



Assessing the options to use the regulatory environment to promote local physical activity and healthy eating



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Acronyms

ABG	Area Based Grant
DCLG	Department for Communities and Local Government
ECJ	European Court of Justice
EU	European Union
HIA	Health Impact Assessment
ITA	Integrated Transport Authority
LAA	Local Area Agreement
LDD	Local Development Document
LDF	Local Development Framework
LDS	Local Development Scheme
LGA	Local Government Association
LSP	Local Strategic Partnership
LTA	Local Transport Authority
LTP	Local Transport Plan
NCN	National Cycle Network
PPG	Planning Policy Guidance
PPS	Planning Policy Statement
RDA	Regional Development Agency
RSS	Regional Spatial Strategy
RTP	Regional Transport Plan
SCI	Statement of Community Involvement
SCS	Sustainable Community Strategy
SDS	Spatial Development Strategy
SEA	Strategic Environmental Assessment
SOA	Single Outcome Agreement
SPP	Statement of Public Participation

Executive summary

Background and project aim

The contribution of the law, legislation and policy to the prevention of obesity by local authorities is suspected but has not been described in detail.

This report presents the results of the project *Assessing the options to use the regulatory environment to promote local physical activity and healthy eating*. It describes the roles and responsibilities of local authorities to prevent obesity via healthy eating and physical activity promotion. These results have also been fed into the *Healthy Places* web-based resource, disseminating the findings in a practical and accessible format to wider audiences.

The results of this study and the information in this report reflect UK law and policy at the time of research. There have been subsequent developments in both law and policy in certain areas. These have been incorporated into the *Healthy Places* web-based resource, along with further legal analysis of some of the key results of this research. *Healthy Places* is available at: www.healthyplaces.org.uk

This research was conducted by staff and consultants at the British Heart Foundation Health Promotion Research Group, based at the Department of Public Health, University of Oxford. It was commissioned and managed by the National Heart Forum (NHF) with contributory grant funding provided by the Department of Health.

This project aimed to examine systematically the current evidence for regulatory interventions to reduce obesity by local government in the UK, and to identify implications for translation of evidence-based policy into practice.

We took a novel approach to assess the evidence and to identify legal options for implementation by local government; The study involved four elements; (i) a review of published literature to identify evidence for local regulatory approaches to obesity, (ii) a review of UK case law to highlight the key legal areas that impact on the promotion of physical activity or healthy eating by local government, (iii) a review of UK media to capture examples of regulatory action not considered by the literature or case law, and, (iv) a series semi-structured interviews conducted with representatives of 17 national stakeholder organisations and three independent experts.

Recommendations for possible actions and identified gaps are presented for the NHF.

Main findings

All findings were presented within a framework of the roles and responsibilities of local authorities. Our results clearly identified evidence to support the assumption that the regulatory environment could be harnessed by local authorities to help reduce obesity and what were the specific actions necessary to best utilise this opportunity.

Systematic review of traditional databases

We found 49 published papers that divided into six main categories. These categories were: examples of regulations or legal strategies to combat obesity (10 papers); papers focused on law and physical activity (5 papers); papers focused on planning law and physical activity or healthy eating (9 papers); theoretical papers referencing law and food (2 papers), theoretical papers referencing obesity (15 papers); and theoretical papers referencing law and physical activity (8 papers).

The majority of papers were theoretical and discussed the rationale for legal or environmental interventions, or identified a multi-level framework for legal intervention to combat obesity. Very few directly addressed local authority options for promoting physical activity or healthy eating; those that did referred to the built environment and physical activity, or the school environment and physical activity or nutrition. A few studies examined local government decision-making. These were focused on policies related to physical activity. There were no studies of the impact of planning or other local laws on healthy eating. Some papers addressed the relationship between law and physical activity, especially the negative impact of injury liability on activity promotion.

The literature presents clearly expressed rationales for regulatory intervention to reduce obesity, based on a long pedigree of law's use for public health protection, the existence of regulatory intervention in the free market to promote other social and economic goals, or the need to address market failure and an environment that is weighted against free choice. The review identified strategic areas for action, focusing on restriction of traffic and promotion of active travel, promotion of access to healthy food, and construction of a sustainable and active environment. However, there is an absence of literature that identifies specific legal mechanisms to address obesity – especially in the UK – and only a few papers focused on the role of local government in a legal response to obesity.

Review of grey literature and media

We found 36 articles identifying the relationship between a law or regulation and the promotion of physical activity and healthy eating. We found many examples of media coverage of application of regulations to the prevention of obesity at local authority level. There were more examples relating to nutrition and food issues than found from the systematic review of traditional databases and from the review of grey literature and media. Three broad themes emerged: 1) regulations restricting access to unhealthy food; 2) regulations restricting traffic and promoting active travel; and 3) regulations promoting physical activity, play and access to green space. This review provided an opportunity to identify possible participants (key organisations or individuals) for the stakeholder interviews and to generate items for our stakeholder interview schedules.

Most of these examples of local level regulation have an incidental impact on public health. Their primary purpose and justification are to address separate (but often related) problems such as congestion or antisocial behaviour. Their implications for obesity are rarely acknowledged, and yet regulatory action such as the implementation of a 'workplace parking levy' could have a dramatic impact on the factors driving obesity. These are existing legal mechanisms that the wider public health community should be aware of. The media highlights many potential regulatory changes that deserve greater public health input and that need further research and legal scholarship to determine their feasibility. Media reports also highlight the different political dimensions involved in each area of regulation: most articles reporting restriction of traffic were negative in tone; articles reporting regulations restricting fast-food and takeaway food were generally positive; and most articles reporting regulations that restrict physical activity were in favour of their reform.

Case law review

We identified four key areas in the case law on physical activity and healthy eating: local planning; licensing; claims in negligence, occupiers' liability or other injury liability; and tax and fiscal measures. Consideration of obesity is relatively new and untested in much local decision and policy-making.

We found that **local planning** policy is clearly an important tool in the development of a healthy environment and it is relevant to the promotion of both physical activity and healthy eating. Planning powers are regularly exercised to preserve open spaces and facilities for physical activity, but they have only just begun to be used to combat the proliferation of fast-food retailers. This use of planning powers has yet to be challenged in the courts. Policy at a national and regional level now prioritises the preservation of 'green space'. There is not yet a similar national importance attached to the development of a healthy eating environment. In the meantime, such decisions must continue to be made at the local level where they may be possible due the wide discretion afforded to local planning authorities.

Local authorities are also able to use **licensing** powers to promote healthy eating and they have a similar discretion in these decisions as in planning decisions. However, licensing is exclusively a matter of local authority competence. It is not likely that a regional or national policy will be developed to

encourage healthy eating through licensing, and therefore it is up to each local authority to choose their approach. There is a high standard of procedural fairness to be met in licensing decisions because they involve the granting or refusal of individual rights; each decision must be carefully reasoned.

The case law in relation to **negligence, public and occupiers' liability and other claims for personal injury** refutes the common perception of a 'compensation culture'. However, in some circumstances local authorities are being over-cautious in the encouragement of physical activity, due to a misplaced fear of litigation. This might be prevented by clear advice on the situation regarding their legal liabilities.

There are no specific **fiscal measures** aimed at healthy or unhealthy foods *per se*. Fiscal measures relating to food mainly involve the VAT regime. In the physical activity arena, the supply of sporting services is exempt from VAT. However, the cost of constructing new facilities is assessed for VAT on a case-by-case basis according to the dominant purpose of the new facility. This produces uncertainty for each construction project and an unfavourable assessment may prove expensive and difficult to challenge.

Local policy and decisions that promote a healthy environment might be justified by numerous factors including litter, pollution, noise and antisocial behaviour concerns. In many areas of regulation, public health has only recently begun to be used explicitly as an important independent factor. However, with this comes the potential to challenge a local authority opinion on what is or is not healthy food. The reasonableness of such an opinion will determine how far they can go in this area.

Stakeholder interviews

We identified 17 stakeholder organisations and three independent specialists who work with relevant sectors or services of UK local government (e.g. town planning, sustainable transport, health promotion, licensing, legal risk and liability, and taxation). These interviews proved essential to generate key themes related to local decision-making and how it might be improved, and about the best channels for knowledge transfer and dissemination of research.

These interviews also identified many examples of specific regulations that could help or hinder the promotion of physical activity or healthy eating by local authorities.

Recommendations for the National Heart Forum

The National Heart Forum should:

- 1 Advocate to all services within local authorities that they have a critical role to play in the reduction of obesity using existing national policies, legal powers and examples of good practice. There is currently a limited recognition of this role at local authority level.
- 2 Produce a resource to help bridge the gap between national policy and legal powers and traditional, highly variable, local practice. This resource needs to provide specific peer-group case studies as the best means of encouraging other local authorities. It should be evaluated and field-tested.
- 3 Conduct research on the best channels for dissemination – involving local authority and primary care trust officers or representative organisations. This is to ensure optimal traction with appropriate professional bodies to disseminate this guidance outside traditional health channels.
- 4 Consider the application of this type of research for other risk factors for cardiovascular disease, such as alcohol.

1 Introduction

Project aim

The project had three aims:

- 1 To examine systematically how current European directives, national regulations, statutes and statutory instruments are related to obesity prevention, i.e. physical activity and healthy food environments.
- 2 To examine how current case-law, local byelaws and policies are related to obesity prevention, i.e. physical activity and healthy food environments.
- 3 To identify the implications of the practical application of information from aims 1 and 2 on everyday physical activity and healthy eating for children and adults.

Recommendations for possible actions and identified gaps are presented for the National Heart Forum. (See section 3.)

Background

The Foresight report on obesity clearly demonstrated the complexity of the ‘system drivers’ of the disease –the factors that contribute to the rising levels of obesity in the UK¹. However, the actual means of addressing these system drivers often lies within a regulatory or legal framework. The way we live, what we eat, how we travel, our built environment and our natural resources are all bound in some way by legislation. Until recently, the role of law as a lever to promote physical activity had not been explored.

A study to scope where legislation might be used as a population-wide public health intervention to raise physical activity levels was conducted in 2003 by the British Heart Foundation Health Promotion Research Group (BHF HPRG), and commissioned by the National Heart Forum (NHF) through grant funding from the Department of Health. The study assessed how existing legislation, guidelines and policy impact upon the promotion of physical activity and identified key areas of legislation that, with refinement or revision, could support more opportunities for physical activity promotion. The study was completed in January 2004, and made over 50 recommendations for four key policy/regulatory areas: planning and green space; personal risk and liability; fiscal incentives and disincentives; and local regulations and policies. These recommendations called for actions by the Department of Health, other government departments, non-governmental organisations and local authorities. Since 2004 a number of these recommendations have been translated into action, most noticeably the harmonisation of the definitions of green space in planning and education legislation making it harder to sell small areas like school sports pitches for development.

There is an increasing recognition that the local authority is a key player in constructing the built environment to promote physical activity. For example, in 2008, public health guidance from the National Institute for Health and Clinical Excellence (NICE) on the environment and physical activity was the most popular download from the NICE website, of all its clinical and public health guidance. The National Heart Forum’s *Building Health* report² highlighted the importance of local authorities in the construction of healthy built environments using the existing regulatory framework.

Increasingly the food environment has grown in importance. Historically research has focused on assessing exposure, access and provision of healthy or unhealthy foods, e.g. food deserts. Recent policy interventions such as the Healthy Towns initiative have focused on evaluating the impacts of a whole-town approach on preventing obesity and clearly such joined up policy between physical activity and food environments increases the importance of the role of the local authority.

In order to support this work, the BHF HPRG has assessed what progress has been made in the five years from 2004 to 2009 and what legal and regulatory barriers still exist which impede efforts by local authorities to create a built environment that promotes active living and healthy food environments.

The structure of local government in the UK

England

There is a complex pattern of local government across England. From 1972 England was organised into shire counties and metropolitan counties, each containing several shire districts or metropolitan districts.

Shire counties (upper-tier authorities) are broken down into **shire districts** (lower-tier authorities) and they have different responsibilities. There are **27** shire counties, split into **201** shire districts. The largest shire county is Kent (population 1,406,600) and the smallest is Dorset (population 407,800). Northampton (population 205,200) is the largest shire district. West Somerset (population 35,500) is the smallest.

The **six metropolitan counties** were abolished as authorities in 1986 and only exist as geographical or ceremonial entities. They are also the basis for some joint services such as fire or police services. The **36 metropolitan districts** now provide most other services for metropolitan areas. Birmingham is the largest with a population of 1,016,800. Knowsley (population 150,800) is the smallest.

Since 1992, parts of England have been re-organised so that shire county and shire district responsibilities are carried out by a single **unitary authority**. Cornwall (population 532,200) is the largest unitary authority; the Isles of Scilly (population 2,100) is now the smallest. There are now **56** unitary authorities in England³. Figure 1 shows the different authorities within England and their main responsibilities.

Where unitary authorities and other authorities share certain services (i.e. fire and rescue services) there are **single purpose authorities** covering a large area.

The **Greater London Authority** is the upper-tier authority of London with a directly elected Mayor as its executive and a separately elected assembly. It has four areas of responsibility: police, fire and emergency, transport and London development. Most other services are provided by the **32 London borough councils** and the **City of London** (lower-tier authorities). The largest London borough is Croydon (population 341,800); Kingston upon Thames (population 160,100) is the smallest. The City of London has a population of just 7,900.

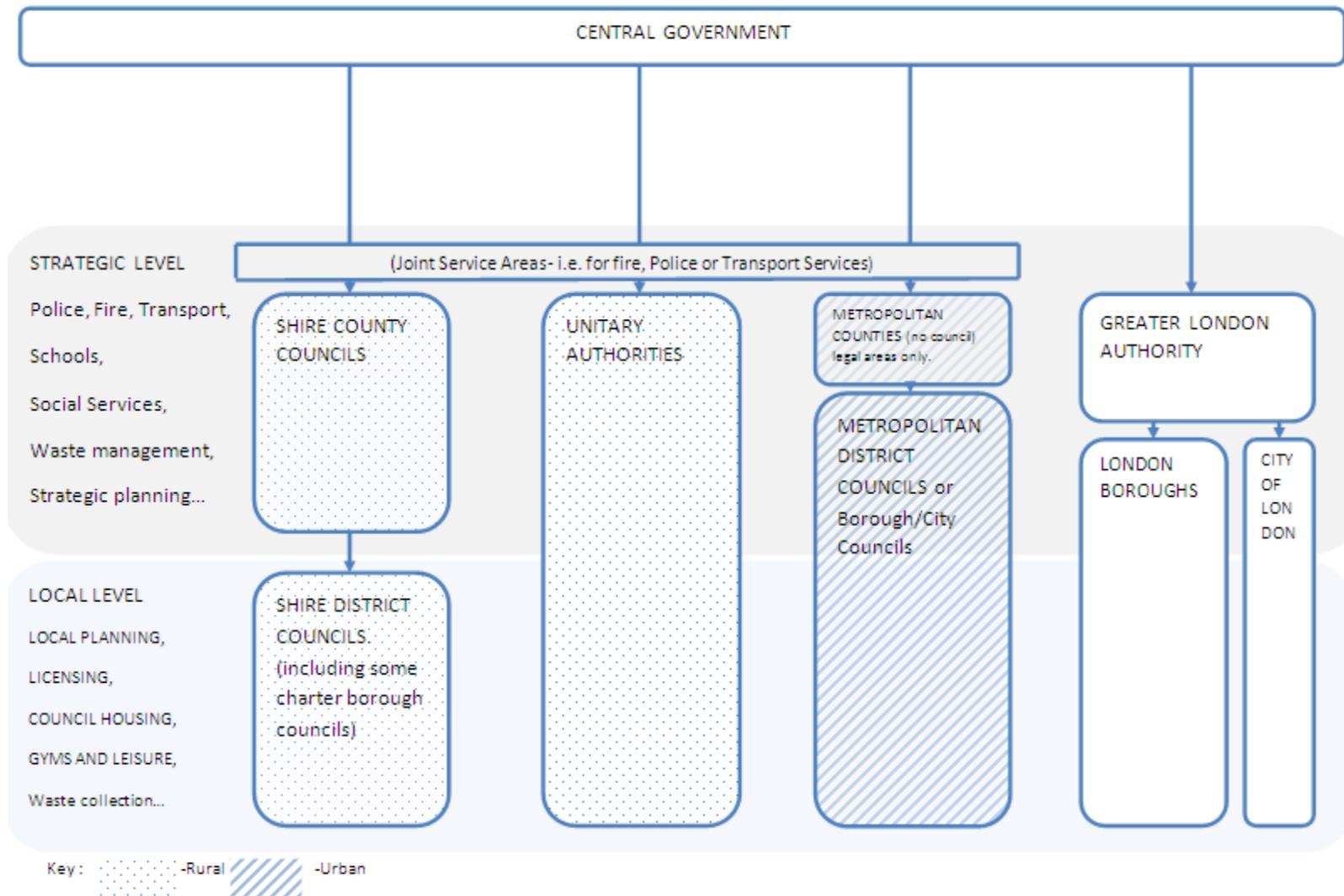
Shire counties and districts and unitary authorities cover 63% of the English population. Another 15% live in metropolitan districts, and the remaining 22% are within London.

English regions

England is currently divided into nine administrative regions⁴. Government Office Regions were created in 1994 to co-ordinate the regional activities of several government departments and each Government Office formed the link between central and local government in that region. Regions incorporate Regional Development Agencies (RDAs) and coincide with the electoral boundaries for English MEPs.

London is the only region with a directly elected assembly; other regional assemblies were composed of a majority of members from local councils. The assemblies used to take responsibility for regional spatial planning and transport planning from county councils, but these assemblies (excluding London's assembly) were themselves abolished in 2010 and their functions transferred to RDAs and Regional LA Leaders' Boards. In 2010, the Coalition Government announced its intention to abolish RDAs and Regional LA Leaders' Boards, leaving London as the only remaining region with an assembly, RDA and planning powers.

Figure 1 Structure of local authorities in England



Scotland, Wales and Northern Ireland

Constitutionally the Westminster Parliament is the supreme power in the UK. It has the power to make law on any matter and this cannot be challenged in the courts. It has created the Scottish Parliament, the Welsh Assembly and the Northern Ireland Assembly and has given them the power to make law for their own areas of the UK. The Westminster Parliament will not normally legislate on devolved matters, but it retains the power to legislate for all of the UK and can override any other legislation.

The regions do not have equal levels of autonomy:

- The **Scottish Parliament** can enact primary legislation – Acts of the Scottish Parliament – subject to territorial limits. Certain matters are ‘reserved’ by the UK Parliament: defence, foreign affairs and other more specific areas.
- The **Northern Ireland Assembly** can also enact primary legislation – Acts of the Assembly. As in Scotland, certain matters are ‘excepted’ by the UK Parliament.
- The **Welsh Assembly** cannot make primary legislation. It has the power to make delegated legislation on certain devolved matters. These areas of competence can only be added to by UK legislation.

Local authorities are therefore subject to different laws in each region of the UK.

The devolved governments are responsible for local authorities in their territory and they supply most of their funding. This means there is a different pattern of local government across the four regions. Scotland, Wales and Northern Ireland have only one tier of local authority, similar to unitary authorities in England, although there are the following differences between them.

Scotland

Scotland has 32 local authorities. The largest local authority in Scotland is Glasgow City (population 548,200), and the Orkney Islands (19,900) is the smallest. Most of their funding comes from the Scottish Government.

Wales

Wales has 22 local authorities. This number might be reduced in the future. Rhondda, Cynon, Taf (population 234,100) is the largest local authority; Anglesey (population 69,000) is the smallest.

Eighty per cent of their funding is set by the Welsh Assembly. Most of this comes from a block grant paid by the Westminster Government.

Northern Ireland

Northern Ireland currently has 26 local authorities. Belfast (population 268,300) is the largest local authority; Moyle (population 16,900) is the smallest. These authorities deliver fewer local services than in England, with many services being provided by regional bodies or the devolved government.

A devolved Assembly review has decided to reduce the number of authorities to 11 and to transfer to local authorities some functions such as planning, local roads, minor economic development and housing currently exercised by central government.

Local government powers and responsibilities

Local authorities' powers are derived from legislation enacted at a UK level and at a devolved level in the regions. The exercise of certain powers is a matter of discretion for the local authority while others are subject to a legal duty.

There are a range of functions carried out by local government, either directly by its employees or through appointed bodies. These include education, transport, social services, housing, cultural services, environmental services, planning and development, and protective services. (See Appendix 7 for a fuller list of service areas.)

There is no set pattern to the exercise of these functions. More specific elements of each function can be divided among the various levels of authority from the regional to the local district level. For example, strategic planning decisions are made by upper-tier authorities or at a regional level, while individual planning applications are handled by the lower-tier district authority. Table 1 shows a more detailed pattern of service delivery by local authorities in England.

Table 1 Local authority responsibility for major services in England

	Metropolitan areas		Shire areas				London area			
	District councils	Single purpose authorities	Unitaries	County councils	District councils	Single purpose authorities	City of London	London boroughs	GLA	Single purpose authorities
Number of authorities	36	20	56	27	201	55	1	32	1	4
Education	✓		✓	✓			✓	✓		
Highways	✓		✓	✓			✓	✓	✓	
Transport planning	✓		✓	✓			✓	✓	✓	
Passenger transport		✓	✓	✓					✓	
Social care	✓		✓	✓			✓	✓		
Housing	✓		✓		✓		✓	✓		
Libraries	✓		✓	✓			✓	✓		
Leisure and recreation	✓		✓		✓		✓	✓		
Environmental health	✓		✓		✓		✓	✓		
Waste collection	✓		✓		✓		✓	✓		
Waste disposal	✓	✓	✓	✓			✓	✓		✓
Planning applications	✓		✓		✓		✓	✓		
Strategic planning	✓		✓	✓			✓	✓	✓	
Police		✓				✓	✓		✓	
Fire and rescue		✓		✓		✓			✓	
Local taxation	✓		✓		✓		✓	✓		

Source: *Local Government Financial Statistics, England No 20, 2010*.⁵ Subject to Crown copyright.

Devolution to local government and measures of performance

Local authorities are being encouraged to take centre stage in the battle against obesity. The Government has focused on the strengthening of local democracy in England and a concurrent strengthening of local government, making them best placed to deal with many of the causes of obesity. Scotland, Wales and Northern Ireland have taken different approaches but in many cases local authorities have the power to take action against obesity using the existing regulatory environment.

England

In recent years central government has looked to local government to play a major role in meeting national ambitions. This has meant an increase in local autonomy, allowing authorities greater flexibility in their use of government funds and the tailoring of performance to match local priorities.

The Government has agreed a three-year **Local Area Agreement (LAA)** with each upper-tier local authority⁶ and strategic partners like the police and primary care trusts (a Local Strategic Partnership or LSP). These are matched to 35 negotiated targets chosen from a set of 198 national indicators (to replace over 1,200 previous indicators). In two-tier areas it is possible to set both district and upper- and lower-level indicators as part of the agreement.

Some of these indicators are directly relevant to obesity. Other indicators are not directly related to obesity but encourage measures that would promote healthy eating or physical activity (see Table 2). Three of these indicators are among the 20 most commonly chosen LAA indicators: NI 56 (Obesity in primary school age children in year 6) is the sixth most commonly chosen indicator, suggesting that many LAAs will specifically target a reduction in child obesity.

(Note: In October 2010 the Secretary of State for Communities and Local Government announced that the Government will no longer require new LAAs, and the ending of the monitoring of those currently in place. Future targets will be locally set and monitored, and the data required from local authorities by central Government will be reduced.)

Scotland

There is now a similar relationship between the Scottish Government and local government as there is in England. Single Outcome Agreements (SOAs) are similar to LAAs in that they focus on local priorities and aim to end ring-fencing of funds to give local authorities greater autonomy and flexibility.

Wales

Local authorities are responsible for setting and reporting their own performance targets.

Northern Ireland

There are no LAAs here but they will be considered in the future if local government is re-structured to increase local powers and responsibilities.

