



Law Society  
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# Consultation Response

Consultation on a new National Public Health body:  
'Public Health Scotland'

July 2019



## Introduction

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The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Health and Medical Law, Mental Health and Disability, and Privacy Law Sub-committees welcome the opportunity to consider and respond to COSLA and the Scottish Government's consultation on the new National Public Health Body 'Public Health Scotland'.

## Comments

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### **Question 1: Do you have any general comments on the overview of the new arrangements for public health?**

We fully support the intention to embed a human rights based approach to health and wellbeing, and hope that this will expressly encompass a wide range of international human rights obligations including those included in the UN Convention on the Rights of Persons with Disabilities.

### **Question 2:**

#### **(a) What are your views on the general governance and accountability arrangements?**

Public understanding of leadership and accountability within the organisation will likely be supported by ensuring certainty and clarity around the governance arrangements and the roles taken by each part of the leadership group.

In order to ensure its role as a trusted and impartial champion for public health, it is important that the appointment process is open and transparent, and we would recommend a role in this area for the Ethical Standards Commissioner, as is the case for NHS boards and NHS24.

**(b) How can the vision for shared leadership and accountability between national and local government best be realised?**

Shared leadership and accountability between Scottish Ministers and COSLA introduces a new mechanism for leadership and accountability in the sector. The proposed Memorandum of Understanding will require to provide a solid arrangement for exercise of these functions. Clarity on financial and performance accountability will require to be provided to enable members of the public to build confidence in the organisation, and to allow Board members and staff of the new organisation to fully understand their roles and responsibilities. Similarly, the roles of the Scottish Parliament, COSLA and the Scottish Government will require to be clear to ensure proper scrutiny of the functions of the new organisation.

**Question 3:**

**(a) What are your views on the arrangements for local strategic planning and delivery of services for the public's health?**

**(b) How can Public Health Scotland supplement or enhance these arrangements?**

We have no comment at this stage.

**Question 4: What are your views on the role Public Health Scotland could have to better support communities to participate in decisions that affect their health and wellbeing?**

We have no comment at this stage.

We welcome the recognition of the third sector in connection with the proposals. Many of these groups work first-hand with some of the most vulnerable in society and are best placed both to promote their groups and enhance the understanding and knowledge of the healthcare background for Public Health Scotland. They can influence and help direct information and resources to those communities or groups.

### **Question 5:**

**(a) Do you agree that Public Health Scotland should become a community planning partner under Part 2 of the Community Empowerment (Scotland) Act 2015?**

**(b) Do you agree that Public Health Scotland should become a public service authority under Part 3 of the Community Empowerment (Scotland) Act 2015, who can receive participation requests from community participation bodies?**

**(c) Do you have any further comments?**

We have no comment at this stage.

### **Question 6:**

**(a) What are your views on the information governance arrangements?**

The approach to information governance arrangements set out in the consultation is too high level to offer detailed comment. However, we emphasise the importance of building a system in which privacy and data protection are embedded following the principles of privacy/data protection by design and default – see, for example, Article 25 of the General Data Protection Regulation. When dealing with matters relating to public health we recognise the importance of maximising the potential benefits of data analysis and note that anonymisation of data may prove useful in ensuring that data can be used to drive research and innovation while protecting privacy. Where numbers of data subjects in particular categories are small, anonymisation may require the use of broader categories, reducing the quality of the data. However, in any case it is important to carefully consider whether data requires to be in a personally identifiable form, or not.

We also welcome the recognition of the importance of Data Protection Impact Assessments: these must be rigorous and evidence-based.

Information governance arrangements will require to be properly set out, but arrangements exist for data sharing between NHS Boards, Local Authorities and others, and these can usefully provide a basis for arrangements aligned specifically with Public Health Scotland functions.

**(b) How might the data and intelligence function be strengthened?**

Public Health Scotland will be in possession of much data and information relevant to health in Scotland, and may benefit from consideration of how this can be made appropriately accessible to others for the purposes of research or similar, and would usefully give consideration to processes to proactively publish useable data to reduce requests for access or receipt of Freedom of Information requests.

### **Question 7:**

**(a) What suggestions do you have in relation to performance monitoring of the new model for public health in Scotland?**

**(b) What additional outcomes and performance indicators might be needed?**

We have no comment at this stage.

### **Question 8: What are your views on the functions to be delivered by Public Health Scotland?**

Consideration should be given to ensuring that the new body is effective across the whole of Scotland, taking into account the needs of different regions and communities and being aware of the impact of centralisation of services on users and communities and the public health implications of resource allocation to local communities, including the related consequences for the wellbeing of people in those communities.

