

Who is who in the COVID-19 crisis?

Leon Glenister

Relevant bodies

- Central government: Secretary of State, Public Health England, Chief Medical Officer.
- NHS bodies: NHS England, Clinical Commissioning Groups
- Local authorities
- Other interested groups: NICE, BMA.

Secretary of State

- Section 2A of the NHS Act 2006: SoS “must take such steps as the SoS considers appropriate for the purpose of protecting the public in England from disease or other dangers to health”.
- This can include:
 - “conduct of research”
 - “providing vaccination, immunisation or screening services”
 - “providing other services or facilities for the prevention, diagnosis or treatment of illness”
 - “providing information or advice”

Secretary of State

- Also has powers under Public Health (Control of Disease) Act 1984 Part IIA, which was inserted by the Health and Social Care Act 2008 following SARS, so a pandemic was in mind.
- Section 45B: “The appropriate Minister may by regulations make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in England and Wales”

Secretary of State

- It was based on this power that SoS made the Health Protection (Coronavirus) Regulations 2020.
- Questions over whether the Regulations are lawful. Act permits restrictions on where “groups of persons” go or have contact if they may be infected. Is the entire population a “group of persons”?
- Questions re guidance, e.g. the Government guidance states “one form of exercise a day” but the Regulations do not place any limit. Guidance amended following threatened legal challenge based on the potential need for disabled people to exercise more than once a day.

Public Health England



Public Health
England

- An executive agency of the Department of Health and Social Care.
- Website describes responsibilities as “preparing for and responding to public health emergencies”, and that it will “provide government, local government, the NHS, Parliament, industry and the public with evidence-based professional, scientific expertise and support”.
- In legal terms it mainly discharges duties on Secretary of State in relation to public health

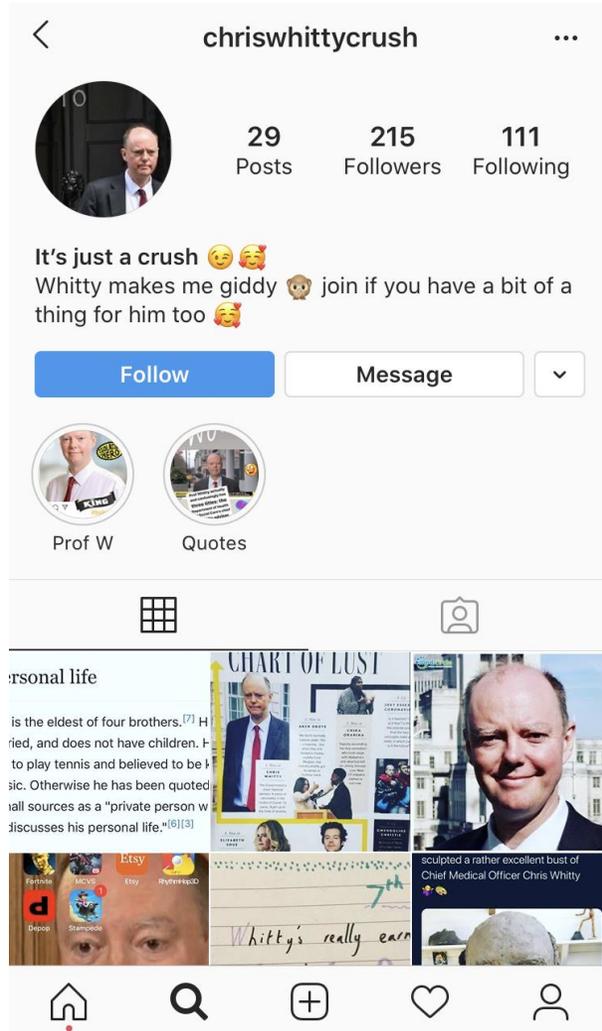
Public Health England

- In respect of COVID-19 so far it has:
 - Provided guidance e.g. on PPE, stay at home guidance
 - Monitoring the number of cases in the UK
 - Carrying out research into a vaccine
 - Provide emerging evidence, e.g. the greater impact on smokers

Chief Medical Officer

- A role within the Department of Health and Social Care.
- Described on the gov.uk: “acts as the UK government’s principal medical adviser, and the professional head of all directors of public health in local government and the medical profession in government.”
- Currently held by Professor Chris Whitty

Chief Medical Officer



NHS England

- Its duties are set out in the NHS Act 2006.
- Its general duties remain as set out in the NHS Act 2006: to promote a comprehensive health service, exercising functions in view of continuous improvement of services, reducing inequality, promoting research, etc.
- In relation to public health “Parliament did intend to exclude NHS England from any responsibility in the field of public health...” (R (National Aids Trust v NHS Commissioning Board [2017] 1 WLR 1477 per Underhill LJ).

Other NHS bodies

- CCGs:
 - CCGs are in charge of commissioning health services, and its duties are set out in Chapter A2 of the NHS Act 2006 (inserted by HSCA 2012).
 - Its general duties remain (which mirror those of NHSE).
 - No direct role in public health pursuant to legislation.
- NHS Trusts
 - Sections 25-27 and Schedule 4 of the NHS Act 2006.
 - Provision of goods and services for the purpose of the health service.

Local authorities

- Section 2B of the NHS Act 2006 states “[e]ach local authority must take such steps as it considers appropriate for improving the health of the people in its area.”
- This can include:
 - “information and advice”
 - “providing services or facilities for the prevention, diagnosis or treatment of illness”
 - “providing assistance (including financial assistance) to help individuals to minimise any risks to health arising from their accommodation or environment”
 - “making available the services of any person or any facilities”

Local authorities

- Note a range of guidance from central government for local government, which even if non statutory, is both helpful and relevant to decisions (ranging from housing, education, rates, PPE, etc):
<https://www.gov.uk/guidance/coronavirus-covid-19-guidance-for-local-government>

NICE

NICE
National Institute for
Health and Care Excellence

- National Institute for Health and Care Excellence
- Part 8 of the HSCA 2012, functions to carry out research.
- It has released “Guidelines” in relation to particular patients and departments. CCGs do not have an absolute duty to implement guidance, but had a duty to consider it and understand it in determining whether to implement it: *R (Fisher) v North Derbyshire HA* [1997] EWHC Admin 675



- The trade union and professional body for all doctors in the UK. It “represents, supports and negotiates on behalf of all UK doctors and medical students”.
- A key body in campaigning for doctors in respect of PPE and testing.
- Has also released guidance on prioritising life saving treatment.

Thank you for listening

© Copyright Landmark Chambers 2020

Disclaimer: The contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

London

180 Fleet Street
London, EC4A 2HG
+44 (0)20 7430 1221

Birmingham

4th Floor, 2 Cornwall Street
Birmingham, B3 2DL
+44 (0)121 752 0800

Contact us

✉ clerks@landmarkchambers.co.uk
🌐 www.landmarkchambers.co.uk

Follow us

🐦 @Landmark_LC
🌐 Landmark Chambers