Table 2 National indicators closely related to the promotion of physical activity or healthy eating (England)

	National indicator	Originating Departmental Strategic Objective (DSO) or Public Service Agreement (PSA)
NI 8	Adult participation in sport and active recreation	DCMS DSO (16 th most commonly chosen)
NI 47	People killed or seriously injured in road traffic accidents	DfT DSO
NI 48	Children killed or seriously injured in road traffic accidents	DfT DSO
NI 52	Take-up of school lunches	PSA 12
NI 55	Obesity in primary school age children in reception	PSA 12
NI 56	Obesity in primary school age children in year 6	DCSF DSO (6 th most commonly chosen)
NI 57	Children and young people's participation in sporting opportunities	DCSF DSO
NI 119	Self-reported measure of people's overall health and wellbeing	DH DSO
NI 120	All-age all cause mortality rate	PSA 18 (11 th most commonly chosen)
NI 121	Mortality rate from all circulatory diseases at ages under 75	DH DSO
NI 137	Healthy life expectancy at age 65	PSA 17
NI 167	Congestion – average journey time per mile during the morning peak	PSA 5
NI 173	Flows on to incapacity benefits from employment	DWP DSO
NI 175	Access to services and facilities by public transport, walking and cycling	DfT DSO
NI 176	Working-age people with access to employment by public transport (and other specified modes)	DfT DSO
NI 177	Local bus and light rail passenger journeys originating in the authority area	DfT DSO
NI 178	Bus services running on time	DfT DSO
NI 185	CO ₂ reduction from local authority operations	PSA 27
NI 186	Per capita reduction in CO ₂ emissions in LA area	PSA 27
NI 188	Planning to adapt to climate change	PSA 27
NI 198	Children travelling to school – usual mode of travel	DfT DSO

DCMS = Department for Culture, Media and Sport
DCSF = Department for Children, Schools and Families
DfT = Department for Transport
DH = Department of Health
DSO = Departmental Strategic Objective
DWP = Department for Work and Pensions
PSA = Public Service Agreement

Sustainable communities and health

Recent legislation and guidance has promoted the principle of sustainable development throughout local government,^{7 8 9 10 11 12 13} particularly in the development of spatial planning and transport planning documents. The following framework is in place to ensure that sustainability and community involvement are paramount in local policy formation.

Local Strategic Partnerships (LSPs)

LSPs were introduced by the Local Government Act 2000. They are non-statutory bodies initiated and led by local authorities and made up of representatives from the public sector, business, the voluntary sector and community organisations.

LSPs: *“provide the forum for collectively reviewing and steering public resources, through identifying priorities in Sustainable Community Strategies and LAAs.” (Creating Strong, Safe and Prosperous Communities: Statutory Guidance¹³)*

Their primary role is to produce a Sustainable Community Strategy (SCS), based on data and evidence from the local area, to establish a shared set of priorities for action. The long-term vision embodied in the SCS will then be used to guide and produce a three-year Local Area Agreement (LAA) that sets local priorities and targets for monitoring. Certain bodies are statutory ‘partner authorities’ and as such must be involved and co-operate in preparing LAA targets that relate to them.

All local authorities are required to prepare an SCS¹⁴ but only upper-tier authorities are required to prepare an LAA. An LAA should reflect the local priorities identified by both upper- and lower-tier LSPs, and therefore upper-tier authorities are required to consult partner authorities in preparing and modifying their strategy¹⁵.

(Note: The Government no longer requires new LAAs. See note on page 21.)

Sustainable Community Strategy (SCS)

An LSP is required to consult and seek out the views of all groups within the community in drawing up their strategy¹⁶ and there is now a broad legal duty to involve the community in local decision-making¹⁷.

There has been a change of nomenclature from ‘community strategies’ as originally legislated and ‘Sustainable Community Strategies’, to emphasise that sustainability should be at the heart of decisions.

A Sustainable Community Strategy should contribute to the achievement of sustainable development in the UK. This goal is “to enable all people throughout the world to satisfy their basic needs and enjoy a better quality of life, without compromising the quality of life of future generations” (*Securing the Future – UK Government Sustainable Development Strategy 2005*).¹⁸

Health is an important part of the principle of ‘sustainable development’. For a local priority or policy to be sustainable, it should respect five principles¹³:

- living within environmental limits

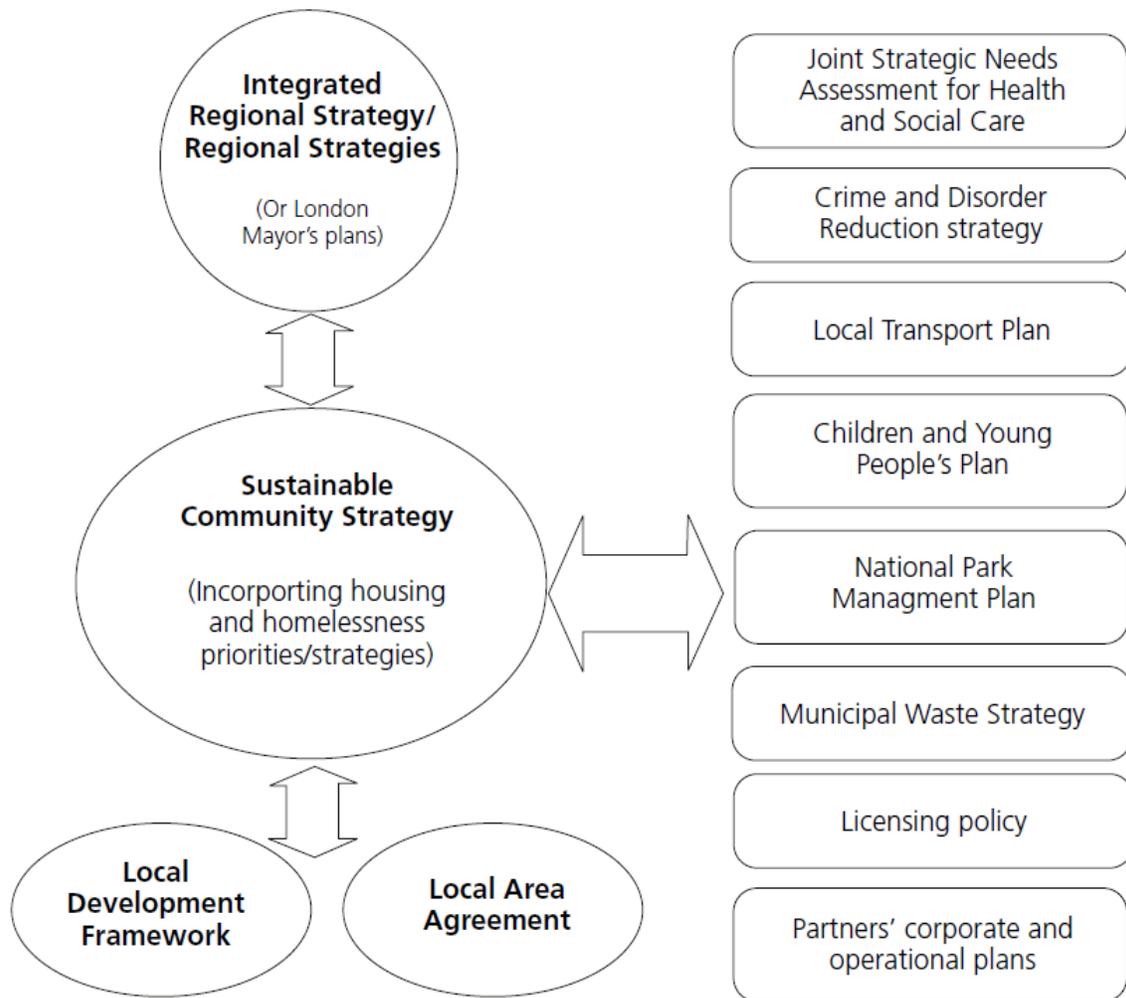
- *a strong, healthy and just society*
- achieving a sustainable economy
- promoting good governance
- using sound science responsibly.

Sustainability will shape the content of long-term local strategies, which will in turn guide the immediate local priorities within an LAA and this agreement will direct all local authority decisions on resource allocation and development for the duration. Alongside this, the SCS and LAA will guide the construction of other longer-term local plans including the Local Development Framework (LDF) and Local Transport Plan (LTP). (See Figure 2 for an explanation of LDFs and LTPs.)

It is important that the development of a healthy community is given a key priority in the over-arching Sustainable Community Strategy. If this is done, the health agenda will filter through all areas of local authority activity.

The requirements of community and stakeholder consultation in the SCS process create the potential for public advocacy prioritising a healthy community. The Sustainable Communities Act 2007 provides a process by which ideas generated by local communities can be fed through the local authority and selected for consideration by central government.

Figure 2 Relationship between Sustainable Community Strategies and other statutory local plans



Source: Department for Culture, Media and Sport.¹³

The planning system

The English government introduced a new 'plan-led' system of planning in 2004. Planning bodies are now required to draw up long-term frameworks for land use which are designed to meet broader policy goals. These will guide and mark the statutory starting point for all planning decisions in their area.

Below is an outline of the planning system in England. Scotland and Wales have similar planning structures and Northern Ireland is embarking on a reform of its whole planning system.

Figure 3 demonstrates the hierarchy of the planning system in England.

National level

The department of Communities and Local Government develops national policy which is then set out in Planning Policy Statements (PPSs). These are replacing Planning Policy Guidance notes (PPGs). Government will also produce National Policy Statements on the development of important infrastructure like motorways, railways, and energy generation and supply lines. Decisions on these infrastructure projects will be made by a new Infrastructure Planning Commission, and not by local or regional bodies.

Regional level

Until 2010, regional planning bodies were required to produce a Regional Spatial Strategy (RSS) reflecting their development and land-use aims over a 10 to 15 year period. The strategy would reflect national planning policies and was drawn up in collaboration with a number of stakeholders including all the local authorities in a region. Following the abolition of regional assemblies (outside London) the regional planning function was transferred to Regional LA Leaders' Boards.

Regional Spatial Strategies were revoked in July 2010 and no longer form part of the Statutory Plan. However, in London, regional planning is still the responsibility of the Mayor of London who produces a Spatial Development Strategy – The London Plan.

Local level

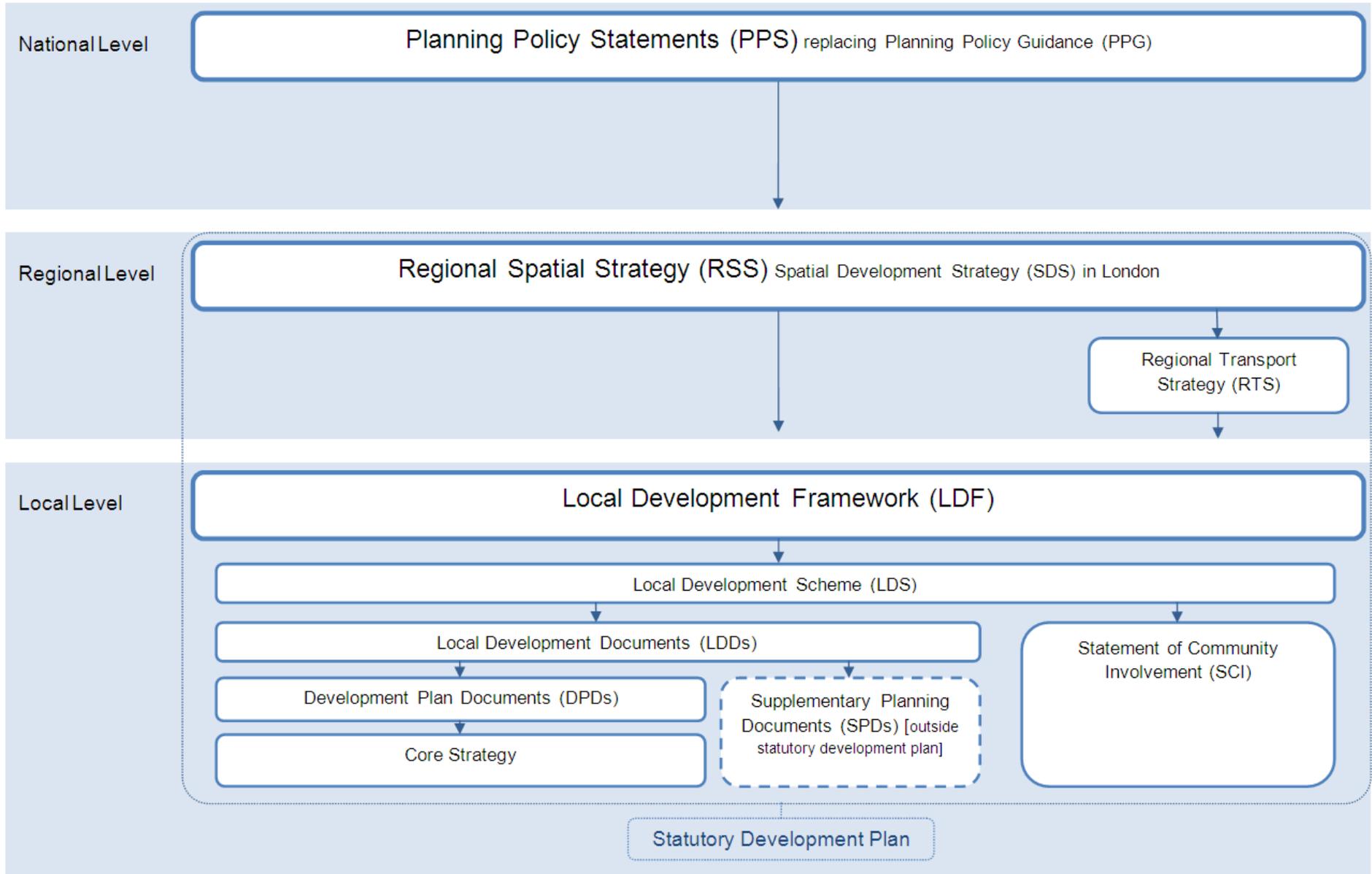
Local planning authorities (mainly lower-tier local authorities) must now prepare a **Local Development Framework (LDF)**, which (until 2010 with the RSS) forms the statutory **development plan** for all planning decisions. This plan must be the starting place for decisions, but other considerations may be relevant.

The LDF will contain a Local Development Scheme (LDS), which sets out the programme for the production of the framework. It will include Local Development Documents (LDDs) and a core strategy as the key plan within the framework.

A core strategy will contain an overall vision for the development of an area over a minimum of 15 years, alongside policy objectives and a strategy for their achievement. Other supplementary documents may add detail or further goals to the framework, but are not strictly part of the statutory plan.

Figure 3 Planning policy in England

Note: From 2010, the regional level applies only to London.



Public health and planning

Urban planning has a strong public health pedigree. In the 19th and early 20th centuries, green space was created to improve mental and physical wellbeing, community infrastructure (such as drinking water and sewage systems) were developed to control infectious disease, and land-use policies were created to protect against industrial toxic and injury hazards. However, the health and planning disciplines drifted apart during the 20th century. The recognition of environmental factors behind modern-day epidemics of obesity and coronary heart disease has strengthened calls for resurgence in public health driven planning¹⁹.

Sustainable development and planning

National policy recognises the imperative for development of healthy settlements and communities. The Planning and Compulsory Purchase Act 2004 imposes a legal duty to aim towards sustainable development in the creation of LDFs²⁰. PPS 1 'Delivering sustainable development' places the principle of sustainable development at the core of the planning system.

This is a broad principle which incorporates social, environmental and economic aims. The objectives of sustainable development include the encouragement of 'safe, healthy and attractive places to live' and healthy communities.

Health is potentially an important factor in planning decisions. However, attention has been drawn to a policy/action gap in the planning system which has meant that this potential is all too infrequently met²¹.

The examination of planning and public health has hitherto focused on construction of an environment which encourages physical activity. However, planning has also begun to be recognised as an important tool in the promotion of nutrition and the development of a healthy eating environment.

Advocacy and policy formation

There is scope for advocacy for a healthy planning framework at regional and local level. The construction of an LDF requires wide stakeholder and public consultation, and community involvement is one of the key principles of sustainable development (PPS 1). Local authorities are engaged in Local Strategic Partnerships (LSPs) with other public, private and third-sector bodies to form a strategy to improve their community. This will in turn influence the policy of an LDF.

There are opportunities for involvement in the drafting of key documents during evidence-gathering processes, consultation stages and examinations in public. An authority is obliged to consider comments and take appropriate action. In preparing an LDF, a local authority must produce a **Statement of Community Involvement (SCI)** as part of their development scheme to describe their consultation programme. Similarly, regional bodies must produce a Statement of Public Participation (SPP) as part of any strategy revision. The plans are also reviewed by

independent planning inspectors on behalf of the Secretary of State who will consider public representations.

It will be more difficult to influence a framework or strategy once it has been finalised and adopted, and many areas have already nearly completed their LDF. Any legal challenges to a strategy or framework must be brought within six weeks of approval by the Secretary of State.

Policy implementation and development control

Development control is conducted by planning officers and local officials through the consideration of planning applications on a case-by-case basis.

An application for planning permission for new development or for change of use²² is made to the local planning authority, which will appoint a professional planning officer to review the case. The officer will produce a report on the relevant issues for the executive committee or council member and a recommendation on whether or not the application should be approved. The final decision is made by a committee or a single councillor under delegation.

The inspector's report and the decision should be in line with the statutory development plan unless other material considerations apply. Where other considerations are relevant, the statutory plan will be the starting point for the decision.

A decision may be challenged by an appeal to the Secretary of State (handled by the Planning Inspectorate). Third parties may comment on a planning application but may not appeal the decision.

Planning and advertising

Local planning authorities have control over some forms of advertising in their area. Posters, billboards and other signs are subject to consent rules, provided they are not of a class excluded from local authority control or deemed to be acceptable under national rules. Where an advert does require consent, the authority may only consider two issues: amenity and public safety. Amenity relates to the visual effect of the advert within the local environment; the content of the advert is not a relevant consideration. Public safety is confined to traffic or road safety only. This means that a local authority is not able to restrict static advertising on health grounds.

Local licensing

Certain activities require a licence from the local licensing authority under the Licensing Act 2003. This might provide an opportunity to promote healthy eating.

Licensing powers are to be exercised with a view to specific objectives²³:

- the prevention of crime and disorder
- public safety
- the prevention of public nuisance, and

- the protection of children from harm.

Scotland's licensing laws include a fifth objective of 'protecting and improving public health'²⁴ but this has only been in force since September 2009. Without a specific health objective in England and Wales it is not certain how far a health-based restriction on a licensable activity might be justified under the Act²⁵.

In determining a licence application, any representations from an authorised person, interested party or a responsible authority must be taken into consideration²⁶.

Late-night takeaway

The provision of hot food or drink (beyond certain exemptions) after 11pm and before 5am requires a premises licence²⁷.

If public health can be brought into the licensing objectives, a licence to sell unhealthy late-night takeaway food may be refused or restricted on these grounds. Otherwise, late-night food can only be restricted in line with the current objectives.

Street trader licensing

This is governed by the Local Government (Miscellaneous Provisions) Act 1982 and does not have a set of statutory objectives.

Transport planning

National level

The Department for Transport is responsible for national transport policy and has direct control of national and international networks. It produces statutory guidance for regional and local authorities and provides government funding for much of their work.

Local level

Local Transport Authorities (LTAs) are responsible for a **Local Transport Plan (LTP)**. They are upper-tier authorities, unitary authorities or, in England's metropolitan areas, Integrated Transport Authorities (ITAs)²⁸ who have drawn up plans in partnership with metropolitan district councils²⁹.

A Local Transport Plan must further the aims of the Sustainable Community Strategy and take into account national transport policy, regional plans and local development frameworks. Local transport funding is derived from two sources: the regional funding allocation and direct grants from the Department for Transport (DfT). The LTP is an important document in securing DfT funding for specific initiatives.

The Transport Act 2008 has removed a requirement that an LTP be produced every five years, to allow longer-term, more flexible transport planning³⁰. The DfT will no longer formally assess LTPs or impose mandatory targets³¹. This is to encourage local authorities to choose their own objectives and make them accountable to their community rather than to central government. Their assessment will be through the LAA process and public service inspections. An LTP must contain strategic policies and implementation plans. These may be separate documents and subject to separate timescales, to allow correspondence with infrastructure projects or community strategies.

An LTP will contain local objectives but these must refer to five over-arching national transport objectives³²:

- to support national economic competitiveness and growth, by delivering reliable and efficient transport networks
- to reduce transport's emissions of carbon dioxide and other greenhouse gases, with the desired outcome of tackling climate change
- *to contribute to better safety, security and health and longer life expectancy by reducing the risk of death, injury or illness arising from transport, and by promoting travel modes that are beneficial to health*
- to promote greater equality of opportunity for all citizens, with the desired outcome of achieving a fairer society, and
- to improve quality of life for transport users and non-transport users, and to promote a healthy natural environment.

Government guidance stresses that transport and spatial planning should be closely integrated and recommends joint planning between county and district councils and alignment with Local Development Frameworks. An LTP should recognise that patterns of transport may cross local boundaries, so a joint LTP between several authorities might be appropriate.

Health impact assessment

Consideration of 'human health' is a legal requirement in a Strategic Environmental Assessment (SEA), and a Health Impact Assessment (HIA) is an integral part of an SEA to identify and inform health issues in plans. Undertaking an HIA should provide an evidence base to help the decision-making process in developing an effective LTP, and to mitigate the negative effects on health and wellbeing (whether physical and/or mental health).

Glossary of terms

The language and institutions of the law and legislation often appear complex. The aim of this section is to describe the meaning of a number of important key terms used in this report.

Legislation

This means the process of the enacting laws by Parliament, or under a power granted by Parliament. Legislation will usually be formulated outside a particular factual context and will be of general application (i.e. legislation is designed to apply to all situations). Therefore, the role of legislation is to establish laws of general application – the primary purpose of which is to guide the conduct of those subject to the law. Legislation takes two forms:

- 1 Primary legislation (also Act of Parliament or Statute) – Legislation enacted by Parliament itself. Usually a Bill is drafted by the Parliamentary Counsel, under instruction from the relevant government department. It then goes to the House of Commons, where there will be a vote. If the Bill is passed, it goes on to the House of Lords, and if it is passed by both Houses it will become an Act of Parliament.
- 2 Secondary legislation (also Statutory Instrument, Delegated Legislation) – Legislation enacted usually by a government department under a power granted to that body in an Act of Parliament. Hence the power to enact legislation is delegated by Parliament to the body concerned.

Parliament

Technically this is a collection of three institutions: the House of Commons, the House of Lords and the Queen. In practice, once both Houses have approved a Bill, the Queen's assent is never refused. Note that it is not the government of the day – their influence is limited to proposing a Bill. However, members of the government will usually be members of the House of Commons, or occasionally the House of Lords, and so the members of the government will have some role in the passing of legislation, usually in their capacity as MPs. Furthermore, it is not the House of Commons – whilst they must approve a Bill before it can be enacted, in the majority of cases the approval of the House of Commons alone is not sufficient. (The only exception is when the Parliament Acts are invoked to force the Bill through the House of Lords. However, this is not commonly used and its use has traditionally been governed by strict conventions.)

Enacted

The act of passing legislation – when it has been adopted by Parliament.

Case law

This means law that stems from the resolution of individual cases in court. Unlike legislation (above), it is not necessarily of general application and the decision in a case can very often be limited to its own facts. Essentially case law operates in two areas. First, case law will be

relevant to the interpretation of legislation. Hence there will be case law that establishes what certain Statutes or Statutory Instruments mean, or parts thereof. Second, case law is relevant in the development of the common law (see below).

Common law

This means law that is developed by the judiciary on a case-by-case basis. It develops as a series of cases clarify or expand on points so as to create a body of law of general application, the practical effect of which is very similar to legislation. Historically, whole areas of law were entirely judicially developed and today, large sections of the law are still entirely judicially developed. As an example, large areas of the law of contract or the law on negligence are judicially developed.

