

## STATUTORY GUIDANCE ON THE ROLES AND RESPONSIBILITIES OF THE DIRECTOR OF CHILDREN'S SERVICES AND THE LEAD MEMBER FOR CHILDREN'S SERVICES

### ABOUT THIS GUIDANCE

1. This is statutory guidance issued by the Secretary of State for Education. Local authorities in England must have regard to it in relation to the appointment of the Director of Children's Services (DCS) and the designation of the Lead Member for Children's Services (LMCS). This guidance covers the legislative basis for the two appointments, roles and responsibilities of the post holders and how this relates to Government expectations about local authorities' role in education and children and young people's services.

### EXPIRY/REVIEW DATE

2. This guidance replaces the previous versions, issued in 2005 and 2009. The guidance will be *reviewed* on an annual basis to check whether it is still fit for purpose; but it will only be *revised* if it is no longer considered to be fit for purpose.

### WHAT LEGISLATION DOES THIS GUIDANCE RELATE TO?

3. This document is issued under sections 18(7) (Director of Children's Services) and 19(2) (Lead Member for Children's Services) of the Children Act 2004. This means that local authorities must have regard to it and if they decide to depart from it they will need to have clear reasons for doing so.

### WHO IS THIS GUIDANCE FOR?

4. This guidance is for local authorities in England with responsibility for education<sup>1</sup> and children's social services functions.

### KEY POINTS

- The *Children Act 2004* requires every upper tier local authority to appoint a Director of Children's Services and designate a Lead Member for Children's Services.
- The DCS and LMCS are appointed for the purposes of discharging the education and children's social services functions of the local authority. The functions for which they are responsible are set out in section 18(2) of the Children Act 2004. This includes (but is not limited to) responsibility for children and young people receiving education or children's social care

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<sup>1</sup> References in this guidance to local authority "education" functions do not include further and higher education functions listed at section 18(3) of the Children Act 2004.

services in their area and all children looked after by the local authority (regardless of where they are placed).

- Within this legal framework, it is for individual local authorities to determine their own organisational structures in the light of their local circumstances. However, local authorities must ensure that there is both a single officer and a single elected member each responsible for both education and children's social care. The DCS and LMCS should each have an integrated children's services brief, ensuring that the safety and the educational, social and emotional needs of children and young people are central to the local vision. Between them, the DCS and LMCS provide a clear and unambiguous line of local accountability.
- The DCS has professional responsibility for children's services, including operational matters; the LMCS has political responsibility for children's services. Together with the Chief Executive and Leader or Mayor<sup>2</sup>, the DCS and LMCS have a key leadership role both within the local authority and working with other local agencies to improve outcomes for children and young people.
- The DCS is a politically restricted statutory chief officer post; they should be a first tier officer and report directly to the Chief Executive.
- Local authorities should, as a matter of course, assure themselves that their arrangements enable them to discharge their education and children's social care functions effectively.
- Given the breadth and importance of children's services functions that the DCS and LMCS cover, local authorities should give due consideration to protecting the discrete roles and responsibilities of the DCS and LMCS before allocating to them any additional functions other than children's services.

## **GUIDANCE ABOUT THE DIRECTOR OF CHILDREN'S SERVICES AND LEAD MEMBER FOR CHILDREN'S SERVICES**

### The Director of Children's Services (DCS)

5. Section 18 of the Children Act 2004 requires every top tier local authority to appoint a Director of Children's Services. The DCS has professional responsibility for the leadership, strategy and effectiveness of local authority children's services and, as such, this post should be at first tier officer level. The DCS is responsible for securing the provision of services which address the needs of all children and young people, including the most disadvantaged and vulnerable, and their families and carers. In discharging these responsibilities, the DCS will work closely with other local partners to improve the well-being of children and young people. The DCS has direct,

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<sup>2</sup> Subject to the passage of the Localism Bill, local authorities that subsequently consider adopting the committee system should take into account any implications for the DCS and LMCS roles.

operational responsibility for the performance of local authority functions relating to the education and social care of children and young people. The DCS is responsible for ensuring that effective systems are in place for discharging these functions, including where a local authority has commissioned any services from another provider rather than delivering them itself. The DCS should have regard to the General Principles of the United Nations Convention on the Rights of the Child (UNCRC) and ensure that children and young people are involved in the development and delivery of local services.

