

# **The Abolition of Community Health Councils:**

## ***Human Resources Framework***

**31<sup>st</sup> JANUARY 2003**

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# **COMMUNITY HEALTH COUNCIL STAFF: HUMAN RESOURCES FRAMEWORK**

## **1. Introduction**

Under the NHS Reform Act 2002, Community Health Councils (CHCs) are to be abolished and replaced with a new system of public and patient involvement. This document aims to provide CHC staff and their managers with a jointly agreed national framework that will support them during the abolition process. It will also assist staff to maximise the employment opportunities available to them in the wider NHS and with the Commission for Patient and Public Involvement In Health. This document has been prepared jointly with employing authorities, Unison and Amicus MSF.

CHC staff are employed by Strategic Health Authorities (StHAs) and assigned to CHCs. Any reference to CHC staff in this document relates to those employed by StHAs to work in CHCs and Regional Associations of CHCs.

CHC staff have valuable skills which are important to the smooth running of the NHS. If, in consequence of CHC abolition, employers anticipate that there may be a need for redundancies, every reasonable step will be taken to avoid or minimise them and to mitigate the consequences and the potential loss of skills and experience to the NHS.

Whilst we envisage the majority of staff leaving the CHCs on or at the abolition date, it is possible that some residual work may remain. As a result, some staff may be invited to stay on for a limited period beyond the abolition date to undertake these tasks. This will be managed locally, and further details on this are in paragraph 9.

The Department of Health is responsible for issuing this guidance and ensuring employing StHAs and other employers in the NHS family operate Clearing Houses equitably and effectively and provide training and support to CHC staff. CHC staff seconded to other organisations are also covered by this HR Framework. Additional resources have been made available to employing authorities to facilitate this process.

The future of Independent Complaints Advocacy Service (ICAS) pilot projects is yet to be decided. The provisions of this HR Framework do not apply to staff on fixed term contracts with ICAS pilots, unless they are CHC staff seconded to the pilot. This framework does not apply to other project workers.

## **2. Implementation of the new system and abolition of CHCs**

The Commission for Patient and Public Involvement in Health will implement the new system for patient and public involvement in the NHS. The

Commission is currently considering the timetable for implementation and will communicate this to CHC staff as soon as it is ready.

It is intended that the CHC abolition date will be 1<sup>st</sup> September 2003.

### **3. Employment Issues**

#### **3.1 Human Resource Principles**

Ministers have made clear that, following the abolition of CHCs, all CHC staff should be properly supported to gain suitable alternative employment in the wider NHS or outside, if their employer is unable to retain them.

The following general principles will determine the process at all levels:

- Openness. All staff will be kept informed during the change process by communications from their employing StHAs, Regional CHC Leads and Chief Nursing Officer newsletters;
- Where redundancies are anticipated by employers, every reasonable effort will be made to avoid them or to reduce them by redeployment;
- Maximising opportunities. Employing StHAs will work with other local NHS employers to ensure that job opportunities are identified and CHC staff have access to these opportunities through Clearing Houses;
- Fairness. No CHC employee will be discriminated against on grounds of age, gender, marital status, race, religion or beliefs, creed, sexual orientation, colour or disability or on working patterns, or that they are on a fixed term contract and the different treatment cannot be objectively justified, or on the grounds of Trade Union membership (Unlawful discrimination on the grounds of race, sex or disability is prohibited under the Race Relations Act 1976, the Sex Discrimination Act 1975 and 1986, the Disability Discrimination Act 1995 and the Employment Relations Act 1999);
- Respecting the individual. The HR process, which must be fair and transparent, must focus on the need of individuals, which will vary. A one-to-one career interview will be undertaken for CHC staff to explore the opportunities open to them. This will be followed up with further interviews as appropriate;
- Partnership working. The Department of Health has worked in partnership with Trade Unions at a national level on this HR Framework document. Employing StHAs will continue this partnership at a local level.

One of the key aims of this document is to ensure consistency of application of these principles to all CHC staff.



### **3.2 Employment Options**

Following legal advice and after careful consideration of the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector, the Government concluded that the Transfer of Undertakings (Protection of Employment) (TUPE) Regulations 1981 does not apply to CHC staff (see Q10).