Byelaws

This means law made by those acting at the local level, in the form of a regulation adopted by a local authority or corporation. Byelaws will be of limited geographic scope, only applying in the area controlled by the local authority or corporation concerned, and will generally speaking be concerned with more minor nuisances (e.g. playing of ball games in public areas, cycling through parks, etc.) Byelaws give rise to criminal offences, currently enforced through the Magistrates' Courts, with fines ranging from £200 to £2,500.

Judicial review

The procedure whereby the courts determine the legality of the exercise of powers held by public or state bodies. It is not an appellate jurisdiction; the court cannot supplement its own decision in place of the public body, but may find that errors in the decision-making process render the decision illegal, or that the body has acted outside its powers.

Judiciary

The judges of England and Wales collectively.

European Union law (EU law)

A body of law that is outside the Parliamentary system within the UK, European Union law stems from the institutions of the European Union (EU) – primarily the Council, Commission, European Parliament and the European Court of Justice (ECJ). EU law can essentially take three forms. 1) Legislative, whereby a law is adopted by the European Union and is then directly effective in the UK (for all practical effects, as if enacted by the UK Parliament – so it is similar to primary legislation). 2) A lot of EU law is regulatory in nature and very similar to regulations formulated and adopted as secondary legislation by government departments in the UK. 3) The hugely significant body of EU law and the EU's constitutional structure have been developed by the case law of the ECJ.

European Court of Justice cases

The case law of the European Court of Justice (ECJ) and the Court of First Instance (CFI – a lower court to the ECJ) has been very relevant in developing the constitutional structure of the European Union (EU) and in developing the substantive law of the EU. Much like UK case law, it is relevant in the interpretation of the treaties that have established and modified the EU and

in the interpretation of law adopted by the institutions of the EU. In some areas the 'interpretation' of the ECJ has been so extensive that some argue that it is developing a body of law analogous to England's common law.

2 Methods and results

Systematic review of traditional databases

Methods

Computerised searches were carried out using MEDLINE, AMED, EMBASE, CAB abstracts, PAIS International, Global Health, PsychINFO, and Sports DISCUSS (physical activity search only) from 2002 to September 2009. The search strategy was piloted to search for studies on MEDLINE and adapted for each database. Key words for the searching included 'food', 'food behaviour', 'healthy eating', 'obesity', 'exercise', 'physical activity', 'swim', 'cycle', 'walking', 'law', 'legislation' and 'local authority'. An example of the search strategy for MEDLINE is presented in Appendix 1. The search was limited to English language journals. Potential papers were assessed via titles or abstracts. Additional searching was undertaken using references of review papers and the papers identified in the search.

Each paper was read and assessed against the following inclusion criteria:

- The paper must be reporting the results of an observational or experimental study that aims to examine the possible relationship of any type of physical activity or healthy eating and any aspect of law or legislation.
- Theoretical review papers that reference to fiscal, legislative, environmental or policy interventions to promote physical activity or healthy eating were also included.
- The results or examples must have an impact (positive or negative) upon the promotion of physical activity or healthy eating.

Results

6,625 hits were made with 59 papers reviewed (1,850 hits for food searches and 4,775 hits for physical activity searches). 49 papers met the inclusion criteria and are described in Tables 3 to 13. The majority (31) of papers were from the USA, with only nine from the UK and seven from Australia or New Zealand. The other paper related to Africa. The results were analysed under four main headings reflecting the main focus of the paper, although there is some overlap between categories:

- Papers identifying regulations or legal strategies to combat obesity (10 papers) Tables 3 and 4
- Papers on law and physical activity (5 papers) Tables 5 and 6
- Papers on planning law and physical activity or healthy eating (9 papers) Tables 7 and 8
- Theoretical papers referencing:
 - law and food (2 papers) Tables 9 and 10
 - law and obesity (15 papers) Tables 11 and 12
 - law and physical activity (8 papers) Table 13

The majority of papers were theoretical rather than observational studies. These papers discussed the rationale for legal or environmental interventions, or identified a multi-level framework for legal intervention to combat obesity.

Very few papers directly addressed local authority options for promotion of physical activity or healthy eating, and those that did referred to the built environment and physical activity, or the school environment and physical activity or nutrition. A few studies examined local government decision-making. These were focused on policies related to physical activity. There were no studies of the impact of planning or other local laws on healthy eating. Some papers addressed the relationship between law and physical activity, especially on the negative impact of injury liability on activity promotion.

Table 3 UK examples of regulations or legal strategies to combat obesity

Author and date	Country	Study aim	Aspect of law or regulation	Findings	Relevance
1. Licence (2004) ³³ Review paper	UK	A review of research into interventions that promote and protect the health of children, including those that promote a healthy diet and physical activity among children.	Multi-level legal strategies to reduce obesity (UK)	There is a lack of high-quality evidence from interventions for reducing childhood obesity and the bulk is from the USA and not the UK. However, there is evidence of success by controlling advertising and availability of damaging goods, by ensuring a healthy school environment and by encouraging active lifestyles in children.	High: Evidence-based environmental interventions
2. Akerman (2006) ³⁴ Cross-sectional study	UK	A survey of transport authorities and primary care trusts (PCTs) to identify joint working arrangements and understand the impact of health themes in transport plans and vice versa.	Local Transport Plans (UK)	Consultation with the PCT was full in 67% of transport authority areas and more limited in the remainder. Only 33% of areas had agreed common targets but 40% had shared programmes or themes and 13% had one theme agreed. Seventy-seven per cent of areas had on-going links between transport and health authorities. Joint working needs to be strengthened, formalised and re-organised.	High: Reality of local transport planning
3. O'Brien (2008) ³⁵ Description paper	UK	Description of legally binding school food standards and the responsibilities of local authorities and schools in meeting them.	Nutritional standards in schools (UK)	Responsibility for provision lies with the local authority or directly with schools in some cases. Progress is monitored by Ofsted.	High: Local authority responsibility for school meals

Table 4 International examples of regulations or legal strategies to combat obesity

Author and date	Country	Study aim	Aspect of law or regulation	Findings	Relevance
4. Perdue et al (2005) ³⁶ Cross-sectional review	USA	Review of legal strategies across multiple public health settings that help prevent and control cardiovascular disease.	Federal, state and local legislation to combat cardiovascular disease	Seven strategies of regulation: 1) direct regulation, 2) economic incentives and disincentives, 3) indirect regulation through private enforcement, 4) government as information provider, 5) government as direct provider of services, 6) government as employer and landlord, and 7) laws directed at other levels of government.	Background: Framework for legal intervention
5. Yee et al (2006) ³⁷ Evaluation	USA	Evaluation of the first 20 states funded by the Nutrition and Physical Activity Program to Prevent Obesity and Other Chronic Diseases over 2004.	State legislation to prevent obesity	Nearly half of the states reported legislative acts related to nutrition or physical activity as part of a programme of environment change. Over half were planning new legislation. There was also progress in capacity-building and interventions.	Background: Status of legal interventions
6. Boehmer et al (2007) ³⁸ Systematic review	USA	Systematic review of state-level childhood obesity prevention legislation introduced or adopted between 2003 and 2005.	State-level childhood obesity prevention legislation	The amount of legislation – introduced and adopted – increased over the period. There was no statistical association between state-level adult obesity prevalence and the introduction of legislation. Some geographical patterns were observed. A scale of topic popularity was identified. School nutrition standards and vending machines were the most popular subjects for the introduction of legislation.	Background: Status of environmental legal interventions

Author and date	Country	Study aim	Aspect of law or regulation	Findings	Relevance
7. Ashe et al (2007) ³⁹ Framework paper	USA	Highlights a selection of local (not federal) legal strategies to fight obesity	State and local laws to combat obesity (USA)	Communities can take the lead from the tobacco control movement in using regulation to de-normalise obesogenic behaviour, and improve: 1) the school environment, 2) the built environment, 3) community facilities, and 4) the point-of-sale environment. There is also potential to raise revenue for health measures through taxation of harmful activities or products.	Background: Framework for local level intervention
8. Magnusson (2008) ⁴⁰ Systematic review	Australia	A systematic review of population-wide legal strategies that might prevent weight gain, with particular reference to Australia and the USA	Multi-level legal strategies to reduce obesity	A number of measures are identified: creating a structure for a 'whole of government' approach to obesity; using law to create health information resources; law mandating the provision of nutrition information; restriction of unhealthy advertising; economic measures – fat taxes, tax relief for workplace-based prevention, tied grants to local agencies and medical 'lifestyle prescriptions'; and direct regulation of businesses and organisations. The impact of any one measure may be modest but their cumulative effect could be far greater.	Background: Framework for legal interventions
9. Story et al (2009) ⁴¹ Discussion paper	USA	Discussion of the role of school environments and policies in obesity prevention	School food and physical activity policies	The article found that: 1) competitive foods are widely available in schools. Studies have related the availability of snacks and drinks sold in schools with students' high intake of total calories, soft drinks, total fat and saturated fat, and lower intake of fruits and vegetables; 2) physical activity can be added to the school curriculum without academic consequences.	Low: School environment and obesity

Author and date	Country	Study aim	Aspect of law or regulation	Findings	Relevance
10. Pomeranz et al (2009) ⁴² Framework paper	USA	To present novel legal approaches to obesity through: a) direct application of law to factors that contribute to obesity; and b) new legal solutions that address the weak regulatory stance of government and ineffectiveness of existing policies.	Litigation, regulation and legislation to promote nutrition (USA)	<p>1) Advertising control: The USA's Constitution rarely allows restriction on free speech, even in commercial advertising to children. Instead can use 'compelled speech', labelling and information on health costs. It may be easier to regulate nutrition-related conduct, taxation, ingredient limits, zoning, and ban on sales. Litigation may be possible around addiction and industry disclosure.</p> <p>2) Innovation: Litigation can be inefficient compared to regulation – it is uncertain and less scientific but it might be the only possibility. Tort law requires causation, which is difficult to show in this context. Nuisance law might be used instead; the sale or promotion of obesogenic foods may be considered a public nuisance. However, two bills were introduced to senate and congress seeking to shield fast-food restaurants from liability and 24 states have enacted such legislation. Performance-based regulation might replace command and control regulation. For example, it may be possible to state the objective but leave industry to develop the means – such as a tax scheme with exemptions for achieved objectives.</p>	Background: Framework for legal interventions

Table 5 UK papers on law and physical activity

Author and date	Country	Study aim	Aspect of law or regulation	Findings	Relevance
<p>11. Trayers et al (2006)⁴³</p> <p>Community impact assessment</p>	UK	<p>To explore the perspectives of different groups in the community on planned improvements to the built environment.</p> <p>A qualitative, multiple-focus group study was conducted in a deprived neighbourhood subject to a proposed 'home zone' development (streets re-designed for equity between pedestrians, cyclists, social uses and vehicles) and extension of the National Cycle Network to provide traffic-free access to shops and facilities.</p>	Local environmental improvements benefitting physical activity	<p>Four main themes of concern were identified: safety, space, antisocial behaviour, and physical activity and health. Physical activity and health was the least important issue to all groups. Residents were more concerned with home and car safety and feared a new cycle/walkway would reduce their safety. Planners felt the changes would enhance safety and health for the residents.</p> <p>Environmental improvements may not improve levels of physical activity if community safety concerns are not taken into consideration.</p>	High: Factors influencing efficacy of local environmental improvements

Author and date	Country	Study aim	Aspect of law or regulation	Findings	Relevance
12. Taylor et al (2008) ⁴⁴ Feasibility study	UK	Research into the feasibility of four performance indicators being used as national indicators for play provision in local authority areas.	UK national indicators; LAAs	The four indicators represented participation in outdoor play, satisfaction with local play spaces, quality of local play spaces, and accessibility to local play spaces. Quality assessments could not be undertaken in a sufficiently consistent manner. The other indicators were found to be suitable for national comparison. Mapping data used to audit 'access' was useful in its own right, but some local authorities might find it challenging to develop such a resource.	High: Local authority performance indicators for play

Table 6 International papers on law and physical activity

Author and date	Country	Study aim	Aspect of law or regulation	Findings	Relevance
13. Kim et al (2008) ⁴⁵ Evaluation	USA	A study of rates of violation of Hawaii's strengthened 'pedestrian crosswalk' laws.	Pedestrian crossing laws	Drivers tend to commit proportionately more violations than pedestrians and the violations are committed by a broader range of drivers than pedestrians. Education and enforcement should be aimed towards drivers.	Low: Efficacy of local traffic laws
14. Griffin et al (2008) ⁴⁶ Community impact assessment	USA	A qualitative study to assess the importance of safety and environmental factors in influencing physical activity among African-American residents of a low-income, high-crime neighbourhood.	Crime and physical activity	Minorities and low-income groups are experiencing greater obesity rates than the general population. Focus groups identified safety and non-safety-based environmental barriers to physical activity and proposed solutions with an emphasis on safety and crime. Solutions included community cohesion and social support, structured programs and law enforcement.	Medium: Factors influencing efficacy of local environmental improvements
15. Eyler et al (2008) ⁴⁷ Evaluation	USA	To explore processes and policies that facilitate the development of community trails: a multiple-site case study.	Legislative or regulatory rules affecting establishment of multi-use trails.	Policy and legal influences came from federal, state and most influentially local level. Committed people, collaborative partnerships and community involvement are important to the success of trail development.	Low: Best practice for a particular local initiative

Table 7 UK papers on planning law and physical activity

Author and date	Country	Study aim	Aspect of law or regulation	Findings	Relevance
16. Mindell et al (2004) ⁴⁸ Health impact assessment	UK	To increase the positive and mitigate the negative health impacts of the Mayor's draft Transport Strategy for London. A rapid Health Impact Assessment (HIA) was applied to the draft strategy and change audits performed to assess the impact of the HIA on policy.	Regional Transport Strategies (UK); Transport Strategy for London (Mayor of London)	The Health Impact Assessment had a successful influence on the drafting process and the final strategy. Significant changes were made, including: promoting sustainable travel plans for workplaces and schools; giving priority to London's deprived communities; increased emphasis on promoting walking and cycling and reducing reliance on private cars; and a commitment to track the health impacts of the final strategy. The Health Impact Assessment was also successful in increasing policy makers' understanding of the determinants of health.	Background: Framework for 'healthy' policy

Table 8 International papers on planning law and physical activity

Author and date	Country	Study aim	Aspect of law or regulation	Findings	Relevance
17. Pollard (2003) ⁴⁹ Opinion paper	USA	An examination of the relationship between laws and policies that impact on the built environment and health problems related to physical inactivity and poor air quality.	Zoning laws	Zoning laws present a hurdle to healthier communities when they prohibit mixed-use development and make cycling and walking impractical. Minimum parking provisions and motor-centric street and road design add to the problem. Public funding of infrastructure like roads and sewers effectively subsidises scattered development. There are opportunities to improve health through policies that encourage mixed-use development and sustainable transport.	Low: Health problems of zoning
18. Perdue et al (2003) ⁵⁰ Theoretical paper	USA	An examination of the historical, empirical and theoretical relationship between public health and the built environment	National planning policies	There is a longstanding relationship between regulation of the built environment and public health. Government intervention in the built environment may conflict with the principle of autonomy, but since there is already a large degree of intervention the question becomes: which 'goods' are of greatest benefit to the population? Health is a not an overriding 'good', but government has an obligation to consider the population's health carefully in its land-use policies.	Background: Rationale for health-driven planning
19. Librett et al (2003) ⁵¹ Cross-sectional survey	USA	Survey of local planning officials to identify current and intended municipal policies that promote physical	Planning	Planners made up a small proportion of municipal staff. High-growth cities reported more current and intended planning policies that promote physical activity than medium-growth or small-growth cities.	Low: Status of healthy planning policies

Author and date	Country	Study aim	Aspect of law or regulation	Findings	Relevance
		activity in cities across Utah.			
20. Schilling et al (2005) ⁵² Theoretical paper	USA	To analyse the legal roots of zoning in order to direct reform that encourages smart-growth, mixed-use developments and physically active environments.	Zoning law	Zoning developed from the common law of public nuisance and was influenced by a need to protect public health against contagious disease and industrial hazards. However, current zoning regulations can operate as a barrier to more active mixed-use development. A modernisation of zoning to promote a more active environment is consistent with its legal heritage and current health problems.	Background: Rationale for health-driven planning
21. Kochtitzky et al (2006) ¹⁹ Theoretical paper	USA	Describes the pedigree of urban planning in improving public health, and evaluates modern application of public health to planning.	Planning	There has been a modern resurgence in the integration of planning and public health in the USA.	Background: Rationale for health-driven planning
22. Schilling et al (2008) ⁵³ Evaluation	USA	Case study of Wisconsin's plan-led system for urban development to examine its potential for active living.	Planning	Wisconsin's smart-growth planning system allows input from active living proponents and was found to have potential in addressing the relationship between physical activity and the built environment. Potential pitfalls were identified, including a possible political clash with advocates of property rights.	Background: Health potential of plan-led planning

Author and date	Country	Study aim	Aspect of law or regulation	Findings	Relevance
23. Lees et al (2008) ⁵⁴ Evaluation	USA	To assess the impact of a collaborative planning process for school siting on physical activity among children. A case study of Lee County, Florida.	Planning	The joint planning process was found to have limited impact on physical activity promotion and most participants ignored the impact of school siting on physical activity. There was found to be a need for further strengthening of the health inputs to planning decisions and health department involvement was very limited. Other barriers included the existing suburban model of development and parental objections.	Low: Factors influencing local decision-making
24. Heinrich et al (2008) ⁵⁵ Cross-sectional study	USA	A survey of local planning departments to identify policies that promote an Active Community Environment; providing a baseline measure across the state of Hawaii.	Local planning powers (USA)	Active Community Environments are encouraged by a number of policies across Hawaii's four counties in five domains: sidewalks, greenways, recreational facilities, commercial buildings, and shared-use paths. Few policies specifically addressed the promotion of physical activity. This baseline will help focus efforts to increase opportunities for physical activity.	Background: Status of local legal interventions

Table 9 UK theoretical papers on law and food

Author and date	Country	Study aim	Aspect of law or regulation	Findings	Relevance
25. Schmitt et al (2007) ⁵⁶ Review paper	UK	To survey the diversity and impact of marketing strategies that promote unhealthy food to children, and to assess the effectiveness of current controls.	Advertising, and labelling	The review found that a large variety of methods are used to promote unhealthy foods and that they have a strong impact on children. Product placement subverts the separation of advertising and editorial content. Parents and children are not always aware of healthy food promotion. Nutrition labelling does not attract consumers and is not easily understandable. Self-regulation is not sufficient protection for consumers; European-wide legislation is required.	Background: Regulation of marketing strategies

Table 10 International theoretical papers on law and food

Author and date	Country	Study aim	Aspect of law or regulation	Findings	Relevance
26. Cawley (2006) ⁵⁷ Theoretical paper	USA	Examination of policy solutions to childhood obesity from the perspective of economics.	Legal strategies to reduce obesity	Markets have contributed to the increase in childhood obesity. Government intervention in markets can be justified by economic rationales, because free markets under-provide information that the consumer needs, because society bears the costs of obesity, and because children are not 'rational consumers'. Policy options to address these problems should be subject to cost-benefit analysis but there is optimism since small changes in flows of calories can have a great impact on obesity numbers.	Background: Rationale for intervention in the free market

Table 11 UK theoretical papers on law and obesity

Author and date	Country	Study aim	Aspect of law or regulation	Findings	Relevance
27. Lang et al (2005) ⁵⁸ Theoretical paper	UK	Discussion of the case for a new 'Council of Nutrition and Physical Activity'.	National obesity policy co-ordination (UK)	Such a council could co-ordinate national food and health policy and improve their coherence. This would reduce a tension between product-oriented and healthcare-oriented policies.	Low: Co-ordinated policy-making
28. Martin (2008) ⁵⁹ Opinion paper	UK	An examination of how law might play a role in promoting a healthy food culture.	Legal strategies to reduce obesity (UK)	<p>The NHS gives a considerable added impetus for government to address the cost of obesity to the state. However, government policy has increasingly allocated responsibility for obesity to the individual, mitigating against a broad use of law. Instead it should be recognised that personal choices are heavily influenced by environment and circumstances, and that these factors can be legitimately addressed using the law. Some suggestions are made on how the law might address UK-centric risk factors. Removal of the worker's power to opt out of the EU's Working Time Directive would improve food preparation and consumption habits. Removal of obstacles to breastfeeding in public and control of promotion of infant milk products including follow-on milk would improve breastfeeding rates. A single clear regulation on nutrition labelling of food would encourage informed choices. A strengthening of advertising controls could protect children by altering their food choices.</p> <p>We must be careful in drawing a parallel with alcohol and tobacco, because it is harder to</p>	Background: Rationale and framework for environmental legal intervention

Author and date	Country	Study aim	Aspect of law or regulation	Findings	Relevance
				legislate for the distinctions between healthy and unhealthy foods. There must be a continued building of evidence on the contribution of environmental factors to obesity if law is to play a role in these areas.	