6. The DCS is a politically restricted statutory chief officer post<sup>3</sup>. This means the post holder is prevented from taking part in certain political activities. In particular, the DCS is disqualified from being a member of the local authority. The DCS should report directly to the Chief Executive (Head of Paid Service), who in turn is accountable to the Council on the performance of its chief officers<sup>4</sup>. Local authorities are encouraged to involve children and young people in the appointment of the DCS.

#### The Lead Member for Children's Services (LMCS)

7. Section 19 of the Children Act 2004 requires every top tier local authority to designate one of its members as Lead Member for Children's Services. The LMCS will be a local Councillor with delegated responsibility from the Council, through the Leader or Mayor<sup>5</sup>, for children's services. The LMCS, as a member of the Council Executive, has political responsibility for the leadership, strategy and effectiveness of local authority children's services. The LMCS is also democratically accountable to local communities and has a key role in defining the local vision and setting political priorities for children's services within the broader political context of the Council.

8. The LMCS is responsible for ensuring that the needs of all children and young people, including the most disadvantaged and vulnerable, and their families and carers, are addressed. In doing so, the LMCS will work closely with other local partners to improve the well-being of children and young people. The LMCS should have regard to the General Principles of the United Nations Convention on the Rights of the Child (UNCRC) and ensure that children and young people are involved in the development and delivery of local services. As politicians, LMCSs should not get drawn into the detailed day-to-day operational management of education and children's services. They should, however, provide strong, strategic leadership and support and challenge to the DCS and relevant members of their senior team as appropriate.

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<sup>3</sup> Under section 2 of the Local Government and Housing Act 1989 (as amended).

<sup>4</sup> See Schedule 1 to the Local Authorities (Standing Orders) (England) Regulations 2001 SI 3384.

<sup>5</sup> In local authorities with executive governance models.

Ensuring a clear line of accountability

9. Integrating education and children's social care services under a single officer and a single member provides both a strategic and professional framework within which the safety and the educational, social and emotional needs of children and young people are considered together. The DCS and LMCS roles provide a clear and unambiguous line of political and professional accountability for children's well-being. The DCS and LMCS should report to the Chief Executive and to the Council Leader or Mayor respectively as the post holders with ultimate responsibility for the political and corporate leadership of the Council and accountability for ensuring that the importance of improving outcomes for all children and young people is reflected across the full range of the Council's business. The DCS and LMCS (in their respective roles) will also need to work closely with the Director of Public Health<sup>6</sup> as the principal adviser on health to officials and members.

Additional functions not related to local authority children's services

10. It is legally permissible for the DCS and LMCS roles to be combined with other operational and political functions of the local authority. However, given the breadth and importance of children's services functions that the DCS and LMCS cover, local authorities should give due consideration to protecting the discrete roles and responsibilities of the DCS and LMCS before allocating any additional functions to individuals performing these roles. In particular, local authorities should undertake a local test of assurance so that the focus on outcomes for children and young people will not be weakened or diluted as a result of adding such other responsibilities (see paras 13-16 below). Given the demanding nature of the DCS and LMCS roles, local authorities should consider *all* aspects of any combined posts (e.g. the impact on both children and adult services where there is a joint DCS and Director of Adult Social Services post).

11. The DCS should report directly to the Chief Executive, so it is not appropriate for the Chief Executive also to hold the statutory role of DCS (except possibly as a temporary measure whilst the Council actively takes steps to fill a vacant DCS post and an alternative interim DCS appointment is not considered appropriate).

Joint DCS appointments

12. It is legally permissible for two or more local authorities to appoint a single joint DCS to cover children's services responsibilities across all the local authority areas concerned.