Where employing StHAs anticipate that redundancies will result as a consequence of abolition, they will support displaced staff in finding suitable alternative employment in the wider NHS by means of local Clearing House arrangements. The Department of Health will contact the NHS family – all StHAs, NHS Trusts, Primary Care Trusts (PCTs), Care Trusts and Special Health Authorities - via the Chief Executives, and HR Directors bulletins and make clear that no suitable jobs should be advertised externally without first liaising with the relevant CHC Clearing House as to the availability of suitable candidates. This will enable CHC staff in the Clearing House to get the first pick of the local NHS jobs available. At risk employees will be offered an interview on a prior consideration basis which will lead to a guaranteed interview where the employee meets the person specification, an interview taking place before external applicants are interviewed, and where successful at interview an appointment being made and external interviewing not proceeded with.

## **4. Clearing Houses**

### **4.1 Purpose**

Each employing StHA will establish a Clearing House to help support staff affected by the abolition of CHCs to find suitable alternative employment. The Clearing House cannot guarantee jobs or posts but is an effective way of informing people with relevant skills of appropriate posts, and retaining staff within the NHS family. It is intended to be as flexible and supportive to staff as possible. Additional training support may also be available to staff who either wish to consider a different type of employment in the NHS or who require different or additional skills prior to applying for a job outside the NHS family. With the agreement of their management, staff will be allowed time off to look for work or make arrangements for, or undergo, training.

### **4.2 Structure and Practicalities**

Clearing Houses will be established by each of the seven employing StHAs. In areas where Clearing Houses are already operating, these may be extended instead of establishing new ones. These are expected to run until the end of the residual period (see para 9).

CHC staff will be automatically registered with their employing authority's Clearing House and will be required to complete a registration form. Association Of Community Health Councils For England And Wales (ACHEW) staff who have not been made redundant will also be able to register with the



Clearing House. However, staff will be able to register with Clearing Houses in other areas, if they wish. Employing StHAs will be responsible for managing the Clearing Houses and for ensuring all staff have equal access to Clearing House vacancies. Employing StHAs will give details of how the Clearing Houses will work in their areas and how staff can access their services and information.

In order to ensure that all CHC staff using the Clearing Houses are treated fairly and consistently throughout the country, employing StHAs will ensure that all Clearing Houses do the following:

- Make arrangements with local NHS employers to advertise suitable vacancies with the Clearing Houses, prior to external advertising;
- Provide one-to-one career counselling. This should be a two-way process with views of staff being heard as well as issues being explained to them;
- Ensure all suitable vacancies are brought to the attention of CHC staff. Staff will need to apply for vacancies in the usual manner by completing an application form. Whether an individual is offered a guaranteed interview will depend on whether they meet the required criteria;
- Have arrangements for appropriate training opportunities for those who want it;
- Have a named individual in each employing authority responsible for overseeing and running the Clearing House;
- Where applicants for an NHS post are not successful, a member of the interviewing panel from the appointing organisation will inform the applicant of the reasons through specific feedback. The Clearing House will then consider what further action to take, e.g. the applicant might need some further training.

Employing StHAs will inform staff in detail how the Clearing House will work in their area and how individuals can work with the Clearing House to ensure they have the best opportunities to access the information and support that the Clearing House can offer. Staff will also be asked to check that the information held about them in the Clearing House is correct, and updated if necessary. The performance of the Clearing House will be managed by the local employing authority.

Where there are other reorganisations taking place locally, the Clearing House will need to engage with local employers in deciding on the best way forward.

#### **4.3 Staff on Fixed Term Contracts, Temporary Promotion and Secondment**

CHC staff on fixed term contracts have already been notified that they will be offered extensions of contract of 3 months and that this will be extended up to the abolition date. They will also have access to Clearing House arrangements.



Permanent staff who were successful through fair and open competition for a more senior post that they previously held and have done for a minimum of 12 months on a temporary basis, will be offered substantive status at that level. As a result, they will be entitled to apply for Clearing House posts of equivalent status without reverting to the previous level of the individual concerned. There may be other cases that are not so clear. In these circumstances, it will be up to local employers, in discussion with trade unions and taking account of any local agreements, to make a decision on their status. Individuals who think that this would apply to them should contact their employing authority. Employing StHAs will be notifying the appropriate staff to confirm their new positions.