Table 12 International theoretical papers on law and obesity

Author and date	Country	Study aim	Aspect of law or regulation	Findings	Relevance
29. Mensah (2003) ⁶⁰ Opinion paper	Africa	Discusses the opportunity to prevent certain social, cultural and environmental risk factors for cardiovascular disease from arising in sub-Saharan populations.	Population-wide policies to prevent cardiovascular disease (sub-Saharan Africa)	Population-wide approaches include control of the environment and access to land for recreation and physical activity, and promotion of nutritious choices in schools.	Background: Framework for environmental intervention
30. Hayne et al (2004) ⁶¹ Theoretical paper	USA	Exploration of potential regulatory approaches to reduce obesity.	Multi-level legal strategies to reduce obesity	Food labelling, advertising controls, school nutrition regulations, vending controls, urban planning regulations and rules restricting eating behaviour can all help to reduce obesity. The USA's position in global trade promises that some beneficial impacts will also have an international dimension.	Background: Framework for legal intervention
31. Mariner (2005) ⁶² Framework paper	USA	To examine the lawyer's role in the field of public health and to provide a conceptual legal framework to identify the most	A human right to health	Human rights provide a conceptual framework for the application of appropriate law to different public health problems. Three obligations to respect, protect and fulfil the right to health are identified. These involve both freedoms and entitlements. This approach demands a balancing of competing rights, forcing specialist lawyers to	Background: Human rights rationale and framework for legal intervention

Author and date	Country	Study aim	Aspect of law or regulation	Findings	Relevance
		suitable type of law for each public health problem.		adopt a broader view of public health legislation.	
32. Roller et al (2006)⁶³ Opinion paper	USA	Opinion piece criticising litigation and its underlying rationale as a means of advancing obesity and public health objectives.	Deception law suits; federal nutrition regulations (USA)	Class-action deception law suits aimed at unhealthy promotion messages are undermining federal regulations that have already accounted for public health. Overly strict regulation of nutritional claims harms the dissemination of healthy messages; nutritional competition among producers was most intense prior to extensive regulation. Controversial food marketing practices have been addressed by self-regulation. The tobacco model does not apply to food litigation since it is not an intrinsically harmful substance and regulation is conducted by government.	Background: Argument against legal interventions
33. Mello et al (2006)⁶⁴ Theoretical paper	USA	Article reviews the rationale for regulatory action to combat obesity and examines the prospects for legal intervention in this area.	Legal frontiers in the fight against obesity (USA)	Development of a scientific base and social disapproval are triggers for intervention for public health. The conditions for a broader public policy approach to obesity appear to be converging. There is a difference between tobacco and food but the key similarity is the use of products by children who are vulnerable to advertising and marketing.	Background: Socio-political factors influencing a regulatory response to obesity
34. Armstrong (2007)⁶⁵ Theoretical paper	Australia	Note from Sydney conference on 'obesity, law and personal	International variation in legal attitudes to	Some countries acknowledge that obesity is a social, economic and environmental problem, while others stress that it is a matter of personal responsibility. Legal controls can be supportive of	Background: International attitudes to environmental

Author and date	Country	Study aim	Aspect of law or regulation	Findings	Relevance
		responsibility’.	obesity	personal responsibility in re-balancing the environment against the weight of industry advertising and promotion. The USA is split between viewing obesity as a public health issue and as a personal issue.	interventions
35. Alderman et al (2007)⁶⁶ Opinion paper	USA	Advocates for a change in legal strategy in response to obesity: from regulating individual risk factors to broader social risk factors.	The relationship between the legal system and public health as a whole	The failure of attempts to regulate industry, and the nature of obesity, demand a paradigm shift in public health legislation from regulation on the principles of autonomy and rational agency to recognition that the broader social and environmental context need legal control. Any approach must be sensitive to existing legal and political doctrines like ‘consumer choice’.	Background: Rationale for environmental interventions
36. Gostin (2007)⁶⁷ Theoretical paper	USA	Discusses the methods and justifications of regulation to prevent overweight and obesity.	Regulation and litigation to reduce obesity	The high socioeconomic costs and disproportionate social impacts associated with obesity could justify regulation. Forced disclosure, disease surveillance, junk-food taxation, built environment regulation, and prohibitions of harmful foods are all potential options. Litigation could also attack misleading practices, and advertising to children could be regulated. However, there are political and philosophical objections to regulation and litigation that vary in strength depending on the legal tool and setting.	Background: Rationales for regulation and litigation to reduce obesity
37. Swinburn (2008)⁶⁸ Theoretical paper	Australia	Commentary on current government response to	Legal strategies to reduce obesity	The problem of obesity is a ‘market failure’ and demands legal intervention into the free market in the form of both a ‘soft’ and ‘hard’ paternalism. Soft approaches include the promotion of healthy	Background: Rationale for intervention in the free market

Author and date	Country	Study aim	Aspect of law or regulation	Findings	Relevance
		obesity and a potential for policies, laws and regulations to respond to the problem.		behaviours; regulations and fiscal measures are harder options. An obesity impact assessment on legislation would identify rules which contribute to obesogenic environments.	and paternalism
38. Sacks et al (2008)⁶⁹ Systematic review	Australia	To develop a tool that will systematically identify legal and regulatory opportunities to change the food system and physical activity environment to prevent obesity.	Legal opportunities to prevent obesity	A systematic review of cross-discipline literature identified potential obesity prevention policy actions across a wide range of areas. These policy areas were classified across two dimensions of governance – the level of government responsible for administering the policy action, and the level of government responsible for its development and implementation. This information can be used to scan for potential policy action at a specific level of government or in a certain field. Analysis of potential policy areas may identify further possibilities for action and any constraints to intervention.	Background: Framework to identify local policy options
39. Isganaitis et al (2008)⁷⁰ Review paper	USA	A review of recent publications on childhood obesity prevention, including those discussing policy and legislative issues.	Multi-level legal strategies to reduce obesity	Legal strategies include: disclosure of nutritional content, school nutrition regulation, land-use strategies, taxation and earmarking, tort liability and performance-based regulation. There is potential for successful school- and community-based interventions. Legal strategies should include a reduction in USA agricultural subsidies which are keeping the cost of unhealthy food down.	Background: Status of legal strategies to combat obesity

Author and date	Country	Study aim	Aspect of law or regulation	Findings	Relevance
40. Hodge et al (2008) ⁷¹ Framework paper	USA	To analyse the theoretical and practical roles of law as a tool to curb obesity in the USA.	Multi-level legal options to reduce obesity	Ten major legal themes to address obesity among the USA population, including: 1) use of incentives to encourage healthier behaviours; 2) use of financial disincentives to discourage unhealthy behaviours; 3) requirements to improve food quality, diversity, or availability; 4) compensation for injured persons seeking recourse; 5) restriction of access to unhealthy foods; 6) regulations aimed at influencing consumer choices; 7) control of marketing and advertising; 8) creation of communities that support healthy lifestyles; 9) physical education/fitness requirements in school and work; and 10) insurance compelling coverage for individual obesity treatment.	Background: Framework for legal interventions
41. Dietz et al (2009) ⁷² Review paper	USA	Review of legal interventions that aid obesity prevention to identify actionable options for all levels of government.	Federal, state and local legislation to combat obesity	The National Summit on Legal Preparedness for Obesity Prevention and Control, convened by the Centers for Disease Control and Prevention, identified a broad array of legislation pertaining to obesity. If legal interventions are co-ordinated, they can play a critical role in obesity prevention and control, particularly if they are part of a systematic legal framework targeting obesity.	Background: Framework for legal interventions

Table 13 International theoretical papers on law and physical activity

Author and date	Country	Study aim	Aspect of law or regulation	Findings	Relevance
42. Steele et al (2005) ⁷³ Cross-sectional study	Australia	To identify internal perceptions of the role of local government in physical activity promotion; focus groups from Rockhampton City Council, Queensland.	Local government obesity policies	Physical activity promotion was not considered part of the core business of the council. However, there was a clear understanding of local government's role in the provision of infrastructure and facilities that support an active community. Focus was on the built environment and partnership-building, but there were felt to be insufficient resources for direct intervention.	Background: Local decision-making and physical activity
43. Centner (2005) ⁷⁴ Review paper	USA	A review of legislative mechanisms to limit claims against activity providers for personal injury to children in the USA.	Tort law (USA)	Four possible strategies to limit litigation: limit liability for 'inherent risks'; give effect to release provisions; presumptions against duty of care; and remove statutory duties of care.	Background: Framework to limit negative effects of personal injury liability
44. Shilton (2006) ⁷⁵ Framework paper	USA	To develop a model for understanding and mobilising physical activity advocacy.	Promoting physical activity through law	A three-part model: 1) gathering and translating the most pertinent physical activity evidence; 2) developing an advocacy agenda from the evidence and articulating a plan of actions that will increase population levels of physical activity; and 3) implementing a mix of advocacy strategies to influence and mobilise support for the physical	Background: A framework for effective advocacy

Author and date	Country	Study aim	Aspect of law or regulation	Findings	Relevance
				activity agenda.	
45. Bullen et al (2006) ⁷⁶ Cross-sectional study	New Zealand	A survey of New Zealand territorial local authorities, investigating policies and plans promoting physical activity.	Local authority policies and plans related to physical activity (New Zealand)	Only 59% of New Zealand's territorial local authorities reported an overall plan or policy for physical activity. The majority reported plans or policies on open spaces, recreation, pathways or cycle lanes. Rural authorities and those with deprivation were less likely to have an overall policy or direct involvement in promotion. There is scope for greater emphasis on physical activity and planning.	Background: Status of local physical activity policies
46. Spengler et al (2007) ⁷⁷ Theoretical paper	USA	Article addressing the legal issues around community use of school facilities for physical activity.	Personal injury liability (USA)	The threat or fear of legal liability may influence decision-makers to restrict public access to school facilities. The law can give protection to providers through a lower duty of care, defences to negligence, contractual defences and immunity legislation (in some states) including 'joint use agreements' between the school and community. There is little research on the role of risk perception in such decisions and the availability and scope of insurance must better understood.	Background: Negative effects of law on physical activity
47. Taylor WC et al (2008) ⁷⁸ Theoretical paper	USA	To develop a framework to gather evidence that will support a legal claim of environmental injustices related to physical activity.	Environmental justice principles (USA)	Environmental justice is concerned with the disproportionate burden of negative environmental health impacts on disadvantaged communities. Originally, these health impacts were related to pollution but they have been extended to include obesity and heart disease related to walkability and urban design. A comprehensive assessment of the environment is the first stage in compiling a legal claim and can	Background: Environmental justice as a legal doctrine for intervention

Author and date	Country	Study aim	Aspect of law or regulation	Findings	Relevance
				be achieved through resident surveys and objective audits. The next steps are to assess differences in environmental features related to disadvantaged communities and document related health disparities.	
48. Salvesen et al (2008) ⁷⁹ Cross-sectional study	USA	A qualitative study of factors influencing implementation of policies to promote physical activity in Montgomery County, Maryland.	Local legal strategies to promote physical activity (USA)	Interviews identified that knowledge and awareness, inter-governmental co-ordination, commitment and capacity, and conflict are all key factors in physical activity policy implementation.	Medium: Local policy decision-making
49. Allender et al (2009) ⁸⁰ Cross-sectional study	Australia	To understand how local governments make choices about healthy public policy to prevent obesity and identify barriers to change.	Local government obesity policies	Interviews identified factors facilitating policy change, including: evidence of local problem and cost-effectiveness of policy, provision of funding, co-ordinated council structure and strong leadership, community advocacy and necessary legal capacity. Barriers included a perceived or real lack of power and complexity of legislative framework.	High: Factors influencing local decision-making

Review of grey literature and media

Methods

Searches were conducted on the Nexis online publications database for terms related to healthy eating and physical activity combined with 'council' or 'local authority', and terms related to the regulatory environment. Appendix 3 contains a list of search terms used.

Searches were limited to publications from 11 September 2008 until 15 January 2010. Some more general terms were limited to searches of UK broadsheets only; other terms were searched across all available UK publications. Some results were found through further research on an identified issue.

Articles were read and assessed against the following inclusion criteria:

- The article must report the possible relationship of any type of physical activity or nutrition and any aspect of law or legislation.
- It must be at local authority level.

Results

Tables 14 to 16 present 36 articles identifying the relationship between a law or regulation and the promotion of healthy eating or physical activity, grouped under the following headings:

- Regulations restricting access to unhealthy food Table 14
- Regulations restricting traffic and promoting active travel Table 15
- Regulations promoting physical activity, play and access to green space Table 16

Some articles covered areas already identified by the case law review and have not been included. Only one example of a story is given for each issue; other stories that cover the same issue but add no further information have not been included. We found many examples of media coverage of application of regulations to the prevention of obesity at local authority level. There were more examples relating to nutrition and food issues than found from the other reviews.

This review provided a good opportunity to identify possible participants (key organisations or individuals) for the stakeholder interviews. We used these media examples to generate topics for our stakeholder interview schedules.

Table 14 Regulations restricting access to unhealthy food

Issue	Where reported	Article details	Law or regulation	Key person or organisation
1. Planning control for takeaways near schools	The Daily Telegraph (London) 21 April 2009	Waltham Forest Council has banned new fast-food outlets from opening within 437 yards (400 metres) of schools, parks and leisure centres.	Local planning policy on hot-food takeaways	Waltham Forest Council
2. Planning control for takeaways across a borough	Your Local Guardian 18 September 2009	Croydon Council is considering using planning powers to control the number of fast-food shops in the borough and to influence where they are opened.	Local planning policy on hot-food takeaways	Croydon Council
3. Planning control for takeaways in town centres and district centres	The Shields Gazette ⁸¹ 1 October 2008	Hot-food takeaway planning guidelines intended to curb the number of hot-food takeaways granted planning permission in district areas. Concern that South Shields was not included in the policy's remit area. It was left out because it was deemed to be part of the town centre.	Local planning policy on hot-food takeaways – planning policy on retail hierarchy	South Tyneside Council
4. Planning control of takeaway opening hours	Croydon Advertiser ⁸² 12 January 2010	An alliance of neighbours is fighting to stop a McDonald's drive-through being allowed to open until 2am. A planning application to extend the opening hours of the fast-food giant's restaurant off the Purley Way in Waddon from Thursday to Saturday has been submitted.	Planning control over takeaway opening hours	Croydon Council

Issue	Where reported	Article details	Law or regulation	Key person or organisation
5. Levy on grant of planning permission for unhealthy development	Estates Gazette 5 November 2009	Developers may have to fund myriad non-property-related initiatives, including local authorities' fight against obesity, under new government plans to adopt a Community Infrastructure Levy (CIL).	Community Infrastructure Levy (CIL)	Stephen Ashworth, Head of Planning Law at Denton Wilde Sapte
6. Levy on grant of planning permission for unhealthy development	The Telegraph ⁸³ 10 September 2009	The London Borough of Barking and Dagenham will levy a £1,000 charge on hot-food takeaway businesses when they are granted planning permission. Barking and Dagenham said it believed this was the first time a council had promised "to use the proceeds exclusively on initiatives to combat obesity".	S.106 planning obligation used exclusively to combat obesity	London Borough of Barking and Dagenham
7. Street trader licensing	Daily Mail (London) 25 April 2009	Harrow Council has decided not to issue street vending licences to ice cream sellers and is encouraging police to enforce the embargo. The council had banned ice cream vendors from all public land, including parks and streets.	Street trader licensing	Harrow Council

Issue	Where reported	Article details	Law or regulation	Key person or organisation
8. Street trader licensing	The Journal (Newcastle, UK) 12 January 2009	Burger van businesses in Newcastle could soon be forced to offer customers a healthy option. It follows a similar move from Guildford councillors which saw the Surrey council warn traders they could be refused a new licence if they do not introduce salads alongside the tasty but calorie-laden burger in a bun.	Local street trader licence and consent powers	Councillor Henri Murison, opposition Labour councillor, Newcastle City Council Guildford Borough Council
9. Premises licensing control for late-night hot-food takeaway	Daily Post (Liverpool) Mersey edition 12 October 2009	A taskforce is being set up to tackle the spread of off licences and takeaways across Liverpool. Senior councillors will form a special committee after arguing that the proliferation of cheap booze and junk food is having a devastating effect on communities by causing antisocial behaviour.	Premises licensing – Licensing Act 2003	Liverpool City Council – Deputy Council Leader, Flo Clucas
10. School lunchtime lock-ins	The Herald (Glasgow) 17 September 2009	Pupils at eight secondary schools run by Glasgow City Council have been asked to stay in school at break time and eat either a packed lunch or a school meal.	School lunchtime policies	Glasgow City Council

Issue	Where reported	Article details	Law or regulation	Key person or organisation
11. Packed lunch scrutiny	Daily Post (Liverpool) North Wales edition 14 July 2009	Councillors in Denbighshire will today be asked to consider training school staff to vet the food pupils bring in from home. The aim would be to outlaw fatty and sugary snacks, and boost canteen takings from healthy school meals by encouraging more pupils to buy them.	Packed lunch inspections	Denbighshire County Council
12. Tuck shop controls (Scotland)	The Herald (Glasgow) 22 September 2009	Hungry for Success, the Scottish Government initiative, says crisps, sweets, fizzy drinks and so on should not be offered in school tuck shops. But pupils have branded the policy “very unfair” and lodged a petition at the Scottish Parliament in the hope of bringing about some change.	School food restrictions (Scotland)	Graham Patrick, Head of Facility Support Services for North Lanarkshire schools
13. Controls on unhealthy food and drink sold on the ‘school fringe’	Press Association Mediapoint 17 September 2009	One of these controls should be on the special price offers between eight and nine in the morning, when pupils buy on the route to school. “This can be done by putting a computerised bar on two litre bottles of soft drinks and 500g bars of chocolate, which are among the most popular items bought on the way to school.”		Professor Jack Winkler, Director of the Nutrition Policy Unit, London Metropolitan University
14. Ban on toys with meals	Liverpool Daily Echo 25 October 2008	Liverpool bids to ban free toys with meals in a local byelaw. The council hopes that the motion, passed in July, will inspire the government to roll out legislation nationally.	Byelaws	Liverpool City Council

Table 15 Regulations restricting traffic and promoting active travel

Issue	Where reported	Article details	Law or regulation	Key person or organisation
15. Closure of temporary car parks – development control	Nottingham Evening Post 17 August 2009	Temporary car parks, which have sprung up on cleared building sites and in empty properties, are undermining congestion-busting strategies which encourage public transport use and limit city-centre parking to mainly short and medium stay.	Planning enforcement against car parks without permission	Jim Rae, Planning Services Department, Nottingham City Council
16. Parking restriction around schools	The Telegraph ⁸⁴ 31 December 2009	Greater Manchester Health Commission wants residents-only parking around school premises so youngsters can gain exercise by walking or cycling to lessons. The commission has sent its recommendations to the Association of Greater Manchester Authorities in the hope that local councils in the region will take up the guidelines.	Local parking restrictions around schools	Peter Elton, Director of Public Health, NHS Bury
17. 20mph limits on urban roads	Bristol Evening Post 22 January 2009	Bristol introduces 20mph limits across the city as part of its new status as a ‘cycling city’.	Local powers to set 20mph limits	Bristol City Council
18. Workplace Parking Levy to fund public transport	Press Association Mediapoint 22 September 2009	Nottingham is to raise around £14 million a year through a Workplace Parking Levy scheme. All money raised will be used for public transport improvements, including the construction of two more tram lines.	Workplace Parking Levy (England) Regulations 2009	Jane Urquhart, Portfolio Holder for Transport, Nottingham City Council

Issue	Where reported	Article details	Law or regulation	Key person or organisation
19. Business Rate Supplement	Daily Post (Liverpool) 16 September 2009	Local authorities have the discretion to charge companies an extra 2p per pound levy on top of existing business rates. Must be used to support specific regeneration or environmental improvement projects. A Business Rate Supplement would be levied on business premises with a rateable value of more than £50,000. The council has no plans to use the extra powers for fear it could stifle inward investment.	Business Rate Supplements Act	Councillor Flo Clucas, Deputy Leader, Liverpool City Council
20. Department for Transport funding for sustainable local transport schemes	The ENDS Report 28 August 2009	Regional bodies have been told by the Department for Transport to do more to reduce the carbon impacts of transport schemes they have submitted for funding. The department refused funding for 21 road schemes in England. The Delivering a Sustainable Transport System (DaSTS) strategy outlines five goals for transport policy: maximising economic productivity, reducing CO ₂ emissions, contributing to better health, improving quality of life, and making society fairer.	Delivering a Sustainable Transport System (DaSTS) strategy	Department for Transport Regional development bodies and assemblies – England only
21. Development guidelines for a cycle underpass	Wales on Sunday 8 November 2009	Council chiefs are ordering cyclists to dismount at a Welsh underpass. “Cyclists are asked to dismount because the headroom in the underpass structure is below the minimum standard. It's brilliant infrastructure. They need some kind of sign there to cover themselves, but ‘Cyclists beware – low headroom’ would be much more welcoming than ‘Cyclists dismount’.”	Minimum standard for headroom in a cycle underpass	Iain Hayes, of Conwy County Borough Council's environment service

Issue	Where reported	Article details	Law or regulation	Key person or organisation
22. Poor quality of cycle lanes	The Independent (London) 11 September 2009	Research has shown that roads are less safe for cyclists if cycle lanes are installed but below standard.	Non-mandatory standards for cycle lanes	Teams at the University of Leeds and University of Bolton, supported by Chris Peck, policy chief of CTC, the national cyclists' organisation

Table 16 Regulations promoting physical activity, play and access to green space

Issue	Where reported	Article details	Law or regulation	Key person or organisation
23. Allotments	Bristol Evening Post 17 January 2009	The Small Holdings and Allotments Act 1908 allows six people to get together and ask a parish council to provide allotments. The council has the power to lease or even compulsory-purchase land.	Small Holdings and Allotments Act 1908, s.23 and s.39	All Cannings Parish Council chairman, Tim Daw
24. Allotments	The Western Mail 7 September 2009	There is an allotment officer for each council. Allotments on private land are not legally protected. There is a campaign to make more allotments available. Under the Small Holdings and Allotments Act 1908, authorities must supply allotments if there is sufficient demand.	The 1908 Act does not protect private allotments. Many councils are not meeting legislative requirements.	Welsh AM Leanne Wood
25. School sports facilities open to community	The Daily Telegraph (London) 7 August 2009	Local authorities to open secondary school sports facilities on Saturday mornings and during the school holidays.	Occupiers' and other liability for personal injury	Sports Council for Wales

Issue	Where reported	Article details	Law or regulation	Key person or organisation
26. Outdoor learning should be part of the curriculum	The Daily Telegraph (London) 13 September 2008	Academic commitments, health and safety fears and the need to obtain parental consent for each excursion, may be hampering opportunities for active learning outside the classroom. Outdoor learning is not a statutory part of the curriculum. Randall Williams of the English Outdoor Council says “There is no requirement for local government to make it happen. It needs to be an entitlement.”	Health and safety regulations, personal injury liability and parental consent	Randall Williams, Chairman of the English Outdoor Council, an umbrella body for outdoor-learning providers
27. Ban on bikes on school property	Press Association Regional Newswire of English Regions: South East 13 July 2009	Portsmouth primary school prevents child from cycling to school. CTC (the national cyclists’ organisation) said schools were not legally allowed to ban cycling outright, nor were they responsible for the independent travel of pupils to and from school. However, they could ban pupils from bringing bikes onto their property, which is what St Paul’s Primary School did in this case.	School rules on bikes on its property	St Paul’s Primary School, Portsmouth
28. Funding of free swimming for under-16s	The Times (London) 9 February 2009	Free swimming for under-16s has not been taken up by 143 councils across the country. Funding structure is based on numbers of residents, not numbers of pools. Funding was offered to some councils that did not have a pool, while councils that did sign up to the scheme last year said that central government was leaving them with a shortfall that would require them to cut other services.	Funding structure for free swimming for under-16s	Ashford Borough Council, Kent Mansfield District Council

Issue	Where reported	Article details	Law or regulation	Key person or organisation
29. Inconsistent child admissions policies for swimming pools	Evening Chronicle (Newcastle, UK) 10 August 2009	Two mothers with three under-3-year-old children were refused admission to a pool that has a one-on-one supervision policy for young children. Supervision policies across other councils in the North East vary, with some, like South Tyneside, recommending adult supervision of one-to-one, but ultimately leaving the decision to the parent.	Swimming pool admission and supervision policy / guidance – inconsistent	North Tyneside Council Waves Leisure Centre, Whitley Bay
30. Swimming pool closures	Daily Post (Liverpool) North Wales edition 25 August 2009	Anglesey Council has proposed closing two of the island's three swimming pools and the Beaumaris Leisure Centre to save money. This contradicts Welsh Assembly Government policy.	Swimming pool closures (Wales)	Anglesey County Council
31. Swimming pool closures	The Western Mail 3 July 2009	Doctors yesterday called on councils to stop closing local swimming pools and invest in community sports facilities.	Swimming pool closures	British Medical Association
32. Private estate bans on games and activity	Bristol Evening Post 29 September 2008	Private shopping centre bans cycling, skateboarding and smoking. Cabot Circus in Bristol is not able to fine shoppers and so far security is taking a softly-softly approach.	Privately-owned 'high-street' bans enforced by private security; power to eject but not to impose fines.	Cabot Circus, Bristol

Issue	Where reported	Article details	Law or regulation	Key person or organisation
33. Criminal Records Bureau checks for parents supervising play	The Daily Telegraph (London) 29 October 2009	Parents have been banned from supervising their children in adventure play areas if they have not undergone Criminal Records Bureau (CRB) checks.	CRB checks for parents in adventure playground, following government guidance	Watford Borough Council
34. Byelaws banning play and ball games	Harlow, Epping and Sawbridgeworth Star 18 December 2008	Ball games and skateboarding to be banned in over 100 locations, although a new skate park has been built elsewhere.	Byelaws on ball games and skateboarding	Harlow Council
35. 'No ball games' signs	Children Now 6 November 2008	London boroughs should replace 'No ball game' signs with 'Play area' signs.	Local regulations on ball games	London Play
36. Risk-averse interpretation of health and safety regulations and guidance	The Times (London) 22 November 2008	Health and Safety Executive fed up of councils interpreting guidelines and advice into rigid compliance – e.g. goggles for conkers – to avoid unlikely litigation.	Health and safety regulations and guidelines. Personal injury liability.	Health and Safety Executive

Case law review

Case law on physical activity

Methods

A computerised search was carried out using Westlaw for the period between 1 May 2003 and 1 July 2009. The terms used were 'exercise', 'physical activity', 'swim', 'cycle', and 'walking', each combined with the specific terms of 'injury', 'local planning', 'green spaces' and 'liability'. In addition the database was searched using the singular physical activity related terms of 'jog', 'playground', 'play equipment', 'sport', 'football', 'rugby', 'gym', 'rights of way', 'cycle lane', 'physical exercise', 'physical education', 'skateboarding', 'micro-scooters', 'exercise class' and 'fitness centre'. The search was limited to English language sources and databases. Potential hits were assessed via titles and case analysis. Each potential case was read and assessed against the following inclusion criteria:

- The case must examine the possible relationship of any type of physical activity and any aspect of law or legislation.
- The results must have an impact upon the promotion of physical activity.