Local assurance

13. Local authorities will, as a matter of course, want to ensure their structures and organisational arrangements enable them to:

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<sup>6</sup> Subject to the passage of the Health and Social Care Bill

- fulfil their statutory duties effectively (including ensuring that children, young people and families receive effective help and benefit from high educational standards locally);
- be transparent about responsibilities and accountabilities; and
- support effective interagency and partnership working.

14. A local authority should carry out effective assurance checks, integrated as part of an authority's usual decision-making and scrutiny work, of their structures and organisational arrangements; once any new arrangements are in place, local authorities should review their arrangements regularly to satisfy themselves that they continue to be effective.

15. These assurances should secure local political and professional support from within the Council and should be subject to assessment by the local authority itself, as part of efforts to secure continuous improvement, as well as peer challenge and review as part of the sector-led approach to local authority improvement. Where, as part of Ofsted's assessment of the quality and effectiveness of local authority leadership and management, inspectors identify an issue arising from the local authority's arrangements for discharging the DCS and LMCS functions, they may decide to look at the quality and effectiveness of the authority's assurance process.

16. It is for each local authority to determine the precise nature of its own assurance process and how to provide transparency for local communities about which individuals are fulfilling the statutory roles of DCS and LMCS, taking account of local circumstances. However, in doing so, the following elements are likely to be essential in assuring that effective arrangements are in place:

- clarity about how senior management arrangements ensure that the safety and the educational, social and emotional needs of children and young people are given due priority and how they enable staff to help the local authority discharge its statutory duties in an integrated and coherent way;
- clarity about how the local authority intends to discharge its children's services functions and be held accountable for them from political, professional, legal and corporate perspectives (including where, for example, services are commissioned from external providers or mutualised in an arms length body);
- the seniority of and breadth of responsibilities allocated to individual post holders and how this impacts on their ability to undertake those responsibilities (especially where a local authority is considering allocating any additional functions to the DCS and LMCS posts);
- the involvement and experiences of children and young people in relation to local services;
- clarity about child protection systems, ensuring that professional leadership and practice is robust and can be challenged on a regular basis; and

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- the adequacy and effectiveness of local partnership arrangements (e.g. the local authority's relationship with schools, Local Safeguarding Children's Board (LSCB), Children's Trust arrangements, Health and Well Being Boards<sup>7</sup>, Police, probation and Multi-Agency Risk Assessment Conferences) and their respective accountabilities.

### Roles and responsibilities of the DCS and LMCS

17. Local authorities are bound by some 200 statutory duties covering education and children's social care. The way in which the roles and responsibilities of the DCS and LMCS are fulfilled will vary between different places and will change over time. This guidance does not attempt to cover all these in detail but the key aspects of those roles are outlined below.

#### *Leadership and partnership*

18. The DCS and LMCS work together to provide strong, strategic local leadership and development of an increasingly autonomous and diverse education and children's sector. Working with headteachers, school governors and academy sponsors and principals, the DCS and LMCS should support high educational standards for all children and young people, paying particular attention to the most disadvantaged groups. The DCS and LMCS should involve and listen to parents, carers, children and young people. The DCS and LMCS have a key role in ensuring that the local voluntary and community sector, charities, social enterprises, the private sector and children and young people themselves are included in the scope of local authority planning, commissioning and delivery of children's services, where appropriate.

19. Section 10 of the Children Act 2004 places a duty on local authorities and certain named partners (including health) to co-operate to improve children's well-being. The DCS and LMCS must lead, promote and create opportunities for co-operation with local partners (for example, health, police, schools, housing services, early years, youth justice, probation, higher and further education and employment) to improve the well-being of children and young people. Local authorities must also (by virtue of the Child Poverty Act 2010<sup>8</sup>) establish local co-operation arrangements to reduce child poverty and prepare and publish a local child poverty needs assessment and strategy.

20. As a statutory member of local health and wellbeing boards<sup>9</sup>, the DCS will have a clear role in contributing to the development of the local Joint Strategic Needs Assessment and joint health and wellbeing strategy. The DCS will promote the interests of children, young people and their families and help join up local commissioning plans for clinical and public health services, with children's social care and education, where appropriate, to

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<sup>7</sup> Subject to the passage of the Health and Social Care Bill.