The future of ICAS pilots is yet to be decided. The provisions of this HR Framework do not apply to staff on fixed term contracts to ICAS pilots, unless they are CHC staff seconded to the pilot. This framework does not apply to other project workers.

CHC staff who are out on secondment should have their secondment dates regularly reviewed. Secondments cannot last beyond the abolition date with the exception of CHC leads whose secondment status may be extended to the end of the residual period (see para 9).

#### **4.4 Training, Support and Career Counselling**

The employer will provide training, support and career counselling to CHC staff. It will be up to the individual and their local Clearing House to agree what is most suitable for them. The type of arrangements that may be beneficial to supporting staff include preparing CVs, assistance with completing application forms for posts, advice on interview techniques and one to one career counselling. The basic principle for supporting staff who are not successful in securing a post through the Clearing House is that a training plan will be identified to achieve re-employment before any other options are considered. This will be of mutual benefit to the individuals concerned and the NHS.

Arrangements will be put in place to ensure that individuals have access to counselling and training opportunities.

#### **4.5 Suitable alternative employment**

In order to establish if a post is "suitable alternative employment" the job offered (after interview) needs to reflect the skills, aptitude, experience and status of the employee, although additional suitable training might be considered suitable. Terms of employment, salary, hours of work, responsibility and location also need to be considered. Continuity of service benefits should also be one of the components making up an offer of "suitable alternative employment". In addition, the work offered must be suitable for the individual in the circumstances in which they find themselves, for example in terms of their domestic circumstances. Case law has demonstrated that no



single factor is decisive and overall it must be a reasonable offer for the employer to make to the employee.

In the case of CHC staff, suitable alternative employment is not limited to a post in the individual's current employing StHA. Jobs in the wider NHS family, e.g. in other StHAs, PCTs, NHS Trusts may also constitute suitable alternative employment.

The Clearing Houses will support staff to find suitable alternative employment in the NHS family. Employees who unreasonably refuse to apply for, or unreasonably refuse to accept an offer of suitable alternative NHS employment, will forfeit their right to a contractual redundancy payment.

Any offer of suitable alternative employment made must commence immediately on the termination of the old contract or no later than four weeks' after termination. Under Whitley terms, an employee who obtains a job in the NHS within a four-week period after termination must repay their redundancy payment.

If, at the date of termination of their contract by reason of redundancy, an employee has obtained suitable alternative employment, or finds a suitable post in the NHS through the Clearing House or by other means, no redundancy payment is payable. If an offer of alternative employment is rejected, the individual will need to show why the employment was unsuitable and why it was reasonable to refuse the offer. If an individual is offered a post that provides suitable alternative employment and unreasonably refuses to accept the post, that individual will forfeit their rights to a redundancy payment.

## 5. Continuity of Service

NHS Trusts have the freedom under the Health and Community Care Act 2001 to employ staff on whatever terms and conditions they see fit, subject to Regulations or Directions given by the Secretary of State. The previous NHS service of CHC staff can be recognised by a NHS Trust for contractual purposes. The Department of Health will write to the NHS family requesting them to recognise the previous service of CHC staff. There may be posts outside the NHS where continuity of service may also be recognised for contractual purposes. Where this is a possibility, the Department will be engaging with employers to encourage this approach.

For NHS posts advertised other than through the Clearing House system, there is no automatic right to recognise continuous service since it is a new employment contract. However, in order to support the appropriate movement of staff, NHS employers are expected to use sensible incentives, within their legal powers, to address the continuity of service issue. For CHC staff moving to new jobs in the NHS, the Department of Health will encourage NHS employers to take into account previous NHS service for the purposes of



contractual benefits such as redundancy, maternity, annual leave or sickness benefit.

## **6. Redundancy**

Advisory, Conciliation and Arbitration Service (ACAS) provisions on redundancy will need to be considered prior to making any redundancies. These can be found at [www.acas.org.uk](http://www.acas.org.uk). Employing StHAs need to consider their business and staffing needs in consequence of CHC abolition to determine whether CHC staff are likely to be at risk of redundancy. Employers will give advance notification to affected staff so that adequate consultations can take place with local trades unions and with staff. See para 7.

