THE ROLE AND RESPONSIBILITIES OF LOCAL AUTHORITIES AS “RECEIVER” ORGANISATIONS IN THE TRANSFER OF PUBLIC HEALTH FUNCTIONS

National Guidance
The recent Department of Health Guidance “National Policy on Filling of Posts in Receiver Organisations” was issued to support a smooth and effective movement of functions and staff from existing organisations (senders) to new organisations (receivers) in relation to the whole reorganisation of health services. It is a critical document, which supports the employment processes necessary for managing the transfers of staff.

The filling of posts document illustrates an important question about just what the responsibilities of local authorities as “receivers” should be in practice. This additional short commentary sets out the LGA’s views on council responsibilities, which have been developed and agreed by the national Concordat Steering Group which includes the Trade Unions.

This commentary is intentionally short because it has not been written to provide detailed prescriptive guidance. The local parties (PCTs, LAs and TUs) to the transfer need to reach mutually satisfactory agreements between themselves over the next period of weeks. What is most important is that the interests of staff, who need to know their transfer destination by December, are safeguarded alongside the responsibilities of councils to ensure stable and developing services within budgetary requirements. Councils, PCTs and TUs will also need to consider how the requirements of relevant employment law apply in all circumstances.

“Receiving” Public Health Staff
Local authorities are set to receive, via a transfer scheme or order, public health functions and NHS staff as part of the overall reorganisation of health services. As “receivers” local authorities will be expected to follow the legal and policy frameworks for supporting this process, as made clear in the joint letter from the Chief Executive of the Local Government Association and the Chief Medical Officer dated 1st August 2012.

While Paragraph 3.2 of the filling of posts document states that local authorities are outside of the scope of the guidance, the staff transferring to a local authority will be within the scope of the guidance, as indicated under
paragraph 3.3, so authorities cannot work outside the processes that apply to those staff as set out in the guide, especially with regard to the legal basis of the transfer.

Section 4 is the pivotal section of the filling of posts document, setting out the principles underpinning the transfer.

Clearly local authorities are existing employers rather than newly created bodies. However, local authorities are affected by the Health and Social Care Act 2012 so some legal considerations from the Act apply as set out in sections 2 and 4 of the document. Most importantly it is made clear that there will be some transfers of employees to which TUPE itself applies. In circumstances where TUPE does not apply in strict legal terms, ‘COSOP’ will be followed [using transfer schemes to effect the transfer of staff under powers in the Act]. Under COSOP the employees involved in such transfers will be treated no less favourably than if TUPE applied in relation to protecting statutory continuity of employment and transferring on current terms and conditions, including any contractual redundancy or severance entitlements.

The transfer scheme or order will be written to ensure that the protections outlined above are applied to all transferring staff. This avoids confusion over whether TUPE might apply to the transfers and therefore whether staff transfer.

It is also important to bear in mind that because the sender organisations are all NHS bodies, they have to operate according to the principles agreed with the unions in the NHS about treatment of staff during reorganisations. In practice, this means that on some issues, local authorities have to abide by some overall national decisions, because the people transferring into local authorities are NHS staff up to the point of transfer.

**What do Local Authorities need to do?**
The filling of posts document, paragraph 3.2 states that it is strongly recommended that councils do take account of the guidance in their joint working with PCTs and trade unions – in other words, at the very least councils need to understand the processes that PCTs are going through. This makes sense because PCTs currently employ the group of staff, who will be transferring with the necessary skills that councils will need.

These staff work in a wider set of functions, which are being matched against functions in a range of receiver organisations; they are being matched to jobs that will be transferring in various directions. It is in the interests of councils to ensure that they understand how this impacts on the functions and the group of staff transferring to them. We expect a majority of staff currently undertaking relevant public health roles in the PCT to transfer.
The Local Government Transition Guidance, published on 13th January, made the key recommendation that councils should set up joint working groups with PCTs and unions to own and oversee work on these processes. These working groups should be collaborating on agreeing the functions which are transferring and identifying the current workforce employed within those functions. Discussions which are outlined in Section 6.3 of the filling of posts document should be discussed and agreed via this joint working group.

LAs and PCTs have been developing transition plans, which describe the way in which the public health functions will be delivered from April 2013. These plans will need to be supported by a corresponding workforce plan, which describes the roles needed and consequent workforce numbers - job descriptions should be developed with PCTs and unions. Local authorities should be liaising with PCTs on their proposed structures and workforce requirements now. This local dialogue is the absolute pre-requisite of a smooth process of transfer.

With the information exchanged in dialogue, employers and trade unions will be able to identify the staff affected by the transfer and begin the required consultation process, ensuring those staff who are employed within the function transferring are named in the transfer scheme or order (as described above).

Formal consultation processes will, therefore, need to be built into the timeline and councils should seek to ensure that as far as possible the pre-transfer processes are handled in a way that minimises the risk of any unfair dismissal claim, the liability for which could transfer to them. As is normal in these situations, councils may wish to take their own legal advice on the process.

The process for filling posts is described in section 6 of the filling of posts document. Steps 1 and 2 as set out in paragraphs 6.3.1 to 6.3.6 are particularly relevant to local authorities and the process supporting these steps will need to be agreed with trade unions and PCTs as sender organisations.

The ideal outcome described above is not designed to mask the potential challenges involved. The LGA has called repeatedly for local parties to operate in a spirit of openness and collaboration to achieve the best outcomes. The return of Public Health functions to local government provides a great opportunity to ensure that the needs of our communities are always the first priority in health improvement and the other key areas of work and fair treatment of transferring staff is a vital component in ensuring the stability of services.

**Supporting work**

The LGA and the Trade Unions have been examining a range of typical PCT public health roles with the intention of developing some indicative job evaluation scores using the NJC national JE scheme. This material will be made available for benchmarking purposes only. Transferring staff will be
transferring on their NHS terms and conditions, with the protection arrangements confirmed via a transfer scheme or order.