<sup>8</sup> Although the local authority duties under the Child Poverty Act 2010 are not included in the section 18(2) definition of functions for which the DCS/LMCS are automatically responsible, local authorities may nonetheless consider it appropriate to assign them to the DCS/LMCS.

<sup>9</sup> Subject to the passage of the Health and Social Care Bill.

address the identified local needs. The DCS will have a key role in ensuring effective working relationships between the health and wellbeing board and the LSCB. The DCS is responsible for any agreements made under section 75 of the National Health Service (NHS) Act 2006 between the local authority and NHS relating to children and young people – for example, pooled budgets for commissioning and/or delivering integrated services covering children’s health, social care and education.

21. Local authorities must comply with the duties set out in the Equality Act 2010 which means that, as well as ensuring that they do not discriminate unlawfully, DCSs and LMCSs must take into account the likely impact of their policies and decisions on specified groups. In doing so, particular consideration should be given to Article 2 of the UNCRC. Local authorities should also maintain an audit trail to demonstrate how equalities matters were considered as part of the decision-making process.

### Safeguarding

22. Section 11 of the Children Act 2004 requires local authorities and other named statutory partners to make arrangements to ensure that their functions are discharged with a view to safeguarding and promoting the welfare of children. There is a similar requirement imposed on schools<sup>10</sup>. This should ensure that safeguarding is integral to all that local authorities, schools and other named partners do. The DCS and LMCS should ensure that there are clear and effective arrangements to protect children and young people from harm (including those attending independent schools). Local authorities are also required to set up a LSCB to coordinate the effectiveness of arrangements to safeguard and promote the welfare of children and young people in that area.

23. The DCS should always be a member of the LSCB and will be held to account for the effective working of the LSCB by their Chief Executive, including where the LSCB has an independent chair. The LMCS should be a “participating observer” of the LSCB; they may engage in discussions but not be part of the decision making process in order to provide the LMCS with the independence to challenge the DCS (and others) when necessary.

### *Vetting and Barring Scheme*

24. Under the present Vetting and Barring Scheme, DCSs and LMCSs are engaged in “regulated activity” by virtue of undertaking the role: a local authority is entitled to obtain an enhanced disclosure (with a barred list check) on individuals in such roles. Following a review, the Government proposes to scrap previous plans to require registration. Instead, DCSs and LMCSs will in future be among office holders for whom a local authority will be entitled to obtain an enhanced CRB disclosure (without a barred list check). The

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<sup>10</sup> In accordance with section 175 of the Education Act 2002 if they are maintained or the Independent School Standards set out pursuant to section 157 of that Act if they are independent schools, including Academies or Free Schools.

changes should come into force in 2012, subject to Parliament approving the Protection of Freedoms Bill 2011.

### Vulnerable children and young people

25. Local authorities should work with partners to promote prevention and early intervention so that emerging problems are dealt with before they become more serious. This will help to improve educational attainment, narrow the gaps for the most disadvantaged and promote the wider well-being of children and young people, including at key transition points.

26. More specifically, the DCS and LMCS in their respective roles:

- have a shared responsibility with all officers and members of the local authority to act as effective and caring **corporate parents for looked after children**, with key roles in improving their educational attainment, providing stable and high quality placements and proper planning for when they leave care;
- must ensure that disabled children and those with **special educational needs** (SEN) can access high quality provision that meets their needs and fund provision for children with statements of SEN;
- must ensure arrangements are in place for **alternative provision for children outside mainstream education or missing education** (e.g. due to permanent exclusion or illness) to receive suitable full-time education;
- should ensure there is coherent planning between all agencies providing services for children involved in the youth justice system and secure the provision of education for young people in custody; and
- should understand local need and secure provision of services taking account of the benefits of **prevention and early intervention** and the importance of co-operating with other agencies to offer early help to children, young people and families.