Redundancy and early retirement terms for CHC staff are covered in Section 45 and 46 of the General Whitley Council Handbook or in accordance with the contract of employment for senior and general managers. Severance settlements should be considered in accordance with HSG(94)18. In addition, there may be an entitlement to early retirement benefit under the provisions of the NHS (Compensation for Premature Retirement) Regulations 1981 if the dismissal is on the grounds of redundancy and the individual is over 50 with at least five years service in the Superannuation scheme.

## **7. Consultation – Rights of Trade Unions**

Employers are required to comply with their employment law obligations concerning collective consultation regarding any redundancies. This will ensure that before individual redundancies are announced, consideration can be given to whether there are ways of avoiding redundancies, reducing the numbers involved or mitigating the effects of any dismissals that take place. In keeping with good employment practice it is suggested that employing StHAs should consult in good time, both collectively at local level with recognised Trades Unions of staff affected and with individuals who may be made redundant.

## **8. Notice period**

Notice periods for staff, if any, who are dismissed by reason of redundancy will be based on contractual arrangements. For CHC staff it is agreed that 3 months notice will be given.

As outlined in para 9 below, this notice period may be extended, by agreement, if an individual is needed to stay on to sort out residual administrative matters.

## **9. Residual Pool of Staff**

Following the abolition date, it is possible that there will be a need for a small residual pool of staffing resources to deal with any remaining administrative affairs. If there are staff who have been unable to find suitable alternative employment at the date of abolition and there are still residual CHC matters to be resolved, it may be of benefit to the service to invite those staff to extend their employment until 31<sup>st</sup> December 2003. This will be determined by local need and arrangements for this procedure will be agreed between employing StHAs and trade unions locally. These arrangements will not impact on statutory rights to redundancy and any staff involved will have continued access to Clearing Houses. The process will be operated transparently and fairly.

## **10. Opportunities in the Commission for Patient and Public Involvement in Health**

The Commission for Patient and Public Involvement in Health was established in January 2003. The staff of the Commission will need a range of skills and experience, some of which CHC staff already possess. CHC staff will have the opportunity to apply for these posts through the Clearing Houses. The Commission has agreed that posts will be notified to the Clearing Houses at least 7 days before the posts go to open competition. CHC staff who wish to apply for Commission posts and who meet the essential criteria will be guaranteed an interview.

The Commission is working with the NHS Pensions Agency to agree that Commission staff can be members of the NHS Pensions Scheme and that pensionable service can be recognised as continuous for any staff joining the Commission from the NHS with no break in service. This and other employment terms and conditions will be ratified by the Commission Board. The Commission will ensure that CHC staff are aware of the agreed terms and conditions of employment in the Commission as soon as these are agreed.

## **11. Summary**

- CHCs will be abolished on 1<sup>st</sup> September 2003.
- Clearing Houses will be established by employing StHAs to help affected staff to find suitable alternative employment in the NHS family. These are expected to run until the end of the residual period.
- Staff on fixed term contracts employed in CHCs will be offered extension of employment up to the abolition date and will also have access to Clearing House arrangements.
- Permanent staff who currently fill CHC posts on a temporary promotion basis, who got those posts through fair and open competition and who held them for a minimum of 12 months, will be matched against posts at the currently held grade at substantive level.



- This framework does not apply to non-CHC ICAS staff on fixed-term contracts or other project workers.
- The Commission for Patient and Public Involvement in Health has agreed that posts will be placed in the Clearing Houses in advance of going to open competition and that CHC staff who meet the essential criteria will be guaranteed an interview.
- If any CHC staff are selected for redundancy, they will be offered a range of support to achieve re-employment. All reasonable steps will be taken to avoid or minimise redundancies and to prevent the loss of valuable experience from the NHS. Voluntary redundancy will not be an option.

**Questions & Answers****Q1. How will CHC staff be placed in appropriate positions within the NHS?**

A. The Government has given a specific commitment to support staff who are at risk of redundancy because of the abolition of CHCs. Clearing Houses will be set up to support staff to find suitable alternative employment. The employers will offer training and one to one counselling as well as helping to find employment within the NHS family.