Results

Over 10,000 hits (including repetitions) were made from the database, and 39 of these met the inclusion criteria. The proportional increase in findings compared to the study carried out in 2003 (see *Background and project aim*, in section 1 *Introduction*) could be because of the different legal database used and/or the move, within in the last few years, to making many more judgments available online.

The cases were analysed under the following headings:

- Cases relating to planning and green space Table 17
- Cases relating to personal injury liability Table 18
- Cases relating to health and safety regulations Table 19
- Cases relating to fiscal incentives Table 20

The cases are often illustrative examples of how an area of law is applied and are highly fact-dependent, and few can provide practical guidance to those involved in the promotion of physical activity. However, the following conclusions are worthy of note.

Planning and green space

The approach of the courts is not to overturn a finding of a decision-maker unless there is something illegal or irrational in the decision. This is a high standard to achieve. The decisions of planning inspectors are often not overturned if there has been a balancing exercise. The need to preserve open spaces for physical activity is not an overriding consideration within a balancing exercise.

Personal injury liability and health and safety regulations

The tenor of the judgments is to take a common-sense approach to the duty of care owed to individuals. The courts are wary of imposing too onerous standards of care on individuals or public authorities, which could discourage individuals in engaging in formal or informal physical activity. This approach of the courts should be encouraged.

One case demonstrates a worrying misinterpretation by a local authority in relation to its duty under health and safety legislation. The court criticised the authority's over-cautious approach to liability under criminal legislation in their regulation of natural swimming ponds. Risk-averse decisions may only be challenged through judicial review, which may be difficult and costly.

Appendix 4 expands on the difference between perceptions of a 'compensation culture' and the evidence suggested by this review.

Fiscal incentives

These cases tend to be highly fact-dependent and very technical. There is a move to ensure equal treatment of informal and organised sports when providing tax incentives, which is to be encouraged. However, private organisations have less of a fiscal incentive than councils in providing sporting facilities. This could discourage profit-making companies from providing these facilities.

The assessment of construction costs for VAT does not depend on a sports club's charitable status but on the purpose of the facility itself. This means that the construction costs of new facilities are assessed for VAT on a case-by-case basis, and unfavourable assessments may prove difficult and expensive to challenge.

Table 17 Cases relating to planning and green space

Case	Citation	Area of law	Details	Wider relevance to public health
1. Hammersmatch Properties Ltd v First Secretary of State	[2005] EWCA Civ 1360	Planning	Appeal against a refusal of planning permission for change of use of land from employment to health and fitness. Must balance the need for health and leisure facilities and the policy of retaining land as employment land. The need for health and leisure facilities is not an overriding consideration.	
2. R. (on the application of Hampson) v Wigan MBC	[2005] EWHC 1656 (Admin)	Planning	Permission granted to build a multi-use sports complex on open land and old sports fields. Court refused to quash the decision because errors of law would not have affected the outcome.	
3. R. (on the application of Lambert) v Southwark LBC	[2003] EWHC 2121 (Admin)	Planning	Permission granted to build a 'city academy' over much of an existing city park. Claim for quashing order dismissed. The Council's balancing of competing public needs had been lawful.	The need to preserve open spaces can be outweighed by other important public needs.
4. R. (on the application of Orchard (Development) Holdings PLC) v First Secretary of State	[2005] EWHC 1665 (Admin)	Planning	Application to develop housing over an existing football stadium was refused because there was no provision for an alternative stadium. Decision was lawful.	
5. Oxfordshire CC v Oxford City Council (HL)	[2006] UKHL 25	Planning – Village greens	A House of Lords decision clarifying the registration of land as a 'village green'. An application needs proof of customary use for recreation and leisure by members of the community for at least 20 years. If duly registered, the community will have the right to continue that use and may thwart development plans, subject to a local authority's power to appropriate open space in certain circumstances.	Demonstrates the legal importance attached to the preservation of land used for public exercise and recreation. This decision was confirmed and superseded by The Commons Act 2006.

Case	Citation	Area of law	Details	Wider relevance to public health
6. R. (on the application of Lewis) v Redcar and Cleveland BC	[2009] EWCA Civ 3	Planning – Village greens	Decision by local authority not to register land as a village green because it had been used as a private golf course for a period. Therefore, there was insufficient continuous use of the land by the community. Decision was lawful.	
7. R. (on the application of Ramblers Association) v Secretary of State for Defence	[2007] EWHC 1398 (Admin)	Judicial review – Footpath	The Secretary of State for Defence has powers to ‘stop up’ a footpath, but only once the duty to provide an alternative path is met. It is not enough just to rely on existing highway.	

Table 18 Cases relating to personal injury liability

Case	Citation	Area of law	Details	Wider relevance to public health
8. Anderson v Lyotier (t/a Snowbizz)	[2008] EWHC 2790 (QB)	Negligence	Skier collided with a tree and was rendered tetraplegic. Breach of duty of care by skiing instructor because it was reasonably foreseeable that one of the group would run into a tree and suffer injury. Skier was found one-third liable because he should have said the run was beyond his capabilities.	Whilst the decision finds instructors liable for safety of group, the judgment has a postscript stating that the decision does not mean that everyone who suffers injury under a skiing instructor will win damages. Very fact-dependent.
9. Blake v Galloway	[2004] EWCA Civ 814	Negligence	Two boys were throwing bark at one another and one boy was hit in the eye. The game was not a regulated sport or a game played according to rules but analogous to those situations and therefore the same standard of duty of care applied as to sports – i.e. a breach only occurs when conduct amounts to recklessness or a very high degree of carelessness. No breach of duty found on the facts.	Horseplay must apply the same standard of care as would be expected in a regulated sport or game.
10. Burridge v Airwork Ltd	[2004] EWCA Civ 459	Negligence	A cyclist was knocked off their bike by the door of a minibus and dragged along the road. Found that it can't be said that all cyclists who collide with a vehicle door are partly to blame; it depends on the facts.	
11. Cole v Davis-Gilbert	[2007] EWCA Civ 396	Negligence	Claimant fell down a hole when walking across a village green and broke her leg. Claimed it was the hole which had not been properly filled in after the maypole celebrations. No duty of care was breached because it was not clear that the defendants had not adequately filled in the hole.	The judge commented that, if a too high standard of care is set, this could lead to a reduction or prohibition of traditional activities on village greens.

Case	Citation	Area of law	Details	Wider relevance to public health
12. Harris v Perry	[2008] EWCA Civ 907	Negligence	Boy did a somersault on a bouncy castle, kicking another boy in the head. Claim brought against supervising mother. Standard of care found to be that which a careful parent would have shown for her own children, appropriate to protect children against a foreseeable risk of physical harm falling short of serious injury and no need for uninterrupted supervision. On the facts, the supervising mother had fulfilled this.	
13. Kidd (A Child) v Portsmouth City Council	[2004] EWCA Civ 46	Negligence	A 10-year-old girl tripped on a council-owned gravel path and fell into a gate, blinding her in one eye. She contended that the surface was unsuitable. No breach of duty of care; the area was a community garden and not a specific playground and the standard of care required for such an area had been met.	Example against the idea that legal standards are overly prohibitive to local authorities.
14. MacClancy v Carenza (t/a The Vine Riding and Livery Yard)	[2007] EWHC 479 (QB)	Negligence	An adult rider fell from her horse while jumping an obstacle during a riding lesson, leading to brain damage. No breach of duty of care in maintenance of the course or in the level of supervision and instruction.	
15. Mountford v Newlands School	[2007] EWCA Civ 21	Negligence	A 14-year-old boy was injured by a tackle from a 15-year-old during an under-15s rugby match. The selection of the older boy against official guidelines was held to be a breach of the duty of care towards the claimant and a material contribution to his injury.	Demonstrates the importance of official guidelines in the regulation of sport.
16. Orchard v Lee	[2009] EWCA Civ 295	Negligence	A boy, playing tag during lunch break, ran backwards and collided with a lunchtime supervisor causing injury. Example of whether conduct of 13-year-old boy amounted "to recklessness or a very high degree of carelessness", as on the facts there was no breach and no culpability.	

Case	Citation	Area of law	Details	Wider relevance to public health
17. Richardson v Davies	[2006] C.L.Y. 2879	Negligence	Claim for injury during a Sunday league football match where the defendant player made a tackle such that it would stop the other player if did not stop the ball. The test adopted was a reasonable standard of care and skill expected of a player in this level of amateur match. On facts, there was a reckless disregard for the player's safety and the tackler was found to be negligent.	Standard of care owed by a player will depend on the overall level of skill expected at that level.
18. Smith v Finch	[2009] EWHC 53 (QB)	Negligence	A motorcyclist hit a cyclist who was not wearing a helmet. The court found that wearing a helmet is like wearing a seatbelt and a reasonable precaution to take. However, no contributory negligence because it was not proved that a helmet would have probably prevented his injury.	
19. Baldacchino v West Wittering Estate PLC	[2008] EWHC 3386 (QB)	Occupiers' liability	A 14-year-old dived off a beacon into the sea and was paralysed. There were no warning signs. Finding that the child was not a lawful visitor. Under the Occupiers' Liability Act 1984 there is no obligation to place warning signs if the risk is obvious and therefore there was no breach by the occupiers.	
20. Maguire v Sefton MBC	[2006] EWCA Civ 316	Occupiers' liability	A man suffered injury when an exercise machine gave way under use in a council gym. The council appealed against a decision that it was in breach of its duty of care under the Occupiers' Liability Act 1957. Appeal allowed since it had a reasonable service agreement with the negligent manufacturers. They were not responsible for the fault of their agents – unlike in a contractual situation.	

Case	Citation	Area of law	Details	Wider relevance to public health
21. Mills-Davies v RSPB	[2005] C.L.Y. 4196	Occupiers' liability	A man who was walking his dogs in a nature reserve tripped on a stump left from clearing the path, impaling his eye on another stump. He failed to satisfy the court that this was actually how the accident occurred and his claim was dismissed. However, the judge went on to comment that removal of the stumps would not be part of the landowner's duty of care since they were a common feature of such environments and that this would create too great a burden on similar landowners.	This is a suggestion that courts may take a common-sense approach to a landowner's duty concerning naturally occurring dangers on areas of open access.
22. Poppleton v Trustees of the Portsmouth Youth Activities Committee	[2008] EWCA Civ 646	Negligence and occupiers' liability	A young man attempted a risky jump from a climbing wall owned by the appellants and fell on his head. The climbing centre did not offer any supervision, only use of the facilities. The Court of Appeal followed occupiers' liability cases in finding no duty to prevent such obvious inherent risks as injury from a fall.	Prevents the duty of care expected of an activity centre owner, as opposed to an instructor, becoming too onerous. (See also <i>Evans v Kosmar Villa Holidays PLC</i> , below.)
23. Tedstone v Bourne Leisure Ltd (t/a Thoresby Hall Hotel and Spa)	[2008] EWCA Civ 654	Occupiers' liability	Appeal against a finding of negligence when a woman slipped on a puddle of water from a jacuzzi. Appeal allowed, on the grounds that this was a freak malfunction and the accident happened within just five minutes, and reasonable precautions had been taken.	
24. West v Telford and Wrekin BC	[2006] C.L.Y. 4338	Negligence and occupiers' liability	An ice rink was cordoned off so that there was nothing to hold onto. A novice skater breaks her leg. Balancing exercise undertaken by local authority was undertaken responsibly. Skater had accepted obvious risks of skating. No breach.	Balancing exercise of risks and necessity must be undertaken responsibly.

Case	Citation	Area of law	Details	Wider relevance to public health
25. Freeman v Higher Park Farm	[2008] EWCA Civ 1185	Animals Act 1971 and negligence	The claimant, an experienced rider, fell from a horse when it bucked at the beginning of a canter, on a hack, resulting in injury. Claim under the Animals Act 1971 disallowed because bucking was not a “characteristic ... normally found in animals of the same species or not normally so found except at particular times or in particular circumstances” (1971 Act s.2(2)(b)). Alternatively, the claimant had voluntarily assumed the risk.	
26. Welsh v Stokes	[2007] EWCA Civ 796	Animals Act 1971	A 17-year-old girl was thrown from a horse at a busy crossroads. Owners were found to be strictly liable for the damage done under the Animals Act 1971 since they knew that severe damage was likely to be caused by such a situation.	
27. Evans v Kosmar Villa Holidays PLC	[2007] EWCA Civ 1003	Personal injury – contract	The holiday company was not found to have a duty of care to prevent serious injury by diving in too shallow water. The risk was so obvious that they did not even have a duty to improve signage. The Court of Appeal followed occupiers’ liability case law despite the contractual context.	Follows occupiers’ liability case law in a contractual context.
28. Healy v Cosmosair PLC	[2005] EWHC 1657 (QB)	Personal injury – contract	The claimant claimed to have slipped on an unsafe surface next to a swimming pool. The court would probably have found a contractual duty to ensure a safe surface next to a swimming pool and avoid injury. However, in this case the claimant could not prove on the balance of probabilities that he slipped on the unsafe area in question.	
29. Thompson v Hampshire CC	[2004] EWCA Civ 1016	Highway maintenance	The claimant fell into a ditch from the verge of an unlit country road, and sued the highway authority for breach of its statutory duty of maintenance. No breach; the duty is to maintain the surface, not improve its safety.	

Table 19 Cases relating to health and safety regulations

Case	Citation	Area of law	Details	Wider relevance to public health
30. R. (on the application of Hampstead Heath Winter Swimming Club) v London Corporation	[2005] EWHC 713 (Admin)	Judicial review – health and safety	Natural ponds on Hampstead Heath are used for swimming. The Corporation refused permission to use a pond early in the morning before lifeguards were present for fear of criminal prosecution under health and safety legislation. Decision was based on a mistaken view of the law. The court referred to claims under occupiers' liability and suggested that even in criminal prosecution the risk of the activity would be the choice of the swimmer, not a result of the permission to do so.	Demonstrates the mistake of an overly cautious approach to health and safety legislation by a local authority in the provision of public facilities.

Table 20 Cases relating to fiscal incentives

Case	Citation	Area of law	Details	Wider relevance to public health
31. Atrium Club Ltd v Revenue and Customs Commissioners	[2009] B.V.C. 2273	VAT	A gym company sought to avoid VAT on the supply of sporting services by setting up a non-profit subsidiary to provide the services instead. This may have made the company liable for VAT, but the scheme had failed to avoid assessment as profit-making, meaning they did not gain any tax advantage.	None, except that it demonstrates that commercial gyms will find it difficult to avoid VAT in the way council facilities can.
32. Bridgnorth Golf Club v Revenue and Customs Commissioners	[2009] UKFTT 126 (TC)	Tax	A non-profit golf club reclaimed the input tax on the refurbishment of its clubhouse. The lounge and dining areas were partly used to supply a tax-exempt sporting service to members, unlike the bar and kitchen areas. This meant the club could not reclaim all the input tax for the refurbishment of these areas.	
33. Canterbury Hockey Club v Revenue and Customs Commissioners (C-253/07) (ECJ)	[2008] S.T.C. 3351	Tax	EC Sixth Directive Art 13A.1(m) directs member states to exempt the supply of sporting services to 'persons taking part in sport' from VAT. A preliminary ruling was sought as to whether the exemption could apply to sports clubs rather than just individuals. The European Court of Justice held that it could. The article was intended to apply to all sports regardless of organisational structure. (The hockey club was deemed to be such a 'person' in the supply of England Hockey's services because the club was an unincorporated association and has no legal existence apart from its members.)	The European Court of Justice found that the principle of fiscal neutrality demands equally favourable treatment of independent and more organised sports.

Case	Citation	Area of law	Details	Wider relevance to public health
34. Jeanfield Swifts Football Club v Revenue and Customs Commissioners	[2008] B.V.C. 2490	Tax	Appeal allowed against a decision that construction work on a football pavilion could not be zero-rated. Found that the building was used for a solely charitable purpose since the club was open to the whole community and all revenue streams (i.e. tea shop) were too small and incidental to be considered a business.	Fact-specific. Tax benefits will depend on the nature of the club.
35. Messenger Leisure Developments Ltd v Customs and Excise Commissioners (CA)	[2005] EWCA Civ 648	VAT	Article 13A of the Sixth Directive (EC VAT exemption) allows exemption from VAT if the body is 'non-profit-making'. In deciding whether the golf company was 'non-profit-making' the court looked at its transactions in the whole to see how it dealt with any surplus revenues. Here the organisation could certainly be said to benefit other members of the group of companies and was therefore profit-making.	
36. Polo Farm Sports Club v Revenue and Customs Commissioners	[2007] V. and D.R. 44	VAT	The supply of a licence to use hockey pitches between 8am and 9.30pm in return for consideration was not VAT exempt. Application of very specific legislation.	
37. Simpson (East Berkshire Sports Foundation Trustee) v Revenue and Customs Commissioners	[2009] S.T.C. (S.C.D.) 226	Tax – charitable donation	An appeal against an assessment for tax on donations to a non-charitable football club via a charitable trust. Appeal dismissed.	
38. St Helen's School Northwood Ltd v Revenue and Customs Commissioners	[2006] EWHC 3306 (Ch)	VAT	An attempt by a school to use a 'partial-exemption special method' in assessment of VAT on construction of a sports complex. Claim failed. Very technical.	

Case	Citation	Area of law	Details	Wider relevance to public health
39. Trafford MBC v Pollard (Valuation Officer)	[2007] R.A. 49	Rates	A council-owned school and sports hall assessed as two separate rateable properties. Held that the sports hall should be considered part of the school since it was used by the school and the community, and the building cost came from education and leisure budgets.	School and community facilities may be part of the same rateable property if not used for a wholly different purpose.

Case law on healthy eating

Method

Searches were conducted on Westlaw UK for English language reported cases between 1 January 2004 and 9 September 2009, using a variety of terms relating to food, eating, nutrition or obesity. Some more ambiguous terms were cross-filtered by 'health'. These results were then filtered by known areas of interest – injury, local-planning, green spaces, and liability – and also 'local authority'. The terms 'local authority & health' combined with 'planning' or 'licensing' were added, to search for any cases in these specific areas which might have been missed.

The search hits were assessed using the title, keywords and analysis. Cases were read and assessed against the following inclusion criteria:

- The case must examine the possible relationship of food, diet or nutrition and any aspect of law or legislation.
- The results/examples must have an impact (positive or negative) on the promotion of a healthy eating environment.

Results

The searches returned a total of 8,585 hits (including duplicates). Of these, only 27 met the inclusion criteria. Cases relating to health and safety or hygiene were disregarded.

The results are presented under the following headings:

- Cases relating to food and tax and fiscal incentives Table 21
- Cases relating to food safety Table 22
- Cases relating to food and licensing Table 23
- Cases relating to food and planning Table 24
- Cases related to food and free speech Table 25
- Cases relating to food labelling Table 26
- Cases relating to obesity Table 27

Of the 27 cases, only 13 are relevant to local authority level activity. Some cases on local authority housing decisions are relevant only as an example of the impact obesity has on other areas of local authority decision-making.

Some more detailed comments are made below.

Tax and fiscal incentives

There are no cases demonstrating fiscal incentives for healthy eating at either a national or local level. There is no regime of junk-food taxation in UK law; many unhealthy foods are exempt from VAT under the Value Added Tax Act 1994, and some more healthy foods, such as smoothies, are standard-rated.

Licensing

Local authorities have the power to require licences for the sale of food from markets or street traders. The Local Government (Miscellaneous Provisions) Act 1982 gives local authorities the power to demand

a permission, licence or consent to trade on designated streets. In this context a street is anywhere that the public has access to without paying. They also have the power to attach conditions to a consent, licence or permission, including a restriction on where a trader can trade. This power has been used in one case to prevent a chip-van from trading within 100 metres of a school. In this case the condition was unlawful due to the presence of bias. The decision to impose this condition was based primarily on road safety and litter concerns, although the effect on the school meals policy was apparently a factor.

A restriction on such a licence, consent or permission will need to be reasonable with regard to all relevant factors. This might include the need to promote a healthy eating environment, particularly if part of a council policy.

Planning

Unlike with green spaces and recreation areas, there are no national or local development plans which prioritise a healthy eating environment. However, planning authorities can decide whether to grant permission to restaurants, takeaways and other vendors. Judicial review is limited to decisions which are irrational or unlawful and decision-makers are given a wide discretion by the courts.

The case law demonstrates that planning permission is refused where noise or odour pollution is a concern, a local nuisance is feared, or development is not in keeping with the area. It is not yet certain from the case law whether public health and the need to encourage a healthy eating environment would be legal and relevant considerations in making a planning decision.

Table 21 Cases relating to food and tax and fiscal incentives

Case	Citation	Area of law	Details	Wider relevance to public health
1. David Baxendale Ltd v Revenue and Customs Commissioners	[2009] EWHC 162 (Ch)	VAT	Weight-loss programme where customers paid for a supply of food packs and were also given support sessions free of charge. Held that this is one supply of standard-rated services, not a zero-rated supply of food and a separate supply of services.	Weight loss programmes are not given tax breaks.
2. Weight Watchers (UK) Ltd v Revenue and Customs Commissioners	[2008] EWCA Civ 715	VAT	Weight-loss programme and supply of literature are part of one general supply of services which is subject to the standard rate of VAT.	
3. Ocean Grown UK Ltd v Revenue and Customs Commissioners	[2008] S.T.I. 1211	VAT	Appeal against decision that a wheatgrass juice is a beverage and standard-rated and not a zero-rated food. Held: It is a food. It is not drunk to slake thirst or increase bodily liquid levels.	
4. Kalron Foods Ltd v Revenue and Customs Commissioners	[2007] EWHC 695 (Ch)	VAT	The Value Added Tax Act 1994 states that all 'food' (which includes drinks) is zero-rated for VAT purposes except for certain items including beverages. Appeal against assessment of a smoothie as a beverage. Denied: The Act does not imply a policy to exclude 'junk foods' from zero-rating. The product's nutritional value is relevant but not the defining factor. It is a question of fact whether a product is a beverage and this should be decided according to the ordinary meaning of the word.	The Value Added Tax Act 1994 does not imply a policy of excluding junk-foods from zero-rating for VAT.
5. European Independent Purchasing Co Ltd v Revenue and Customs Commissioners	2008 WL 2311360	VAT	A supply of hot food for consumption off the premises is not a zero-rated supply of food. Appeal from Subway that some sandwiches were heated but not 'hot food'. Denied: Dominant purpose was for hot consumption.	Supply of hot 'takeaway food' will not normally be zero-rated for VAT.
6. Durwin Banks v Revenue and Customs Commissioners	2008 WL 2311310	VAT	Appeal against decision that linseed oil was not a food. Allowed: The way it is marketed and consumed was important.	

	Case	Citation	Area of law	Details	Wider relevance to public health
7.	Compass Contract Services UK Ltd v Revenue and Customs Commissioners	[2006] EWCA Civ 730	VAT	Appeal against decision that supply of cold sandwiches to take away was not a 'supply in the course of catering' and therefore was a zero-rated supply. Dismissed: The presence of a catering contract was irrelevant.	
8.	Procter and Gamble UK v Revenue and Customs Commissioners	[2009] EWCA Civ 407	VAT	Appeal against decision that Pringles are not made from potato and are therefore a zero-rated food. Appeal allowed: Tribunal was justified in finding that Pringles were like crisps and contained enough potato to fall in the exception to zero-rating.	
9.	R Twining and Co Ltd v Revenue and Customs Commissioners VAT and Duties Tribunal (London)	[2007] S.T.I. 2255	VAT	Milk-extract drinks are zero-rated. This Ovaltine-like drink powder was found to be such an extract.	
10.	Unilever Bestfoods UK Ltd v Revenue and Customs Commissioners VAT and Duties Tribunal (London)	[2007] V. and D.R. 119	VAT	Thick fruit 'shots' made of concentrate and purée. Held: These were not a beverage; they were not drunk to slake thirst or replace body fluid. Nor were they characteristically consumed for pleasure.	
11.	Revenue and Customs Commissioners v Premier Foods (Holdings) Ltd	[2007] EWHC 3134 (Ch)	VAT	Fruit bars. 'Confectionery' is not zero-rated for VAT. Held: Confectionery applies to both naturally and artificially sweet products, and therefore fruit bars were confectionery for VAT purposes.	

