members must either submit a satisfactory CPD return annually or have been formally exempted by the Faculty from this requirement.
- 5.10 The UK Public Health Register expects all its registrants to participate in CPD, preferably as part of a formal scheme such as those operated by the Faculty of Public Health, the Chartered Institute of Environmental Health or the General Pharmaceutical Council.
- 5.11 For medical consultants subject to the General Medical Council revalidation process there is a requirement for annual medical appraisal to be undertaken as an integral part of the revalidation process. Local authorities should reassure themselves that they are in a position to deliver this requirement.

### The role of responsible officers in relation to the director of public health

- 5.12 Responsible officers help to evaluate doctors' fitness and monitor their conduct and performance. The role of the responsible officer is to support doctors in maintaining and improving the quality of care they deliver, and to protect patients in those cases where doctors fall below the high standards set for them. Responsible officers are licensed doctors themselves, and as such must have their own responsible officer.
- 5.13 The Responsible Officer Regulations came into force on 1 January 2011 and apply to medically qualified DsPH. The regulations designate those bodies that are required to nominate or appoint a responsible officer for the purposes of medical revalidation – this includes local authorities that employ medically qualified staff. For those DsPH who are not medically qualified, arrangements should be in place for supporting the individual's professional practice through appropriate networks. Similarly, alternative arrangements should be made for any medically qualified members of the public health team who work under a non-medically qualified DPH.
- 5.14 Proposals on the responsible officer role in relation to local authorities and public health have been consulted on. The consultation responses are now being considered and the outcome will be reflected in draft regulations that will be published shortly.

## 6. Appointing directors of public health

### General

- 6.1 From 2013 the Secretary of State for Health (and therefore Public Health England, which acts on the Secretary of State's behalf) has two general duties that apply to the joint appointment process:
- to promote the comprehensive health service (section 1 of the NHS Act 2006, as amended by section 1 of the 2012 Act)
  - to promote local autonomy so far as that is compatible with the interests of the comprehensive health service (section 1D of the 2006 Act, inserted by section 5 of the 2012 Act).
- 6.2 Local authorities undertaking public health duties conferred on them by the 2012 Act are part of the comprehensive health service. This means that the Secretary of State may not normally intervene in decisions about matters such as the role or position within local authorities of DsPH, but must intervene - and ultimately may refuse to agree a joint appointment - if s/he has reason to believe that anything about an authority's proposals for the appointment of a DPH would be detrimental to the interests of the local health service.

### Requirements for director of public health appointments

- 6.3 Local authorities recruiting a DPH should:
- design a job description that includes specialist public health leadership and an appropriate span of responsibility for improving and protecting health, advising on health services and ensuring that the impact on health is considered in the development and implementation of all policies
  - make every effort to agree the job description with the Faculty of Public Health and the Public Health England regional director, ensuring in particular that it covers all the necessary areas of professional and technical competence
  - manage the recruitment and selection process and set up an advisory appointments committee to make recommendations on the appointment to the leader of the local authority.

- 6.4 The advisory appointments committee should be chaired by a lay member, such as an elected member of the local authority (the cabinet member of the health and wellbeing board, for example). It should also normally include:
- an external professional assessor, appointed after consultation with the Faculty of Public Health
  - the chief executive or other head of paid service of the appointing local authority (or their nominated deputy)
  - senior local NHS representation
  - the Public Health England regional director, or another senior professionally qualified member of Public Health England acting on his or her behalf
  - in the case of appointments to posts which have teaching or research commitments, a professional member nominated after consultation with the relevant university.

### The role of the Secretary of State and Public Health England

- 6.5 The relationship of the Secretary of State and the local authority in the joint appointment process is one of equals. The role of the Secretary of State is to provide additional assurance of the DPH's competency. Public Health England will advise the Secretary of State on whether:
- the recruitment and selection processes were robust
  - the local authority's preferred candidate has the necessary technical, professional and strategic leadership skills and experience to perform the role - proven by their specialist competence, qualifications and professional registration.
- 6.6 In order to provide this assurance for the Secretary of State, Public Health England will:
- agree with the local authority and the Faculty of Public Health a job description that fits with the responsibilities of the DPH and sets out the necessary technical and professional skills required
  - offer advice in relation to the recruitment and selection process, including the appointment of Faculty of Public Health assessors
  - participate in the local advisory appointment committee
  - confirm to the local authority the Secretary of State's agreement to the appointment.

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- 6.7 Public Health England regional directors will work with local authorities in any area where there is a DPH vacancy to ensure a robust and transparent appointment process is established and a timescale for recruitment and appointment agreed. This should be completed within three months of a post becoming vacant.
- 6.8 If the regional director has concerns about the process or their involvement in it, s/he will seek to resolve these through negotiation with the local authority. They will be able to draw upon advice and dispute resolution support if it is required. It is important that the interaction between the regional director and the local authority is based on dialogue, collaboration and agreement.
- 6.9 The local authority has the primary role in recruiting people who will be under contract to it. However, there are clear joint considerations in processes for appointing a DPH. If, at the end of this procedure, the Secretary of State is not satisfied that an appropriate recruitment process has taken place and that the local authority preferred candidate has the necessary skills for the role, s/he will write to the lead member and chief executive of the council setting out in full the reasons for not agreeing the appointment and proposing steps to resolve the situation.