All suitable posts, including those with the new Commission will also be advertised through the Clearing Houses.

**Q2. Under what circumstances will I be offered redundancy?**

A. Redundancy will be available to eligible staff who meet the relevant criteria governing entitlement. Sections 45 and 46 of the General Whitley Council agreements will apply. Further information can be obtained from your employer and from trade unions. Voluntary redundancy will not be an option. There is no separate scheme for CHCs.

**Q3. Will there be an automatic right of joining the NHS pension scheme for employees of the new Commission?**

A. The Commission is working with the NHS Pensions Agency to agree that staff of the Commission can be members of the NHS Pension Scheme, and that pensionable service can be recognised as continuous for any staff joining the Commission from the NHS with no break in service. This will be ratified by the Commission's Board. The Commission will let CHC staff know what terms and conditions will apply to their staff.

**Q4. What is being done to ensure that the interests of CHC staff, who are not in a union, are fully and fairly represented?**

A. All CHC staff will be treated fairly whether or not they are in a union. Employers have a legal obligation to ensure that all staff are properly treated, whether or not they are in a redundancy situation.

**Q5. How do I register with my local Clearing House?**

A. There may be different arrangements in different areas. Your employing authority will be able to tell you what you need to do and who you need to contact.



**Q6. Is there a limit to how many Clearing Houses I can register with?**

A. No. You will be automatically registered with your local Clearing House, but will be able to register with Clearing Houses in as many other areas as you wish.

**Q7. I am on secondment from a CHC. Will I be expected to return before my secondment period is over?**

A. Generally speaking we would expect secondment periods to be honoured. However, secondments are normally for a set period of time with the ability to return to a suitable post on expiry of that term. Where there are extenuating circumstances and staff need to be called back to their substantive previous post we would expect all parties to agree a solution. Where staff experience problems they should speak to their CHC lead or employing authority. Permanent CHC staff who are out on secondment should have their secondment dates regularly reviewed. Secondments cannot last beyond the abolition date, with the exception of CHC leads whose secondment status may continue to the end of the residual period.

**Q8. I am on a fixed term or short-term contract. Will I be able to enter the Clearing House?**

A. Yes. All CHC staff on fixed-term contracts, with the exception of non-CHC ICAS pilot staff and other project staff, will be able to enter the Clearing House system. See para 4.3 for more detail.

**Q9. How do I fill vacancies in my CHC?**

A. You will need to discuss this with your CHC Lead. Decisions on filling any vacancies will be based on a business need and this will need to be assessed on an office by office basis.

**Q10. I think my job will be transferred to the Commission, why won't I be automatically transferred?**

A. The Government sought legal advice to identify whether TUPE – the Transfer of Undertakings (Protection of Employment) Regulations 1991 – applied to CHC staff and the Commission. The legal advice was, put briefly, that as the Commission is a new, independent body which is structured differently and performs a different set of functions from those of CHCs, TUPE would therefore not apply. However, if you are concerned about this you can seek further advice from your Trade Union or the HR Department of your employing StHA.

**Q11. How will employers in the NHS family be expected to deal with 'protection of pay'?**

A. In order to establish that a post is "suitable alternative employment", terms of employment, salary, hours of work, etc. will need to be considered (see paragraph 4.5).

**Q12. If I apply for a job through the Clearing House and am offered it but I decide on reflection that it is not right for me and I turn it down, does this constitute a rejection of an offer of suitable alternative employment?**

A. It might do. You will need to discuss the reasons for your rejection with your employer. It may be that there were good reasons for the rejection. Each case will be judged on its merits.

**Q13. Why aren't CHC staff entitled to retention allowances?**

A. In the most recent NHS reorganisations, retention allowances have not been paid. Those staff who have accepted the invitation by their employer, to extend their employment, beyond the abolition date, to deal with any remaining administrative affairs, will be entitled to their normal pay for that period. Any redundancy or retirement payments will be based on the salary earned during this period. The Department's view is that there is no necessity for any additional payments for these particular circumstances.