### Fair access to services

27. Local authorities should promote the interests of children, young people, parents and families and work with local communities to stimulate and support a diversity of school, early years and 16-19 provision that meets local needs. More specifically, the DCS and LMCS in their respective roles:

- must ensure **fair access to all schools for every child** in accordance with the statutory School Admissions and School Admissions Appeal Codes and ensure appropriate information is provided to parents;
- must ensure provision for suitable **home to school transport** arrangements;
- should actively promote a diverse **supply of strong schools**, including by encouraging good schools to expand and the development of new Academies and Free Schools<sup>11</sup> in order to meet local demand;

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<sup>11</sup> Subject to the passage of the Education Bill.



- should promote high quality **early years** provision, including helping to develop the market, securing free early education for all three and four year olds and for all disadvantaged two year olds<sup>12</sup>, providing information, advice and assistance to parents and prospective parents, and ensuring there are sufficient **Sure Start children's centre services** to meet local need and sufficient **childcare** for working parents;
- must secure access for young people to sufficient educational and recreational leisure-time activities and facilities for the improvement of their well-being and personal and social development;
- should promote young people's participation in public **decision-making** so they can influence local commissioners; and
- should promote **participation in education or training of young people** e.g. by commissioning provision for young people aged 16-19 (or 25 for those with learning difficulties/disabilities).

### Educational excellence

28. Working with headteachers, school governors and academy sponsors and principals, local authorities should promote educational excellence for all children and young people and be ambitious in tackling underperformance. More specifically, the DCS and LMCS should in their respective roles:

- take rapid and decisive action in relation to **poorly performing schools**, including using their intervention powers with regard to maintained schools and considering alternative structural and operational solutions;
- develop robust **school improvement strategies**, including choosing whether to offer such services in a competitive and open school improvement market, working beyond local authority boundaries;
- promote high standards in education by supporting effective **school to school collaboration** and providing local leadership for tackling issues needing attention which cut across more than one school, such as poor performance in a particular subject area across a cluster of schools;
- support maintained schools in delivering an appropriate **National Curriculum** and early years providers in meeting the requirements of the **Early Years Foundation Stage** (as outlined in the EYFS Statutory Framework);
- establish a **schools forum** for their area, maintain a scheme for financing maintained schools and provide financial information; and
- undertake specified responsibilities in relation to **staffing and governance** of maintained schools.

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<sup>12</sup> The free entitlement to early education for disadvantaged two year olds will be statutory from 2013 subject to passage of the Education Bill.

## FURTHER SOURCES OF INFORMATION

### You may be interested in the following links:

- Association of Directors of Children's Services – [www.adcs.org.uk](http://www.adcs.org.uk)
- Centre for Excellence and Outcomes in Children and Young People's Services – [www.c4eo.org.uk](http://www.c4eo.org.uk)
- Local Government Group – [www.local.gov.uk](http://www.local.gov.uk)
- National College for School Leadership – [www.nationalcollege.org.uk](http://www.nationalcollege.org.uk)
- Office for Standards in Education, Children's Services and Skills – [www.ofsted.gov.uk](http://www.ofsted.gov.uk)
- Society of Local Authority Chief Executives – [www.solace.org.uk](http://www.solace.org.uk)
- United Nations Convention on the Rights of the Child – [www.education.gov.uk](http://www.education.gov.uk)

### You may be interested in the following guidance:

- Code of Practice for Local Authorities on Delivery of Free Early Years Provision for 3 & 4 year olds (2010)
- Early identification, assessment of needs and intervention – The Common Assessment Framework (CAF) for children and young people: A guide for managers (2009)
- Equality Act 2010: Public sector equality duty what do I need to know? A quick start guide for public sector organisations (Home Office, 2011)
- Legal framework for working with looked after children: regulations and guidance (2011)
- School Admissions Code (2009) and School Admission Appeals Code (2009)
- Special Educational Needs Code of Practice (2001)
- Statutory Framework for the Early Years Foundation Stage (2008)
- Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children (2010)