In exercising its leadership role it will be important for Public Health Scotland to recognise the importance of local accountability and accessibility of health and other services, particularly for people with disabilities and mental health problems, who can be particularly disadvantaged by overly centralised services, due to issues around transport, the enduring nature of their health needs, and the importance of strong relationships with services.

We would suggest that, in the context of the wide range of functions that Public Health Scotland will deliver, mental health should be an area of focus. Mental health issues are strongly connected to wider public health issues. This is particularly relevant at this point in time given the range of initiatives, including significant reviews of existing statutory frameworks, that are currently underway. However, it is important that the Mental Welfare Commission for Scotland's existing remit and functions are not inhibited by the new body.

We would highlight the role of the criminal justice system, which deals with some of the most vulnerable in society facing a significant number of health care problems such as alcohol, drug, mental health and traumatic backgrounds that have impacted on and affected them. By improving health outcomes and working collaboratively, as envisaged through the creation of Public Health Scotland, this should contribute towards reducing offending behaviour and improving outcomes for those with criminal convictions linked to health issues, such as addictions. The definition of public health relates not merely to disease but more broadly to physical, mental, and social wellbeing and resilience of individuals and communities. These factors have significance for the criminal justice system.

### **Question 9:**

**(a) What are your views on the health protection functions to be delivered by Public Health Scotland?**

**(b) What more could be done to strengthen the health protection functions?**

Public Health Scotland will also need to be appropriately equipped to deal with emerging threats, including those associated with the globalisation of crime.

### **Question 10:**

**(a) Would new senior executive leadership roles be appropriate for the structure of Public Health Scotland and,**

**(b) If so, what should they be?**

We have no comment at this stage.

**Question 11: What other suggestions do you have for the organisational structure for Public Health Scotland to allow it to fulfil its functions as noted in chapter 5?**

We have no comment at this stage.

**Question 12: What are your views on the proposed location for the staff and for the headquarters of Public Health Scotland?**

The Board will be the appropriate decision-maker regarding location of staff and headquarters. Partnership working and the local community focus of the organisation would support devolved locations to develop working relationships with local authorities and others and demonstrate commitment to local issues.

**Question 13: Are the professional areas noted in the list above appropriate to allow the Board of Public Health Scotland to fulfil its functions?**

A focus on values in recruitment of Board members will support the identification of appropriate persons for appointment to the Board of Public Health Scotland.

Consideration should be given to the inclusion of a representative with a mental health focus.

We are pleased to note the recognition of the link between health and justice. This is implicit under the proposed composition of the Board for Public Health Scotland (Chapter 6 of the consultation) with the proposed inclusion of policing, the judiciary and the legal profession and the Scottish Prison Service, and we support the inclusion of these bodies on the Board.

#### **Question 14:**

##### **(a) What are your views on the size and make-up of the Board?**

##### **(b) How should this reflect the commitment to shared leadership and accountability to Scottish Ministers and COSLA?**

Shared leadership and accountability between Scottish Ministers and COSLA would be appropriately demonstrated by inclusion of local authority members on the Board. Shared leadership and accountability may be best supported by local authority members of the Board representing local authority interests, as distinct from local authority members on territorial NHS Boards. A defined role for local authority Board members would be appropriately supported by guidance from the Scottish Government or Standards Commission on the role of members of a Board exercising shared leadership and accountability. Application of the Board Members' Code of Conduct may not be most beneficial in this circumstance. Consideration should be given to the inclusion of executive leadership from existing NHS Boards and local authorities on the Board.

#### **Question 15: What are your views on the arrangements for data science and innovation?**

As with other aspects of the consultation, we note that the proposals are too general to provide a thorough response at this stage.

We support the data science and innovation function with which Public Health Scotland will be tasked. Advances in medical knowledge driven by data collection and analysis have the potential to provide significant benefits to individuals. We welcome the objective of ensuring that individuals are able to take advantage of progress in this area by choosing health solutions best suited to their personal circumstances. However, we emphasise that data protection and cybersecurity must be taken into account to ensure that the rights to privacy and data protection are properly respected.

See also our comments in response to question 6.

**Question 16: What are your views on the arrangements in support of the transition process?**

The proposals are likely to result in the data controller changing for a significant amount of data. Consideration should be given to the transition measures required for this, including the need for transparency.

**Question 17:**

**(a) What impact on equalities do you think the proposals outlined in this paper may have on different sectors of the population and the staff of Public Health Scotland?**

**(b) If applicable, what mitigating action should be taken?**

We refer to our comments in relation to centralisation of services and the importance of local provision, as well as to the potential benefits of engaging with third sector organisations.

**Question 18: What are your views regarding the impact that the proposals in this paper may have on the important contribution to be made by businesses and the third sector?**

We have no comment at this stage.

**For further information, please contact:**

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