Table 22 Cases relating to food safety

Case	Citation	Area of Law	Details	Wider relevance to public health
12. R. (on the application of Alliance for Natural Health) v Secretary of State for Health	[2005] E.C.R. I-6451	EC law	EC Council Directive prohibiting the marketing of certain foodstuffs including food supplements and dietary products. Justified on grounds of public health and to prevent future obstacles to trade from lack of harmonisation in national laws.	EC trade law can be used to protect public health, even if its primary objective is to allow free movement of goods and services. Public health is not only a matter for national governments.

Table 23 Cases relating to food and licensing

Case	Citation	Area of Law	Details	Wider relevance to public health
13. West Berkshire DC v Paine	[2009] EWHC 422 (Admin)	Licensing	Trader selling tea, coffee and snacks from a van on an industrial estate. The council claimed this was a 'street' for the purposes of their street trading rules and that he required a licence. Held: A street for the purpose of trader licensing is an area the public has access to without payment. This is a broader construction than in other areas of law.	The Local Government (Miscellaneous Provisions) Act 1982 can be adopted by councils, allowing them to require a licence, permission or consent to trade on designated streets.
14. Cameron v Fife Council	2005 S.L.T. (Sh Ct) 115	Public law, and licensing (Scotland)	Chip-van licence granted subject to a condition excluding the vendor from trading within 100 metres of a school. The licensing committee had concerns over health and diet but were primarily motivated by issues of road safety and litter. Their decision was reasonable but a breach of natural justice was found since two councillors sat in on the objecting school's board.	Councils are entitled to impose conditions on food van licences if made for good reasons. It is not clear whether public health or diet concerns alone are sufficient grounds for such a restriction.

Table 24 Cases relating to food and planning

Case	Citation	Area of law	Details	Wider relevance to public health
15. Francis v First Secretary of State	[2008] EWCA Civ 890	Planning	A coffee shop was refused permission to cook food on grounds of noise and odours which would require an unsuitable ventilation system for the area. Held: Decision was reasonable.	
16. R. (on the application of Eid) v First Secretary of State	[2005] EWHC 3030 (Admin)	Planning	Appeal against refusal of permission to use premises as a café. Refused: An appeal is to identify errors of law, not to re-run the substantive enquiry.	Judicial scrutiny of planning decisions is constrained to errors of law. Planning authorities have only to make a reasonable decision.
17. Oxford City Council v Secretary of State for Communities and Local Government	[2007] EWHC 769 (Admin)	Planning	Time conditions attached to planning permission for a restaurant in order to prevent a local nuisance. Local authority appealed against grant of permission. Rejected: Inspector's decision was reasonable.	
18. R. (on the application of Bangalore Village Ltd) v First Secretary of State	[2006] EWHC 2742 (Admin)	Planning	Refusal to regularise the sale of Indian takeaways from premises licensed only for snacks. Appeal rejected.	
19. Tesco PLC v Competition Commission Competition Appeal Tribunal	[2009] CAT 6	Planning	Tesco appealed a report recommending the insertion of a 'competition test' into the planning regime to review a development's impact on existing grocers. Held: The report had not taken into account countervailing considerations.	

Table 25 Cases related to food and free speech

Case	Citation	Area of law	Details	Wider relevance to public health
20. Ajinomoto Sweeteners Europe SAS v Asda Stores Ltd	[2009] EWHC 781 (QB)	Malicious falsehood	Asda announced a campaign to remove 'nasties' including Aspartame from its own products. Manufacturer claimed that the suggestion that Aspartame was especially unhealthy or to be avoided was untrue. Application granted for a preliminary trial on the falsity of this suggestion.	Demonstrates the legal danger of criticising food manufacturers on health grounds.
21. Steel v United Kingdom	(2004) 39 E.H.R.R. SE6	Art 6 ECHR	Anti-junk-food campaigners were sued for defamation by McDonald's. No legal aid for the defendants. The European Court of Human Rights held this was a breach of their right to a fair trial and free speech.	

Table 26 Cases relating to food labelling

Case	Citation	Area of law	Details	Wider relevance to public health
22. Infant and Dietetic Foods Association Ltd, Petitioners	[2008] CSOH 87	Labelling	Scottish regulations implementing EC baby food labelling directive and introducing criminal liability for non-compliance. Unlawful misinterpretation of the directive.	
23. R. (on the application of Sovio Wines Ltd) v Food Standards Agency (Wine Standards Branch)	[2009] EWHC 382 (Admin)	Labelling	The Food Standards Agency restricted the sale of a wine-based product. EC law prevented its sale as wine since it was produced by an unauthorised method and had less alcohol.	

Table 27 Cases relating to obesity

Case	Citation	Area of Law	Details	Wider relevance to public health
24. Saffil Pension Scheme Trustees v Curzon	[2005] EWHC 293 (Ch)	Pensions	It was wrong to refuse an incapacity pension to an injured man even though his obesity prevented remedial surgery.	In this context obesity is not viewed as self-inflicted.
25. Simms v Islington LBC	[2008] EWCA Civ 1083	Housing	Assessment that a dangerously obese man was not in priority need for housing. Decision was reasonable, despite medical evidence of some risk to his health from continued homelessness.	
26. Harouki v Kensington and Chelsea RLBC	[2007] EWCA Civ 1000	Housing	Despite the legal status of overcrowding in her house, a woman and her obese son were not homeless or in priority need. Decision is also a matter of local housing pressure.	Local authorities are given some discretion in management of their housing priorities.
27. Wandsworth LBC v Brown Court of Appeal	[2005] EWCA Civ 907	Housing	An obese man was found to be in priority need of accommodation.	

Stakeholder interviews

Methods

Over 30 stakeholder organisations who work with relevant sectors or services of UK local government – e.g. town planning, sustainable transport, health promotion, licensing, legal risk and liability, and taxation – were identified as potential participants from other areas of the research. Twenty-five semi-structured interviews were conducted with key representatives from 17 of these organisations and three independent experts (see Appendix 6 for details). Interviews were digitally recorded and then transcribed. A series of key headings identified by other parts of the research were used to guide the interviews. These are presented in Appendix 5. Interview transcripts were analysed using thematic analysis.

All results have been presented in an anonymous form and all key stakeholders who participated have been promised a copy of the final report, to be sent after clearance by the funding organisations.

Results

All the key stakeholders who participated in this study shared their extensive expertise and knowledge extremely generously and gave a large amount of their time to ensure that the issues were fully understood and documented.

These results are categorised in two sections:

- **key themes** related to local decision-making and how it might be improved, or the best channels for knowledge transfer and dissemination of research, and
- **examples of specific regulations** that might help or hinder the promotion of physical activity or healthy eating by local authorities.

Key themes

The following range of general themes emerged from the stakeholder interviews:

- the adequacy of the legal framework
- influences on local decision-making
- issues around making the case for increased involvement with the public health and obesity prevention agenda
- leadership
- education and skills development, and
- practical solutions to support change.

Adequacy of the legal framework

Stakeholders generally agree that existing legislative frameworks are fit for purpose. Most participants support the view that problems stem from poor implementation or poor enforcement of existing regulations rather than major concerns with existing regulations. The need for local government to work with some degree of flexibility and autonomy within the overarching regulatory framework of central government emerged as an important issue. One barrier to implementation is attributed to a range of government departments issuing differing regulations and guidance which results in inconsistency at a local level.

“ ... the general quality of guidance [...] in this country is very good. By no means perfect but it's very good by international standards. However, the practice is, again exaggerated slightly, very bad. So that the question immediately arises, why the discontinuity between what guidance suggests is an appropriate, balanced way forward and what actually happens on the ground [...] But it's partly a lack of consistency in Government levels [...] Then you know councillors believing what their job is one thing but what the guidance suggests they should be doing in terms of planning for the best for all is something else [...] So there's a lack of, maybe a lack of quality in some councils, and planning officers, maybe also the training has not caught up with the ideal of sustainable development, let alone healthy development, as much as it should have. It's also something to do with the actual power of local authorities in the face of developers.” Participant 001

“ ... the gap between national policy aspirations and local delivery of local schemes on the ground is a growing chasm, and a widely recognised problem [...] but it's not really about extra guidance. It's around incentivising the uptake of the delivery of the guidance we already have there.” Participant 002

There are mixed views among stakeholders about the need for a specific Planning Policy Statement for Health. Some argue strongly against this and highlight government opposition to support their position. Others are keen to explore the possibility of the development of specific health and planning guidance as a mechanism for mandating planners to consider health and to put health on an equal footing with other issues.

“ [Organisation] is against further national guidance [...] national guidance tends, well it tends not to be the best way of coming up with innovative local solutions, especially around things like access to green space, you know licensing of, for example, fast-food premises, you know things like that, that it's, that these are best, these are best determined at local level.”
Participant 003

“I think it would be helpful but I'm hesitant to say that because you've got so much guidance and so much national policy If it was concise and coherent and it didn't need to be too overly lengthy then it would be useful. We have policies on sustainability, on housing, on the

economy, on retail but we don't have anything on health. Yeah, it would be good so long as it took the approach that the new PPS is taking which is more concise and condensed and actually set out like an LDF document. So you actually have hooks that you can get into. So if it was like that and not some kind of lengthy paragraph document then yeah that would be quite useful.” Participant 004

Influences on local decision-making

Participants identified a range of issues around decision-making at local level. These related to traditionally held views about roles and responsibilities, a lack of awareness of health issues among local decision-makers, the need to demonstrate change within a short time-frame, role divisions and a need for more effective joint working, concerns over funding, fear of litigation and the use of targets and measures.

Traditional roles

One of the most common views across stakeholders is that many local authorities still base their activities on traditionally held views of roles, responsibilities and practices. Although some talk of the beginnings of a change in culture and report significant progress in some areas, most suggest that views around planning, transport and food retail remain entrenched within narrowly defined boundaries. In particular, many stakeholders support the view that health dimensions are not generally considered as important drivers in most day-to-day activity. Several participants reflect on the importance of public health issues within local governance in the past and note the loss of these links among contemporary local authority discourse. When health is discussed, participants generally agree that many people working in local government hold a narrowly focused view of health, relating to the provision of healthcare services rather than encompassing broader definitions of health.

“I would have to say early days for most local authorities. You know there's still a large legacy in people's thoughts that planning is about land use, and it's about how you use the land and that's about appropriate building and that sort of thing, and preservation of Green Belt [...] I think you know there's a big history where planning in the 80s and 90s was really hemmed in and made to be much more just a regulatory service that stopped the worst kinds of development. And that was all it was to do. And it didn't have any pro-active kind of function.” Participant 005

“The barrier often is kind of councillors within local authorities [...] I mean it's kind of like people being wedded to traditional ways of approaching transport, which is just to kind of respond to congestion or to respond to new housing growth by just trying to increase the capacity of the road network, by building new roads, by building bypasses, even though there's plenty of evidence that once you build that new capacity it just gets filled up.”
Participant 006

“... when we talked about fast-food provision locally in terms of restricting the number of outlets, or where outlets could be located, from the top level within the local authority they were really keen to push something through around that, but not on the basis of health, so not going out to the public to say we're going to ban outlets because of health, but they were looking at fast food because of rubbish and environmental issues.” Participant 007

“You know we'd seen the Government documents – health is everybody's business, we'd got that message – but we didn't really know, well you know what does that actually mean for us, how do we actually go forward with that? [...] But my feeling then, and still to some considerable degree, is that quite a lot of district councils in particular have not really got this message fully on board, and are not fully appreciating you know that health should be a priority for their programmes and activities, especially in a time of you know competition for

resources increasing [...] it's very difficult to embark into something which is a new area in which in the minds of you know some, well I'm sure quite a lot of officers but more particularly probably in the minds of quite a lot of members, you know health, well that's the NHS isn't it, you know, you don't have to worry about that. But of course that's just looking at it through a very narrow perspective." Participant 008

"So economic regeneration policy just doesn't seem to consider health. And when you do have structures set up, health is normally parcelled off as a separate issue, so when you're looking at the economy, nobody thinks about health. All they think about is the number of people employed and the value of the product they're producing." Participant 009

"And the biggest fundamental shift in this is that whereas previous guidance said we design roads for cars, currently under what's published as *Manual for Streets*, we have a shift that we say the pedestrian comes first and we design for pedestrian movement, then cycling, then the car comes after that [...] That's a really big shift because it sort of moves back 50 years of received wisdom about what we should do with our road network [...] So that means that those same principles will apply to sort of urban centres and mixed-use streets, which is basically the rest of the urban environment [...] So that is a really exciting opportunity in itself, a massive challenge for, well the kind of professional core who've spent the last few decades designing under one paradigm, then suddenly asking them to actually shift how they design and manage the road network." Participant 010

"I think the whole walking, cycling that kind of movement is more accepted because it's to do with climate change as well which is a massive agenda within planning. I think that's more widely understood than I would say obesity. And I think obesity and health maybe the next thing that's going to come forward in planning as an important issue; something that might not necessarily have been in the forefront of planners' minds." Participant 011

Lack of awareness of health issues among local decision-makers

Stakeholders also point to a lack of awareness of health impacts among some decision-makers at local level.

"Their local health profiles have been really helpful [...] You can talk to local councillors. It comes to them, you know the local health profiles, it comes to them as an absolute revelation that even in their ward there are significant health inequalities. Or the levels of you know, limiting, long-term conditions, it's kind of a complete revelation to them the inequalities, the variations, the variations in terms of you know age groups that are affected, socioeconomic groups that are affected. So I think that that information is incredibly powerful actually." Participant 003

Interviewer: "What's going to make councillors make those decisions?"

Stakeholder: "I think more awareness of what is actually being consumed in a fast-food outlet. I mean some of the things you know, well you didn't know about the [poor quality of fat used in] curry sauce, I mean [...] In exactly the same way you possibly don't think about it unless you're going to have curry sauce and chips. I mean I might have fish and chips from a fish and chip shop once a year, if that. I'll go and get fish and chips from a half decent restaurant, but I just don't, so some of that is half the people you want to make decisions actually don't, aren't in that environment to experience it [...] when people talk about buses, I do use the bus, and unless you use the bus you don't really understand some of the issues around it. And it's not always that pleasant." Participant 009

Short-termism

The pressure to act within short-term political cycles is cited by several stakeholders as an important strategic barrier to engaging action around the promotion of health at a local level. Health gains are often only realised in the medium to long term, but investment by local authorities is often described as needing to be short- to medium-term in order to demonstrate value to local voting communities.

Role divisions

A key theme to emerge from stakeholders involves significant role divisions which seem to be described as a common part of the normal culture within local government and between local authorities and other local agencies.

“... the directorates within a local authority, they're like businesses on their own. They don't necessarily speak to each other you know, regardless of speaking to external organisations.” Participant 007

“One of the things that planners tell us continuously when they start this dialogue is, ‘Oh we've tried to talk to the PCT and you can never get them to tell us what their plans are’. And ‘No, they don't have time to come along and talk to us about what they want’ and all that sort of thing. And that is a real issue of people just ... two professional groups talking in different languages [...] So yes there's a huge scope for better dialogue, better understanding from planners about what public health is about, and therefore the impact that they can have. And also, just on getting a better understanding between the two professions about how one can help the other and how each of them are actually bound to follow regulations as well.” Participant 005

Joint working

Several stakeholders stressed the need for joint decision-making and implementation, especially to integrate a range of different agendas around a common goal. There is a view that Local Strategic Partnerships (LSPs) have generated positive outcomes in some areas but not universally. Other structural issues are also considered to create problems for joint working.

“The work that goes on at LSP level is highly strategic and it's all just about co-ordinating broad corporate priorities. And you find the further down the food chain you go towards the operational level, the less partnership working there actually is. They're still very separate organisations.” Participant 010

“There's been an attempt by Government to sort of say to Directors of Children's Services and Children's Trusts you've got to consider the public realm, you really do. It's in the statutory guidance now for children's trusts that they consider it. But what is more difficult for them is how. How do you impact on that, you know, whoever it is, director who is in charge of, you know, that behemoth of environmental stuff and the planning stuff that I never talk to anyway. Actually bring those people on board. Traditionally a million miles away and things like social care and playing and youth work and whatever.” Participant 012

“I mean essentially you get people like in the DfT constantly saying oh the two need to come together and we need to kind of recognise the role of spatial planning and reducing the need to travel, but they don't necessarily translate into working together, either at a national level or at a local authority level. And part of the problem at a local authority level is that you've got different responsibilities at different spatial levels. So highways are at one

level and then you've got planning and responsibilities at a different level, and then transport responsibilities at another level as well, so in counties you've got planning at district level and transport and highways at county level. And then in the cities you've got the, what were the Passenger Transport Executives, responsible for public transport at one level, at sort of city-wide level, and then, but actually the powers to really do anything about that, like on highways, they're at the district level.” Participant 006

“It's a reasonable hypothesis that there will be a better grip on improving health in an area if the following things are found. Firstly, commitment of senior elected members across the council. Secondly, the council as a whole but particularly those senior members and the senior strata of chief officers, working very closely with the primary care trust on a common agenda. So we've got the leadership and the partnership dimensions there. The third one is places that are actually really rooted in localities and communities and not just going through the rituals of talking about community engagement but actually doing it. I think fourthly an obsession with information, and with outcomes, so they'll have a well-formed joint strategic needs assessment, a well-formed health and wellbeing partnership, programmes of work you can identify, and they'll know what their outcomes are and be kind of getting some sense of whether there's any connection between what they do and what the outcomes appear to be. I think the kind of, you know the final kind of thing is that they will actually have processes of systematic evaluation of a lot of what they're doing. Now you can see a handful, only a handful of places round the country that meet that kind of ideal profile.” Participant 013

Funding

Several stakeholders expressed concern about how future progress towards healthier agendas at local level could be achieved, given the current economic climate. Some were concerned that existing services might be in jeopardy but others saw financial constraints as an opportunity to demonstrate the value of working collaboratively to achieve shared goals. The competition between adjacent local authorities for economic gain is also cited as an additional barrier.

“I suppose if you're looking at money you're looking at the position of much of this provision, and clearly we're dealing with parks, leisure services, which are non-statutory, therefore there's no definite pots of money which are always going to be available. And in the present financial climate then obviously it's possible that some local authorities, in particular if we're talking about public provision, will look upon changes, you know or sort of possible potential savings in non-statutory services before they will look at mandatory services.” Participant 014

“But you know undoubtedly there will be a squeeze in the economy, and I think shouting about and promoting the costs and drawing attention to the equation between how much is spent on encouraging car travel and how much the resulting costs are, I think there's a very one-sided equation and there's a big cost there [...] So I think for us that people wanting to promote physical activity and what in effect are cheaper, much cheaper schemes, and additionally can be shown to have wider savings, I think that's a real opportunity for us.” Participant 002

“From a food point of view – and I'm thinking in particular around local policy change – is that there is a strong reluctance to get involved sometimes because of the fear of losing customers across a border [...] because you might you know restrict, you might be in [place name] on the border of [place name], and you refuse planning permission for a [fast-food chain outlet] and that space goes unrented and unused, and you know they come this side of the border where [place name] don't have a policy. A hundred yards away they build that [fast-food chain outlet] and all the population access but they don't get any of the economic gains from it. And so there are a lot of issues around that that need thinking through when you're looking at local policy.” Participant 007

Fear of litigation

Concern is also expressed about the fear of litigation in relation to planning and risk management. Several participants report that local authorities are mindful of the potential costs of legal action in lost planning appeals. This concern inhibits some planners from using novel approaches until such practice has become more mainstreamed, which results in slow innovation. Similarly, there is a view that local authorities give contradictory views about how much risk they can take. Local interpretation of risk is thought by some to be influenced by fear of litigation, which leads to some councils being nervous of supporting, for example, local neighbourhood activities like art or street events. Several stakeholders suggest there is a need to encourage a shift in emphasis away from risk minimisation and towards risk benefit, particularly in relation to play.

Targets and measures

Participants report some concern about the impact of existing targets and measures used to drive change. Several stakeholders report the dilemma for local authorities in the practical application of national targets and the absence of appropriate measures against which to judge progress.

“I mean I’m thinking particularly around how various sort of funding regimes or kind of performance managers and regimes work across the public sector, and what we’ve seen here is that actually these sort of, whilst particular projects or programmes of funding might have sort of a goal which draws together a number of agendas, then how that’s actually measured and reported on doesn’t, is not as, has not been as successful in trying to actually have a kind of, that integrated or that coherent approach in terms of what is actually measured. So the kind of classic is between trying to invest in public spaces for kind of on the back of public health agenda, and the resources and the sort of incentive to do it being absent within the health funding bodies, that kind of their actual targets which have been set as they’ve cascaded down just don’t reflect the public health agenda very well.” Participant 010

“I think the other thing is national indicators. The problem is if you’ve got a bit of a dearth of leadership or some problems in a local authority, people tend to chase those national indicators. Or feel that they have to chase those national indicators, which can take you down very narrow roads [...] But it doesn’t help you be holistic when you’re chasing national indicators pull you in completely different directions. Or you’re target driven. I suppose the target driven culture in this day doesn’t help thinking wide. You can sit there and say hey wouldn’t it be great to bring all of us together. Well indicator deh deh says you’ve got to do this [...] Government office are going to come in and kick our arse if we don’t see a 4 point rise. And it takes an incredibly clever local authority to go sod you national indicator actually I’m going to pursue local, what it means to me locally rather than the national. Very ballsy.” Participant 012

“... so you know we don’t have a proper economic assessment framework around walking and benefits of walking in comparison to building roads etc., and I know that DfT are doing some work on this, but it’s been very difficult. We just did an evaluation on one of our [...] schemes, it was very difficult to get cost-benefit information around the benefits to walking. We could do it around carbon reduction, which was fine, but we know that there are many other benefits that we can see, not least health, but it was very difficult, there isn’t much evidence around there. So that is a very much disincentive in terms of planners and engineers around assessing different schemes.” Participant 015

Making the case for increased involvement with the public health and obesity prevention agenda

Stakeholders made a range of suggestions about how to increase the engagement of local authorities with the public health and obesity prevention agenda. These include how to make the case, leadership issues, education and skills development and a series of practical solutions.

Making the case

Participants agree that important mechanisms to support engagement in the public health agenda include the presentation of convincing evidence, making health connections between different areas and foci of interest explicit, community involvement, and making use of existing, credible organisations, structures and other opportunities.

Evidence

Stakeholders suggest that a convincing case can be made to local authorities around the size of the public health problem, public engagement and added value. Some argue for a strong and explicit focus on health, but others suggest that this is not without problems.