## ANNEX B

### REGIONAL CHC LEADS

NHS EXECUTIVE REGION	NAME	ADDRESS	PHONE No.
Eastern RO	Mick Rolfe	South East Regional Office 40, Eastbourne Terrace London W2 3QR  <a href="mailto:Mick.Rolfe@doh.gsi.gov.uk">Mick.Rolfe@doh.gsi.gov.uk</a> <a href="mailto:pops.rolfe@virgin.net">pops.rolfe@virgin.net</a>	Telephone: 020 7725 2500 or 020 7725 + (ext ignoring initial '3') Fax No: 020 7258 3908
London RO	Glynis Donovan	40 EASTBOURNE TERRACE LONDON W2 3QR  <a href="mailto:Glynis.Donovan@doh.gsi.gov.uk">Glynis.Donovan@doh.gsi.gov.uk</a>	Telephone: 020 7725 5300 or 020 7725 + (extension ignoring initial '3') Fax No: 020 7258 0530
South East RO	Mick Rolfe	South East Regional Office 40, Eastbourne Terrace London W2 3QR  <a href="mailto:Mick.Rolfe@doh.gsi.gov.uk">Mick.Rolfe@doh.gsi.gov.uk</a> <a href="mailto:pops.rolfe@virgin.net">pops.rolfe@virgin.net</a>	Telephone: 020 7725 2500 or 020 7725 + (ext ignoring initial '3') Fax No: 020 7258 3908
South West RO	Mick Rolfe	South East Regional Office 40, Eastbourne Terrace London W2 3QR  <a href="mailto:Mick.Rolfe@doh.gsi.gov.uk">Mick.Rolfe@doh.gsi.gov.uk</a> <a href="mailto:pops.rolfe@virgin.net">pops.rolfe@virgin.net</a>	Telephone: 020 7725 2500 or 020 7725 + (ext ignoring initial '3') Fax No: 020 7258 3908
West Midlands RO	Dave Rogers And Bob Breakwell	Bartholomew House 142 Hagley Road, Edgbaston Birmingham B16 9PA	Telephone: 0121 224 4600 Fax No: 0121 224 4601

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North West	Cath Broderick	North west regional office 930-932 birchwood boulevard, Millennium park, birchwood, Warrington, WA3 7QN <u>Cath.Broderick@doh.gsi.gov.uk</u>	STD: 01925 - 704000 Fax No: 01925 - 704100
Northern & Yorkshire RO	Cath Broderick And      Graham Girvan	North west regional office 930-932 birchwood boulevard, Millennium park, birchwood, Warrington, WA3 7QN <u>Cath.Broderick@doh.gsi.gov.uk</u>  graham.girvan@northychc.mss.nhs.uk	STD: 01925 - 704000 Fax No: 01925 - 704100    01325 254 846
Trent RO	Mike Smith	Fulwood House Old Fulwood Road Sheffield S10 3TH <u>Mike.Smith@doh.gsi.gov.uk</u>	Telephone: 0114 2630300  Fax No: 0114 2306956



## REGIONAL SLA HOLDERS

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London AND South East RO	Ray Lott	Surrey & Sussex Strategic Health Authority C/O West Sussex Shared Services Consortium The Causeway Goring-by-Sea Worthing BN12 6BT <a href="mailto:Ray.lott@w3sc.nhs.uk">Ray.lott@w3sc.nhs.uk</a>	01903 708588
South West RO	Trevor Buckler	North and East Devon HA Dean Clarke House Southernhay East Exeter EX1 1PG	01392205205
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	Coventry Primary Care Trust Marie Hardie	Coventry Health Authority Christ Church House Greyfriars Lane Coventry CV1 1PG  <a href="mailto:Marie.hardie@chc-tr.wmids.nhs.uk">Marie.hardie@chc-tr.wmids.nhs.uk</a>	024 7624 6021
North West	Nicky O'Connor Associate Director - Organisational Performance	Greater Manchester HA Gateway House Piccadilly South Manchester M60 7LP  <a href="mailto:Nicky.oconnor@gmscha.nhs.uk">Nicky.oconnor@gmscha.nhs.uk</a>	0161 237 2892
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Trent RO	Derwent Shared services  Irene Longstaff	  <a href="mailto:Irene.longstaff@mail.sderby-ha.trent.nhs.uk">Irene.longstaff@mail.sderby-ha.trent.nhs.uk</a>	  0133 262 6300