“So when you talk about roads, you know that’s all they’re thinking about is how do we get people in, how do we provide them with the car parks, and that’s what drives them to doing that. Now if you could cover that by saying, you know by making your workplace more accessible by public transport or cycle storage or whatever, your workplace would become more productive. So if you’re looking at it from an economy point of view there’s greater incentive for a business to invest because the traffic congestion is not as bad, then they’ll start looking at those policies. So there was a real feeling that as soon as you say we’re going to do this because of health, then that turns the public off straight away, and as soon as the public’s turned off then you know the local authority’ll stop it happening [...] It’s certainly what councillors think.” Participant 007

“... you know you talk to planners along those lines and you think, they just get frustrated and say well, you know, go away, you’re wasting our time [...] The funny thing is, if they apply one set of evidence of standards of proof to one thing and another set of standards of proof to another, the standards of proof to the things that they’ve been brought up with – traffic and housing and so on – are very, very, well they don’t question them, this relationship, but if you bring health to the table, the standards of proof that they want is enormous.” Participant 016

“But where we’re looking at being able to demonstrate sort of the business case for why investing in green infrastructure for instance, then being able to lay out all the different functions that green infrastructure can provide in terms of perhaps reducing the temperature of urban areas, with obvious health benefits for doing that, or we’re looking at how green infrastructure can better manage surface water, flooding ... These are the kind of cost comparisons that are able to stack up much better, and can then lend further weight to saying well you know in addition to all the health benefits and costings that we can place on those then a multi-functional kind of green landscape can be that much more persuasive in terms of its contribution across a wider range of solutions.” Participant 010

Making health connections explicit

Stakeholders generally agree that much of the activity that already takes place at local authority level addresses the public health agenda implicitly. Some argue that the connections between different areas of interest and their direct connection with the health (and obesity prevention)

agenda should be made more explicit in order to encourage individuals and departments to consider their own direct responsibility and opportunity to contribute to health-gain goals. These include links to the sustainability and climate change agendas.

Community involvement

The value of genuine community engagement was also noted by some participants.

“So politically there’s some demonstrable lessons that the quality of the public realm has a direct political impact [...] I mean if we’re looking at how we influence politicians, then it’s very much through how vocal the local community are.” Participant 010

“And another issue I would say would make a huge difference is not sure whether it’s more guidance but it’s certainly more support for local involvement networks. And as you know that they’ve only been around for a couple of years now. Their impact is extremely patchy. But I think it’s true to say that they are still very much focused on the NHS. And stretch to social care has been challenging for them. And the stretch to public health and prevention I think in most cases hasn’t even been attempted yet. Because it’s, so I think that there could be far more support of links to develop their capacity to look at prevention and public health.” Participant 003

Making use of existing, credible organisations, structures and other opportunities

Several stakeholders also suggested that it is important to use existing credible policy documents, organisations and structures where possible to add legitimacy to arguments. But no consensus emerged about which organisations were considered to be credible.

“So you’re no doubt familiar with the NICE guidance that came out I guess a couple of years ago now on physical activity and the built environment, and while that’s really useful guidance and repeatedly bumps people over the head with it, the extent to which it kind of, you know the Department Head or yeah the Director for Transport and Planning of a local authority either receives that guidance or sees it as relevant to them, because it’s not coming from a body which they’re normally used to kind of receiving guidance from, is I could guess something of a kind of a question mark in my mind you know.” Participant 018

There may also be potential value in seizing opportunities on which to build interest, such as the Olympic legacy.

Leadership

A strong thread from participants involves the importance of leadership in moving on the public health agenda at a local authority level. This encompasses leadership at all levels of organisations, from senior managers to officers and councillors.

“There’s lots of bits of legislation there, the trouble is joining them up and it needs some quite inspirational and thoughtful people to do that.” Participant 012

“Well the way these things usually work is that officers you know become aware that there is an issue, or there is a new directive, or there is a policy requirement, and usually would take it to the lead politician and say look actually you know we need to be doing this, we need to be thinking about this. Now invariably, where it’s a new area of responsibility, the members would say, would be resistant to that – you know we’ve got enough on our plate, we haven’t got enough money to do what we want to do, I’ve got my pet projects already

and they would be further imperilled if I have to, you know, take on board the notion that as a council we've got to pay more for this activity as well. So there is a lot to be said for reversing the process so that actually it is the politicians who are saying we should be doing this, this is important to my constituents, I've just found out that there is a seven-year age gap between, you know mortality gap between the people I represent and the people who live in the posh parts of the borough, you know that's the kind of thing that galvanises them, particularly if they can be made to feel that it's kind of their responsibility to get something done about it.” Participant 008

Education and skills development

Similarly, several stakeholders saw a need for increased education and skills development within local authorities. This focused on developing an understanding of broad definitions of health along with specific skills development.

“And I think getting down to local level, I think the big issue around skills and capacity and capability around planning departments, whether... I mean you know again one of the issues is around people can be trained around public health and health promotion, well I think that's fine as it goes and that can be built into training and professional development, but I think it's again a bit wider than that in terms of at the moment planning officers are expected to negotiate with quite big developers, you know and not necessarily doing much of that at the moment but, and they don't actually have, in my view, in my experience, the skills and the back-up in order to effectively negotiate good outcomes [...] I don't know whether it's just a general kind of training around influencing, negotiating, all that kind of stuff, but I think there's something deeper which is around local areas feeling confident enough to manage their own places.” Participant 015

Practical solutions

A consistent theme raised by participants was the importance of demonstrating good practice to other local authorities by provision of case studies, peer learning and the development of practical mechanisms for sharing good practice. They also generated some suggestions about potentially useful options for action.

“The role of the public health observatories I think is very important as well. And they were given a specific resource to work with local authorities around I suppose enriching their understanding of the contribution that they can make to the public health and preventative agenda. I'm not sure what's happened to that money and whether it's going to be repeated. But certainly I would say that there is a very strong case for that to happen and for the public health observatories to be seen just as much as a resource for local authorities, well for the local strategic partnership across the piece actually, rather than just, rather than NHS resource. And I do think their report has been really helpful actually. Their local health profiles have been really helpful.” Participant 003

“... the process [...] is trying to mainstream policy around obesity into what authorities and their partners do, isn't it really? It's about having an understanding and awareness of obesity and health and equality issues in the delivery of all council services. So, thinking about it in terms of housing, in terms of public transport commission, in terms of licensing, in terms of planning, in terms of education as well. These are all issues where health inequalities particularly obesity play a strong part in policy-making. There are changes that can be made to planning, licensing, education policy that would enhance policy around obesity, but obviously there will be many authorities in many areas there may well be conflicting policy imperatives to do something different arising from a different area of that particular service [...]. Scrutiny is a very good tool for enhancing and maintaining high-

profile political awareness on a particular topic. Where scrutiny is carried out in a particular topic, that service suddenly gets a much higher profile with senior management and with senior members because they think oh scrutiny is crawling all over this, we should probably check that we're delivering it well." Participant 010

"I think [place name] are funding a scheme which we're involved in which I think is showing much better results from changes to planning, which is about essentially supporting retailers to market fresh food and veg, about persuading them to move the fruit to the front of the shop and the chocolate to the back and you know help support them through the display issues about ... and storage issues about stocking fruit and veg and that kind of thing, and basically it's a more intense version of some of the stuff that Change for Life promoted, about retail. And I think that if you were to push me, that's the thing I think that would make the most difference to the retail environment, is significantly more support for shopkeepers to kind of change the nature of the stuff it is that they sell." Participant 017

Specific regulations

Stakeholder interviewees identified some specific examples of legislation, case law, statutory and non-statutory guidance, and local powers, that might help or hinder the promotion of healthy eating and physical activity by local authorities. These are presented in Tables 28 to 33, under the following headings:

- Specific regulations: Restricting traffic, promoting active travel, and risk of injury liability Table 28
- Specific regulations: Fiscal disincentives and amateur sports clubs Table 29
- Specific regulations: Licensing and promotion of healthy eating Table 30
- Specific regulations: Planning, physical activity and healthy eating Table 31
- Specific regulations: Open space, playing fields and play Table 32
- Other specific regulations Table 33

A number of points were emphasised by separate interviewees and give rise to some specific recommendations.

Planning

There is now good a good planning framework for the development of healthier towns and environments. Planning policy encourages sustainable economic development focusing on town centres and encouraging more sustainable active travel. Local authorities can draw up plans to shape their localities for a more sustainable future and have the power to require car-free developments and financial contributions to mitigate the health impact of new developments.

However, there is a clearly recognised gap between policy and practice. Local authorities may not have caught up with national policy, for example, in the promotion of town-centre rather than out-of-town developments. Local decisions may be influenced by inter-authority competition for development, resulting in a race to the bottom in standards. This may discourage strict policy on the location of developments or on maximum parking provision.

Planning law appears inadequate in one area in particular: the granting of planning consent on the basis of 'class of use' fails to allow regulation of the actual premises and makes the development of local planning policy on healthy food very difficult. The blunt nature of control based on class of use increases a danger of inequality, where a small business is refused consent but big business can afford to complete development and challenge the decision or pay a levy.

Scrutiny

S.21 of the Local Government Act 2000 provides that all local authorities must establish a Scrutiny Committee of members with the power to examine any aspect of local service delivery and report back to the council. Scrutiny Committees have some statutory function to assess local health services. Scrutiny can focus attention on quality of local policy and decision-making and is a useful tool for examination of cross-cutting issues like obesity. Local Scrutiny Committees should therefore be a target audience for dissemination of research and best practice on local authority options to prevent obesity.

Local speed limits

The current law on 20mph speed limits is considered unsatisfactory. It discourages more widespread use of the 20mph limit and is expensive to implement. Instead of implementing a patchwork of 20mph limits, the default limit for all urban roads should be reduced from 30mph to 20mph.

Risk of personal injury liability

The fear of liability for personal injury may discourage the promotion of physical activity. For example, it may discourage land managers from supporting public access to open space.

In most cases the law needs to be clarified rather than amended. For example, it would be helpful to clarify the liability of schools for their pupils' safety while travelling to and from school, to ensure active travel is encouraged by schools.

There is also a call for a law change in relation to accidents between vehicles and cyclists or pedestrians, so that it is the driver who must prove negligence on the other's part in order to avoid civil liability. This reversal of the burden of proof could encourage safer driving and more active travel.

Green space and play space protection

Green space and sports fields are now well protected by the law. However, there are a few remaining gaps. Playing fields held by academy schools are not protected from disposal (because they are a new concept), and play spaces that do not incorporate sports facilities are not protected through any statutory consultation procedure. There is no obvious body with responsibility for the long-term protection of play space, since Play England is a non-statutory agency.

Amateur sports clubs

The legal position of amateur sports clubs can give rise to a number of financial burdens through local business rates, licence fees and VAT. The Finance Act 2002 introduced a scheme for registration as a 'community amateur sports club' (CASC) that allows 80% rate relief and gift aid on donations. This can help alleviate much of the financial burden on amateur clubs. Registration is made more important by the recent removal of discretionary rate relief by many local authorities. Amateur clubs need support from their local authorities to help them register for the CASC scheme. Currently there is no-one within local government responsible for such support, and the process may prove too onerous for the secretaries of some amateur clubs.

VAT laws may prove a disincentive, to schools and other charities, to opening their facilities to local communities. Currently a charity would be liable for some input tax, otherwise zero-rated, if it rents the facilities out more than 10% of the time. It is suggested that the law is amended so that construction of sports facilities by a charity is always zero-rated for VAT, regardless of their future use.

Licensing

Local licensing provides a potential means of regulating unhealthy food provision, primarily through street trader legislation but potentially as part of the wider licensing regime that already regulates an aspect of late-night food retail. Scottish legislation now incorporates public health as a licensing objective. England and Wales could follow this example.

Table 28 Specific regulations: Restricting traffic, promoting active travel, and risk of injury liability

	Regulation	Details	Comments
1.	DfT Circular 01/2006 ‘Setting local speed limits’	<p>Current DfT guidance restricts 20mph limits (without calming measures) to streets with average speeds below 24mph. This prevents use of wider 20mph limits.</p> <p>A 20mph zone may be implemented with calming measures where average speeds are higher. However, there must be physical calming measures like road humps.</p>	Government guidance means a council has to be brave to impose a blanket 20mph limit across the city. Zones should also be allowed to make use of more psychological calming measures (car-share spaces or removal of white lines).
2.	20mph speed limits	The current 30mph default speed limit for urban (restricted) roads was set in 1934 when there were fewer than 2 million motor vehicles registered on our roads.	The public health community widely supports 20mph as a default speed limit where limits above this would need to be actively approved. Currently it is not easy to implement without investment in significant infrastructure.
3.	Speed limits – enforcement	This is the responsibility of the police.	We currently have a light touch in enforcement of speed limits. Proper enforcement is needed.
4.	Personal Injury claims – burden of proof	Currently the claimant pedestrian or cyclist must prove that the driver was at fault on the balance of probabilities.	There should be presumptive driver liability in accidents with pedestrians or cyclists. We have rising traffic levels but, unlike in other countries, the liability is placed on cyclists or pedestrians if there is a collision with a motor vehicle. Evidence from the Netherlands suggests a reversal of the burden has a big impact on the way people drive.
5.	Breach of statutory duty: Gorringe v Calderdale [2004]	This case held that an individual should take the highway as they find it and a local authority is not under a statutory duty to remedy a danger they did not create.	This restricts local authority liability, but local authorities still get a lot of claims for tripping etc., which are onerous to deal with even if they are not legitimate claims.

	Regulation	Details	Comments
6.	Occupiers' liability	Occupiers of land can be liable for personal injury if they have created a danger.	In England, occupiers' liability might be too restrictive. We could build on the countryside code to give land managers more security. With the Scottish land access code a visitor loses their rights if they breach the code. However, there may be enough legislation out there already to protect landowners.
7.	S.2 of the Health and Safety at Work Act	This requires an employer to take reasonable steps to reduce risk.	This is counter-productive because it produces a risk from inactivity. It is not used against local authorities but they interpret it adversely from fear of litigation or insurance.
8.	Crime – cycling on pavements	Cycling on <i>footways</i> (a pavement at the side of a carriageway) is prohibited by Section 72 of the Highway Act 1835, amended by Section 85(1) of the Local Government Act 1888. This is punishable by a fixed penalty notice of £30 under Section 51 and Schedule 3 of the Road Traffic Offenders Act 1988. Home Office guidance has been issued that stresses that it is not aimed at responsible cyclists.	Cycling on pavements is technically an offence, but Home Office guidance is against prosecution (unless dangerous). However, Thames Valley Police produced a leaflet on how they will enforce it. This can scare potential cyclists.
9.	Cycle lane guidance	Local Transport Note 2/08 on cycle infrastructure design provides guidance.	There are no statutory regulations for cycle lanes.
10.	Road safety auditing	This is a statutory requirement for trunk roads.	Road safety auditing is still mostly about ensuring cars do not hit objects and, to a lesser extent, people. This still determines what our street space looks like. In fact it is only a statutory requirement for trunk roads but it is applied on almost every scheme. This is not appropriate. It only produces recommendations anyway. This is local authority misinterpretation of what is required.

	Regulation	Details	Comments
11.	Government Road Safety Strategy	Government strategy for reduction of accidents and deaths on UK roads.	The current strategy measures the number of deaths and accidents; it does not take into account levels of cycling and walking. This could encourage policies that limit walking or cycling, as opposed to making the road safer for cyclists and pedestrians. However, this is set to change with the new Road Safety Strategy.
12.	Local Traffic Regulation Orders (parking restrictions)	A local council can ban pavement parking in a specified area. They have the power to restrict parking around schools. Controlled parking zones can be used to replace normal parking with car-club parking spaces.	A blanket ban on pavement parking with civil enforcement has worked in London. Parking restrictions around schools are positive. There is a suggestion that some local authorities are being negative in their allocation of car-club spaces.
13.	Workplace Parking Levy (brought in by the Transport Act 2000)	Allows a local authority to charge for the provision of workplace parking licences. All income from the scheme should go to local transport initiatives.	Nottingham's Workplace Parking Levy should be easier to achieve and more effective than road charging. Shopping-centre car parks need to charge as well and the money should go into alternative access.

	Regulation	Details	Comments
14.	DfT <i>Manual for Streets</i>	Guidance for planning and design of residential streets. Currently only applies to new and re-developed residential streets. Incorporates 'shared space', a new design concept to reduce the dominance of vehicles.	<p><i>Manual for Streets</i> is a real help in guidance for less risk-averse streets, and acknowledges that most claims relate to poor maintenance rather than design, <u>particularly where the design procedure is robust</u>.</p> <p>There is controversy around shared streets. The RNIB objected to the concept because they want a clear kerb line for navigation.</p> <p><i>Manual for Streets 2 – Wider Application of the Principles</i> will bridge the gap between residential streets (<i>Manual for streets</i>) and trunk roads.</p>

Table 29 Specific regulations: Fiscal disincentives and amateur sports clubs

	Regulation	Details	Comments
15.	The Community Amateur Sports Club scheme (the CASC scheme) – Finance Act 2002: Schedule 18 (relief for community amateur sports clubs)	The Community Amateur Sports Club scheme, brought in by the Finance Act 2002, helps to provide parity with charity status for sport clubs. It allows an 80% rate relief and gift aid on donations for sports clubs. Gift aid does not apply to junior subscriptions to sports clubs.	Not enough clubs have signed up – due to the amount of time and effort involved in signing up. There is a transitional stay of execution for withdrawal of discretionary rate relief by local authorities, but no-one with a role to support clubs. It is mainly clubs with infrastructure that have signed up to the CASC scheme. Clubs without infrastructure need incentives, such as gift aid on junior subscriptions, as enjoyed by the Scouts and the National Trust. However, the Government has tried to restrict this precedent on the basis that gift aid should not apply when an individual receives a benefit (such as membership of a club). This is not logical, because National Trust members receive a similar benefit.
16.	Business Rate Supplements Act 2009	The Act provides a discretionary power for upper-tier authorities in England to levy a supplement of up to 2p per £ on business rates to invest in economic development.	Some sports clubs may be big enough to be caught by any supplement and have no protection in law.
17.	Business rates	The 2010 business rate revaluation is based on rental values from April 2008.	These are pre-recession values. Rates increase when a sports club develops its facilities, even if that is through public or charity funding.
18.	Jeanfield Swifts Football Club v Revenue and Customs [2008] UKVAT V20689 (22 May 2008)	Appeal against a decision that construction of a new pavilion could not be zero-rated for VAT.	VAT on construction costs: Can claim back VAT if the premises are used for charitable purposes (and not for profit or business purposes), but not purely because the club is a community amateur sports club (CASC). HMRC will fight CASCs for VAT on a case-by-case basis. This is onerous for amateur club secretaries.

	Regulation	Details	Comments
19.	Art. 132 of the VAT Directive (Council Directive 2006/112/EC)	VAT exemptions are possible for certain activities in the public interest, including the supply of sports facilities.	VAT on hire costs for facilities: If 10 or more sessions are bought, a club can claim back the VAT (block-booking exemption related to land tax). Otherwise VAT is charged for each session. The European directive should be implemented and the hire of sports facilities made VAT-exempt.
20.	Value Added Tax Act 1994: Schedule 8, Group 5 (as amended) and HMRC Reference: Notice 708 (February 2008) Buildings and Construction	Construction of a non-residential building will be zero-rated for tax if used by a charity other than in the course of business for the first 10 years. (HMRC accept a 10% business use.)	If a school hires out its sports facilities for more than 10% of their use, the school must pay back some of the VAT on the construction costs. This discourages the opening of facilities to local communities.
21.	Licensing Act 2003	A licensing fee is connected to the rateable value of the property.	According to the Licensing Act 2003, the licensing fee is connected to the rateable value and therefore increases with the level of infrastructure (e.g. a field or pavilion). The licensing fee should be capped at 20% of rateable value (in line with CASCs rate reduction). The Act also requires a temporary event licence for fetes and other occasions – a requirement which can inhibit fundraising.
22.	Music licences	Two music licences are required for public broadcast of music: one from PRS for Music (formerly Performing Right Society) and one from PPL (Phonographic Performance Limited).	Both PRS and PPL licences are now required in public places. Some sports clubs are not aware of this extra cost just to play the radio or TV.
23.	Clean Neighbourhoods and Environment Act 2005 s.102	Amends the Environmental Protection Act 1990 to add artificial light 'emitted from premises so as to be prejudicial to health or a nuisance' to the list of statutory nuisances.	Sports floodlighting is considered a statutory nuisance whereas a prison's floodlighting is not. Its status as a statutory nuisance is outdated because technology has minimised the impact of sports floodlighting.

	Regulation	Details	Comments
24.	Community Infrastructure Levy	This is a locally determined levy to fund the infrastructure needs of the Local Development Plan.	There is concern that the development of sport facilities will not be exempt from the levy. There is a lack of joined up thinking, because sports have not been considered alongside charities in this context. There is also concern that Community Infrastructure Levy funds will go to higher-profile needs.
25.	Community Safety Accreditation Scheme	This allows accredited volunteers to stop and direct traffic.	Cycle racing on the highway: Some police forces are pricing the races off the road, partly because (unaccredited) volunteer marshals are not currently allowed to stop the traffic.

Table 30 Specific regulations: Licensing and promotion of healthy eating

	Regulation	Details	Comments
26.	Licensing Act 2003	The sale of hot takeaway food between 11pm and 5am requires a licence.	The Licensing Act 2003 incorporated late-night takeaway and food provision for the first time.
27.	Guidance issued under section 182 of the Licensing Act 2003	A licensing authority may adopt a policy of refusing licences when it receives relevant representations about the cumulative impact on the licensing objectives.	Cumulative impact areas are where a local authority considers there to be so many licensed premises that the sheer number has an impact on the licensing objectives, and policy contains a presumption against new developments.
28.	Licensing (Scotland) Act 2005	The Scottish Licensing Act now has public health as a fifth objective.	The licensing objectives are the basis of all licensing decisions. A licence must be granted if the application meets them. If necessary, conditions may be imposed and a licence may be refused if that will not solve the problem.
29.	The Local Government (Miscellaneous Provisions) Act 1982 Sch. 4 S2 (1)	This gives local authorities the option to regulate street trading in their area by designating streets as prohibited, consent or licence streets. A licensing authority may attach restrictions on the location and articles of sale.	There is no reason why a local authority cannot designate all its streets as consent streets for trade, but they must hear each application. Licence streets are more for street markets, and long-term applications where a right of appeal is not limited. A local authority would probably need a policy on unhealthy street trade detailing their approach to applications and evidence to back it up. All decisions must be reasonable.
30.	The Pedlars Act 1871	Pedlars certified under the Act are exempt from street trader legislation and can trade in otherwise prohibited areas. Pedlars are those who sell on the street without a fixed stall or location.	Street pedlars (not stationary for more than 15 minutes) are exempt from licensing, so many local authorities have been forced to adopt local acts of parliament (which is both time-consuming and expensive). Hot-dog trolleys could be considered street pedlars.

Regulation	Details	Comments
31. Purple flag scheme	This is an award scheme for sustainable and thriving night-time economies.	The purple flag scheme incorporates local transport and it could perhaps be extended to reward good food variety and choices.

Table 31 Specific regulations: Planning, physical activity and healthy eating

	Regulation	Details	Comments
32.	Local Development Framework	This outlines how planning will be managed locally. Policies may vary across local authorities unless there is a higher-level policy at regional or national level.	Long-term options would be best pursued through central enabling legislation that local authorities can adopt. Using supplementary planning guidance means the effort must be repeated by every local authority. Instead there should be a regional approach to healthy planning.
33.	Supplementary Planning Documents	These are non-statutory documents that add policy detail to core policies within a local development framework.	The London Borough of Barking and Dagenham has used core policies on town centre vitality, retail choice and health impact of developments as the basis for a draft supplementary planning document on hot-food takeaways.
34.	Planning Cabinet Office food strategy – Food Matters: Towards a Strategy for the 21st Century	This places the emphasis on promoting consumer choice through improved retail offer.	Planning Policy Statements are in line with this approach.
35.	Planning ‘Stress areas’	Westminster Council designates ‘stress areas’ where types of entertainment have reached saturation, using PPS 6 (now PPS 4) which states that local authorities should consider the cumulative impact of leisure developments.	This allows presumptions against further development of certain types and sizes in certain areas. They will also consider type of use within a planning class.
36.	Planning – Class C4 (houses in multiple occupation)	Planning permission is required for development of houses occupied by between three and six unrelated people with shared facilities.	There is a connection between houses in multiple occupation and poor health. Facilities are not necessarily good enough.

	Regulation	Details	Comments
37.	Local planning policy on hot-food takeaways	<p>Once planning permission has been given, it cannot be removed.</p> <p>Using health as a driver to restrict planning for takeaways is still untested.</p>	<p>The impact of planning control is limited because it is not possible to do anything about existing takeaways. Heart of Mersey is doing some work around controlling fast-food outlets, but they are not sure how to frame it. Waltham Forest Council's policy restricting takeaways near schools (see Table 14) was not explicitly linked to health.</p> <p>Also, there is inequality in the impact of planning restrictions. Large businesses can appeal or buy up places with existing permission, or pay a levy easily.</p>
38.	Town and Country Planning (Use Classes) Order 1987	<p>There are five classes of retail use for planning purposes. Change of use between classes requires planning consent. Consent is granted to a class of property and does not consider the articles of trade or service.</p>	<p>The council cannot do much about the type of development within the broad use classes. This frustrates local officers, but members often do not understand the constraints. However, where most A5 (hot-food takeaway) uses do not offer healthier choices, a blanket policy might be justified.</p> <p>There is no way of discriminating in favour of healthy shops. A new class of use proved too complicated to develop.</p> <p>Big companies can afford to open without applying for change of use and to take the local authority on in subsequent legal proceedings. This needs to be controlled.</p>
39.	Conditions attached to planning consent	<p>A restriction on opening hours can be a condition attached to a planning consent, provided it is reasonable and in line with planning objectives.</p>	<p>Restrictions on opening hours are a potential tool to control unhealthy food.</p>

	Regulation	Details	Comments
40.	Government Planning Policy	Guidance is given in Planning Policy Statements (PPSs) and Planning Policy Guidance Notes (PPGs).	UK planning guidance is very good on health by international standards. However, the practice is not so good. For example, PPG 13 <i>Transport</i> clearly discourages out-of-town developments, but even now local authorities are promoting out-of-town business parks.
41.	PPS 4 Planning for sustainable economic growth	This is the current PPS 4.	PPS 4 has set out that national standards on maximum car parking for retail developments are replaced by locally set limits. This is a concern if some local authorities choose to lower standards to attract development.
42.	PPS 1 Delivering sustainable development, and PPS 4 Planning for sustainable economic growth	Policy guidance on sustainable development and economic growth.	There is no specific planning guidance on hot-food takeaways, but PPS 1 and PPS 4 were useful as a basis for local takeaway policies.
43.	PPS 4 Planning for sustainable economic growth	PPS 6 amendments have now been incorporated into PPS 4 so that it governs town-centre development.	The new PPS 4 can help improve access to healthy food. It introduces a modified (impact) 'needs' test for town-centre development that would improve access to fresh food. However, this does not specifically address takeaways. The PPS 6 consultation also proposed assessing impacts of the type of outlet, and not just the class of outlet.
44.	PPS 4 Planning for sustainable economic growth	Applies a sequential approach to site selection that encourages retail development in town centres rather than on the periphery.	Presumption against out-of-town development is helpful in encouraging active travel.

	Regulation	Details	Comments
45.	PPS Eco-towns (a supplement to PPS 1)	This is a supplement to PPS 1. It provides the standards any eco town will have to adhere to.	The PPS has a stretching target of 50% maximum trips by car. This guidance is the most innovative and progressive of its kind and it would be good to see it applied more widely to other developments.
46.	The Town and Country Planning Act 1990 s.106 (s.106 agreements)	The Act provides for a range of legally binding agreements between a planning authority and the developer to contribute towards improving the impact of a development.	Tends to be a closed shop between developers and local authorities with a fairly conventional set of options (i.e. education or infrastructure). The London Plan mentions health within s.106 possibilities but it is not yet used to potential. S.106 of the Town and Country Planning Act is a broad power, but its potential is constrained by rules set by the department of Communities and Local Government. An s.106 contribution from takeaway developments could be useful but should not be too high a fee to put off smaller businesses.
47.	S.106 Agreements – car-free developments	A local authority may use an agreement to prevent residents obtaining a local residents' parking permit.	This can be used to encourage car-free developments. General car-parking requirements for all new developments should be relaxed. However, local authorities sometimes give in to developers over it.

Table 32 Specific regulations: Open space, playing fields and play

	Regulation	Details	Comments
48.	PPG 17 Planning for open space, sport and recreation	This sets out policy on planning for open space, sport and recreation. The Government's Policy Planning Guidance Note 17: Planning for Open Space, Sport and Recreation (PPG 17) recommends the audit of existing open space provision, and the assessment of local green space needs.	There is concern that revision of PPG 17 on planning for open space, sport and recreation will emphasise conservation of biodiversity. This could conflict with public access if it is given priority. A new PPG 17 will broaden green space strategies to respond to new policy-drivers like climate change. Prioritisation of green space has been helped by demonstrating that the public values it in itself, and that it improves neighbourhood satisfaction. It is also improving the assessment of children's open space needs. However, there is a concern that it places preservation of biodiversity above the need for recreational access in some circumstances.
49.	Byelaws	Byelaws are used to address particular local nuisances. They create criminal offences that are enforced through the Magistrates' Courts with fines from £200 to £2,500.	Liverpool County Council has used byelaws to ban alcohol in public parks, and also looked at the sale of unhealthy food. Byelaws can help address cross-cutting issues like access to green space.
50.	School Standards and Framework Act 1998	The Act requires the consent of the Secretary of State for the disposal of playing fields by a maintained school. This does not include academies.	Academies (because they are new) are not subject to the same protection. They are required to build the same amount of sport space when they develop. Private schools are also outside the regime.
51.	School Standards and Framework Act 1998 s.77	It is necessary to obtain consent for the disposal of playing fields that have been used at any time within the preceding 10 years.	S.77 creates a loophole for the disposal of playing fields and there is a suggestion of land-owners deliberately not using fields in order to develop them.

	Regulation	Details	Comments
52.	School Premises Regulations 1999	Specifies minimum standards for the premises of all maintained schools.	Only requires 'team playing fields'. This does not recognise the need for wider recreational areas in the school environment. It does not apply to under-8s (because they do not do team sports). Progress was made to improve the space requirements, but this has stalled since 2008.
53.	Planning consent for demolition of sports facilities	There is no requirement for planning consent for the demolition of most buildings.	To demolish a sports building you should need to get permission, but this has not been taken forward by the Government.
54.	The Town and Country Planning (General Development Procedure) (Amendment) Order 1996	Introduces a duty to consult Sport England on the loss of playing fields.	Sport England is a statutory consultee for the development of community sports facilities. Playgrounds are beyond their remit unless they incorporate sport.

Table 33 Other specific regulations

	Regulation	Details	Comments
55.	Local Government and Public Involvement in Health Act 2007	The Act contains a broad requirement to involve the community in local decision-making.	The planning concept 'lack of need' can be bolstered by community consultation on health (if interpreted broadly enough) sought under the Local Government and Public Involvement in Health Act 2007 (i.e. that there is a lack of need for new takeaways). A planning approach is then consistent with the consumer choice rationale.
56.	Health targets – tier 3 PCT performance targets	New NHS 3-tiered performance management framework. Tier 3 is for local priorities.	There is a lack of local accountability for the NHS. Only their tier-3 targets are locally set and these are done last. There needs to be more local determination of targets based on the Local Area Agreement and not just primary care trust performance.
57.	Total Place	A 'whole-area' approach to public services.	Total Place will strengthen local determination of priorities. Adequate public consultation and engagement are part of Total Place, providing potential for huge change.
58.	Health and Social Care Act 2001	Local authorities have a duty to scrutinise the provision of health services in their area. For example, if the primary care trust proposes 'substantial variation in local health services', the Scrutiny Committee for that area has a responsibility to investigate.	This duty is quite minimal, so there is wide variation between local authorities on how they do this. However, it can be a very useful tool in stimulating local action on health.
59.	Sustainable Communities Act 2007	This gives an opportunity for councils and communities to put forward proposals on how best to improve quality of life and wellbeing in their local areas.	Local authorities are asking for a number of changes to the regulatory environment to support physical activity and healthy eating through the Act – particularly through planning and transport regimes.

	Regulation	Details	Comments
60.	Advertising: Town and Country Planning (Control of Advertisements) Regulations 2007	Permission is required from a local planning authority for outdoor adverts. However, the content of the advert is not a factor in the decision; only amenity and public safety may be considered.	Unhealthy advertising control is not possible through planning because there are no content restrictions, only considerations of amenity.
61.	Licensing Act 2003 S.20 (3) (b)	Local licensing authorities are empowered to apply age restrictions to films.	It is quite clear that local authorities still have the power to impose age restrictions on films. Liverpool County Council has considered using film restriction powers to apply an 18 certificate to any film showing smoking, but no further action has been taken.
62.	Treasury procurement rules	The general duty from the Local Government Act 1999 states: "A Best Value authority must make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness."	Procurement culture is of best value and not of food quality and there is little high-level (corporate) support for sustainable procurement. Treasury rules prioritise value for money over other considerations. Instead, we should have mandatory quality assessments.

3 Recommendations for the National Heart Forum

The NHF should:

- 1 Advocate** to all services within local authorities that they have a critical role to play in the reduction of obesity using existing national policies, legal powers and examples of good practice. There is currently a limited recognition of this role at local authority level.
- 2 Produce a resource** to help bridge the gap between national policy and legal powers and traditional, highly variable, local practice. This resource needs to provide specific peer-group case studies as the best means of encouraging other authorities. The NHF should evaluate and field-test this resource.
- 3 Conduct research** on the best channels for dissemination, involving local authority and primary care trust officers or representative organisations. This is to ensure optimal traction with appropriate professional bodies to disseminate this guidance outside traditional health channels.
- 4 Consider** the application of this type of research for other risk factors for cardiovascular disease, such as alcohol.

Appendices

Appendix 1	Example of review search strategy for MEDLINE
Appendix 2	Flow diagram of study selection
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Appendix 1

Example of review search strategy for MEDLINE

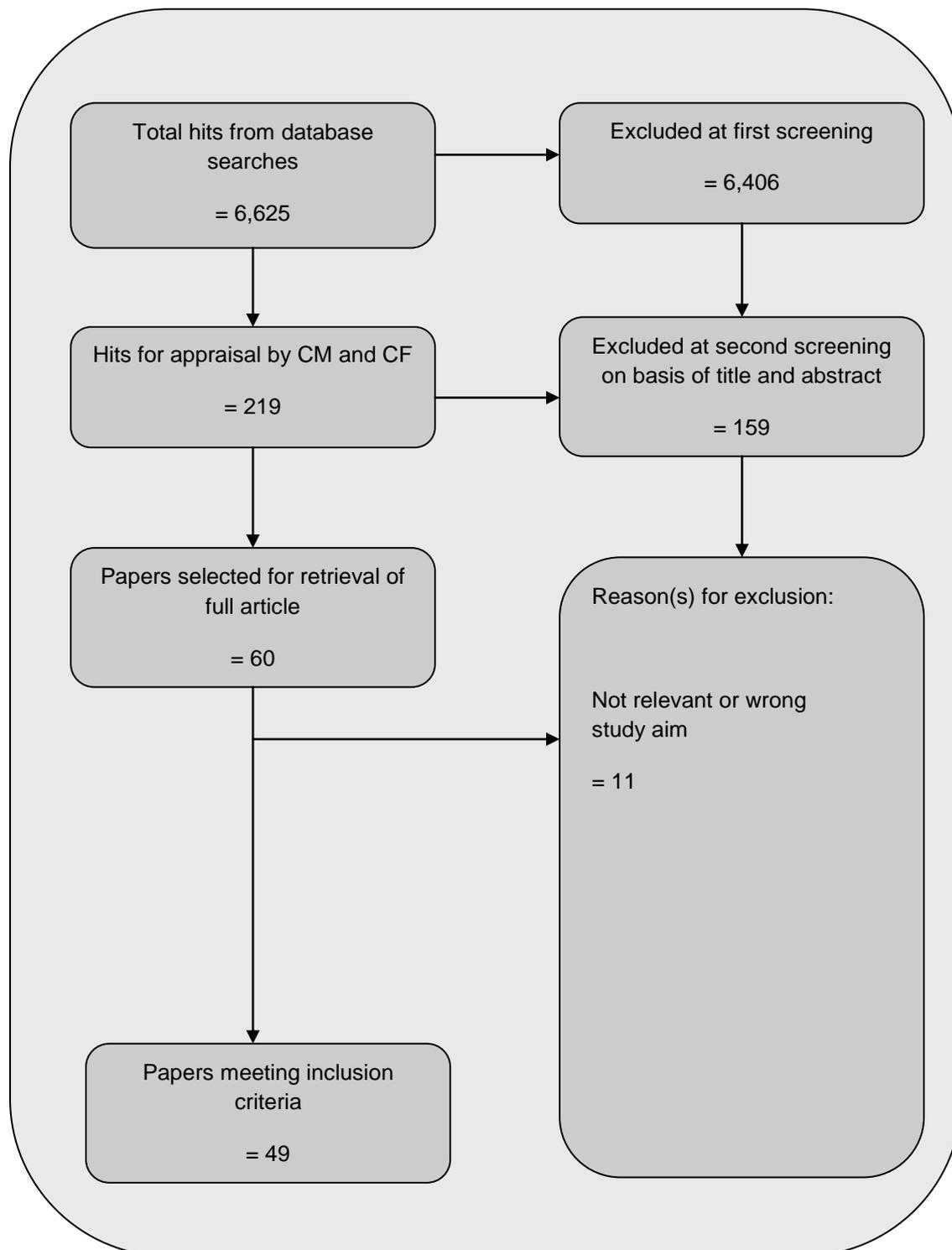
Search term

- 1 Food {Including Related Terms} (14830)
- 2 Food habits {Including Related Terms} (82)
- 3 Food behaviour {Including Related Terms} (14830)
- 4 Food preferences {Including Related Terms} (872)
- 5 1 or 2 or 3 or 4 (14960)
- 6 Eating habits {Including Related Terms} (9194)
- 7 Eating behaviour {Including Related Terms} (4104)
- 8 Eating preferences {Including Related Terms} (10582)
- 9 6 or 7 or 8 (15928)
- 10 5 or 9 (27827)
- 11 Healthy eating {Including Related Terms} (10582)
- 12 Diet {Including Related Terms} (6312)
- 13 Healthy diet {Including Related Terms} (153)
- 14 10 or 11 or 12 or 13 (31106)
- 15 Fat restricted diet {Including Related Terms} (76)
- 16 Health promotion {Including Related Terms} (6422)
- 17 Nutrition {Including Related Terms} (3865)
- 18 Healthy nutrition {Including Related Terms} (32674)
- 19 14 or 15 or 16 or 17 (38441)
- 20 18 or 19 (64935)
- 21 Obesity {Including Related Terms} (7633)
- 22 Obesity prevention {Including Related Terms} (1495)
- 23 Weight control {Including Related Terms} (1883)
- 24 Weight management {Including Related Terms} (1883)
- 25 21 or 22 or 23 or 24 (8485)
- 26 20 or 25 (68804)
- 27 Law {Including Related Terms} (17089)
- 28 Legislation {Including Related Terms} (13204)
- 29 27 or 28 (20077)
- 30 26 and 29 (590)
- 31 Local authority or local government {Including Related Terms} (704)
- 32 31 and 29 (71)
- 33 30 or 32 (657)
- 34 from 33 keep 1-657 (657)

Appendix 2

Flow diagram of study selection

Figure 4 Flow diagram of study selection



Appendix 3

Grey literature and media review search terms

For the grey literature and media review, searches were conducted on the Nexis online publications database for terms related to physical activity and healthy eating, combined with 'council' or 'local authority', and terms related to the regulatory environment.

Regulatory environment terms

Law
Legislation
Rule
Regulation
Statutory guidance
Byelaw
By-law
Bylaw
Policy
Plan
Ban

Physical activity search terms

Broadsheets:

Exercise
Swimming
Cycling
Walking

All UK publications:

Playground
Village or town green
Skateboarding
BMX
Cycling
Sports field
Swimming admission
Skateboarding
Workplace Parking Levy
Subsidised or free gym or transport

Healthy eating search terms

Broadsheets:

Obesity
Fast food

All UK publications:

Fast food
Allotment
Obesity
Food advertising

Appendix 4

‘Compensation culture’: evidence from case law

The behaviour of local authorities in their regulation of open space, provision of leisure facilities, and administration of physical activity programmes has a strong influence on their communities’ levels of physical activity and, thereby, their health. There is evidence that local authorities sometimes make decisions which frustrate physical activity, from fear of litigation and attendant financial costs. This behaviour is often based on a mistaken assessment of legal duties to prevent personal injury. Such caution can cause real harm to the health of a community through an unnecessary reduction in opportunities for physical activity.

Have local authorities actually reduced provision?

It is not always possible to identify instances where an authority has decided *not* to act in order to avoid liability – for example, a decision *not* to run a sports programme.

However, there is evidence that local authorities have taken positive decisions which reduce the options for physical activity in their community, in efforts to meet a legal duty to avoid accident or injury. The Hampstead Heath ponds case⁸⁵ in our case law review (see Table 19) is a clear example of risk-averse behaviour. In this case an authority refused to allow unattended swimming in a pond for fear of prosecution under health and safety legislation. The court found this was a misinterpretation of the relevant legislation and suggested that the risk of injury would be the result of the individual’s decision to swim in the pond, not the permission to do so.

The legal requirements

There are three principal questions in determining a claim in negligence for personal injury. 1) Does the defendant owe a duty of care towards the claimant? 2) If so, what are the requirements of that duty? 3) Have those requirements been met?

In many relevant situations a local authority will clearly owe a duty to its citizens. A good understanding of the second question is the key to avoiding over-cautious decision-making.

Our review of recent case law suggests that the ‘courts have tried to steer a sensible and practical course’⁸⁶ through this area. They have shown a regard for the impact that setting too onerous a duty would have on the future of worthwhile activities.

The court in the Hampstead Heath ponds case was clearly unimpressed by the misinterpretation of health and safety laws which prevented a valuable physical activity (see Table 19). And, in a case concerning injury due to a maypole hole in a village green, the Court of Appeal considered the danger of a restrictive standard of care on the future of maypole dancing and other similar activities, finding no breach of a duty⁸⁷ (see Table 18).

This jurisprudence has been placed on a statutory footing by the Compensation Act 2006, which addresses the potential deterrent effect of an onerous duty on a ‘desirable activity’.

Section 1 of the Act provides that, when assessing the requirements of a duty of care in a claim in negligence or breach of statutory duty:

“A court ... may ... have regard to whether a requirement to take ... steps might:

(a) prevent a desirable activity from being undertaken at all, to a particular extent or in a particular way, or

(b) discourage persons from undertaking functions in connection with a desirable activity.”

The explanatory notes to the Act acknowledge that this section does no more than reflect the existing law. It would appear the intention was to address public perception of a compensation culture rather than a litigious reality.

This has led to criticism of the Act as unnecessary and even counter-productive⁸⁸; the Act might only strengthen fears that a compensation culture does actually exist and is such a danger that it requires parliamentary intervention.

The nature of a duty may be guided by relevant rules and guidelines, including those on health and safety. However, health and safety laws are a criminal matter and do not, in themselves, give rise to compensation. The Health and Safety Executive has made efforts to counteract reports that health and safety rules are responsible for the prevention of desirable activities; they stress that it is misinterpretation of rules that leads to some poor decisions on risk⁸⁹.

The myth of a ‘compensation culture’

There is little legal justification for over-cautious and risk-averse behaviour by local authorities. However, there is a persistent popular belief that a ‘compensation culture’ exists and that it is a threat to those who facilitate many physical activities⁹⁰. This may be the result of an unrepresentative body of extreme, distorted or even false media reports – part of an agenda of outrage at ‘nanny state’ interference or infringements on personal autonomy.

This message has been recognised by the Health and Safety Executive, which has joined with the Local Government Association (LGA) to address risk-averse behaviour by inviting local authorities to sign up to a ‘sensible risk management’ programme.⁹¹ The LGA has also urged parents to shake off a ‘cotton wool culture’⁹² and recognises that an element of risk is positive for children.

The role of insurance

Insurance premiums may play an important part in local authority attitudes to risk. It is unclear if premiums have risen significantly and in a way that encourages a more cautious approach to injury liability. Any increases in premiums are unlikely to be due to an increase in successful litigation unless an authority has a poor approach to risk assessment.

If insurance costs are restricting the activity of organisations that promote physical activity, they need to be closely examined and their discrepancy with the reality of personal injury litigation must be carefully explained.

The cost to public health

Poor decisions on legal responsibilities and health and safety requirements can have a negative impact on a community in several ways, including a stifling of culture, reduced social cohesion, and reduction in opportunities for physical activity.

The cost of reduced opportunities for physical activity on the health of a community must be recognised as an important added driver to efforts to completely defeat a perception of 'compensation culture'.

Conclusion

Many local authorities, third-sector organisations and private companies have recognised that the law takes a reasonable and robust approach to the issue of personal injury liability arising from the facilitation of 'desirable' physical activity. However, there is still a danger that this message is drowned out by conflicting media reports leading to an over-cautious attitude to legal responsibilities. It is important for the health of a community that decision-making is fully and accurately informed and every possible opportunity for physical activity is available.

Appendix 5

Interview schedule headings

Interviews with key stakeholders were based around the following headings but were pragmatically weighted towards the specialism of the interviewee.

1. Background of organisation.
2. Regulations, legislation (the law) and policy or guidance that affect planning and/or green spaces and play / recreation.
3. Regulations, legislation (the law) and policy or guidance that affect licensing/ retail control (not food safety).
4. Regulations, legislation (the law) and policy or guidance that affect personal risk, liability and negligence.
5. Regulations, legislation (the law) and policy or guidance that affect tax and fiscal incentives or disincentives.
6. Local regulations, policies or byelaws.

Appendix 6

Organisations represented in key stakeholder interviews

Campaign for Better Transport

Central Council of Physical Recreation (3 representatives)

Centre for Public Scrutiny

Commission for Architecture and the Built Environment

Fields in Trust

Heart of Mersey

Heart of Mersey Partnerships

Living Streets

Local Government Association

Local Government Improvement and Development (2 representatives)

London Borough of Barking and Dagenham

NHS London Healthy Urban Development Unit

Planning Advisory Service

Play England

Sport England

Sustain: the alliance for better food and farming

Sustrans

Three key stakeholders were also interviewed in their capacity as individual experts on planning, licensing, and food policy respectively.

Appendix 7

Services delivered by local government

Table 34 Services delivered by local government

Major service	Examples of what is delivered
Education	Schools – nursery, primary, secondary and special Pre-school education Youth, adult, family and community education Student support
Transport	Highways – construction and maintenance of non-trunk roads and bridges Street lighting Traffic management and road safety; parking services Public transport Airports, harbours and toll facilities
Social services	Children’s and families’ services – support; welfare; fostering; adoption Youth justice – secure accommodation; youth offender teams Services for older people – nursing, home, residential and day care; meals Services for people with a physical disability, sensory impairment, learning disabilities or mental health needs Asylum seekers Supported employment
Housing	Council housing (Housing Revenue Account) Housing strategy and advice; housing renewal Housing benefits; welfare services Homelessness
Cultural services	Cultural heritage – archives, museums and galleries; public entertainment Recreation and sport; – sports development; indoor and outdoor sports and recreation facilities Open spaces – national and community parks; countryside; allotments Tourism – marketing and development; visitor information Libraries and information services
Environmental services	Cemetery, cremation and mortuary services Community safety, consumer protection, coast protection, trading standards Environmental health – food safety; pollution and pest control; housing standards; public conveniences; licensing Agricultural and fisheries services Waste collection and disposal; street cleansing
Planning and development	Building and development control Planning policy – including conservation and listed buildings Environmental initiatives Economic and community development
Protective services	Police services Fire and rescue services Court services – coroners etc
Central and other services	Local tax collection Registration of births, deaths and marriages Elections – including registration of electors Emergency planning Local land charges Democratic representation Corporate management

Source: *Local Government Financial Statistics, England No 20, 2010*⁵

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