

Supporting Sustainable General Practice

**A Guide to
Provider Organizations
For General Practice**

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Document Author: Robert Connor
Project Manager
Primary Care Transformation Programme
NHS England South (South West)

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Resource Development Stakeholders

This information resource has been developed in consultation with the following organisations:

- Bristol CCG
- Somerset CCG
- South Gloucestershire CCG
- NEW Devon CCG
- South Devon and Torbay CCG
- NHS Kernow CCG
- Avon LMC
- Somerset LMC
- Devon LMC
- Cornwall LMC
- South West Academic Health Science Network
- Severn Deanery
- Sample groups of GPs and Practice/Business Managers within all seven South West CCG areas
- NHS England South (South West) Primary Care

Introduction

This document aims to provide guidance to General Practices considering the formation of a provider organisation. It is one of a suite of documents focused on supporting general practice in achieving and maintaining sustainability, and exploring new, innovative ways of working.

Issues to Consider

The 5 Year Forward View (5YFV) is confirming the need for practices to come together to explore new, innovative ways of delivering Primary Care at scale. There is important learning from the experience of those primary care organizations that have already been through the process which may aid those starting the journey. As with many issues there is no 'right answer' and the decision about the scale of joint working and whether to formally merge or simply work in a federated model will depend on local circumstances.

Among the many potential reasons why General Practices may wish to form a network or federative organisational form could be the desire to enable those Practices to bid for and win contracts to deliver clinical services in their local community. There are a number of forms that a General Practice provider organization might take, including:

- Informal association
- A contractual joint venture
- A partnership
- A limited liability company
- A limited liability partnership

Each of these options will have potential benefits and drawbacks and it will be up to the group to decide what works best for them. An initial step might be to engage with your local commissioner of enhanced primary care services to determine what their criteria are for receiving and considering tenders for service, e.g. do they require submissions to be made by legal entities, rather than informal associations?

Caveats for Organizing

- Development of a **shared 'vision'** for the organization – do all stakeholders have a shared ethos for tendering for enhanced service contracts?
- Producing and agreeing a **robust Business Case**, to establish benchmarks for measuring successful outcomes, document perceived benefits and risks, and document the outcomes of benefit: cost analysis.
- Focus on **the short-medium term** – bringing practices together to consider, agree and plan for delivering a specific set of objectives. Longer term views, hopes or objectives can be referenced and documented for further consideration at a later date.

- Consideration and understanding of **the potential barriers** to achieving the ‘vision’ – successful coming together is only likely where there are perceived benefits for all participant practices/individuals. This will avoid any risk of participants perceiving the ‘vision as a ‘take-over’ or dominated by one or two participant organisations.
- Achieving consensus on **sharing of information** and agreement on **how issues will be handled**. For example:
 - Understanding the scope and exclusions of information sharing requirements
 - Understanding the scope and exclusions of collaboration, e.g. a common purpose while maintaining agreed levels of participant practice autonomy
 - Understanding and respecting that working arrangements may be different
 - Achieving consensus and clarity about what the offer for people joining the new organisation will be and then setting up a process for handling how that impacts on those transferring in
- Consideration of **property related issues and opportunities**. For example will all existing premises be required for future service delivery, should the provider company be successful in bidding for enhanced service contracts?
- Development of a clear **Business Plan** which will deliver the expected benefits, as specified in your Business Case.
- Achieving understanding and consensus on the potential **immediate impact of collaboration** – will it may mean a change to the status quo to each individual’s and practice’s ways of working with the consequent sense of loss?
- Consideration of and consensus on **opportunities for wider service integration**, as outlined in the Five Year Forward View. Key to initial thinking will be the anticipated future relationship with individual and groups of local community health and social care providers.
- Consideration of and consensus on whether you believe you are most likely to succeed in **achieving the ‘vision’ through a collaborative or competitive relationship with those providers**.
- Consideration of **how** you are going to achieve the federation, and realise its objectives – what **resources** will you need e.g. effort, time, project management, facilitation, financial investment, legal and financial advice and guidance. Do your **commissioners** have any expectations and requirements?
- Consideration of **how** you might want to approach effective **communication** with stakeholder partners and service commissioners. Do you need a formal **communications strategy**, which references all potential stakeholders in the community, and how you might wish to undertake effective communication – how, why, who, when and where?
- Consideration of what **expertise** you might need within your provider organization – do you have the required **bid-writing expertise** available within your membership of Practices, or do you need to **develop** that expertise/bring in **external** expertise?

Next Steps

General Practices wishing to begin considering how to collaborate in order to establish provider organizations may need to consider the following:

What's the Big Idea?

- What is the goal or vision for the provider organization?
- Is there a prescribed associative or federative 'model' which you are aiming to establish?
- What is your aspiration (reducing costs? Increasing income streams? Providing new services?)?
- What is the envisaged size of the provider organization?
- What is the envisaged structure of the organization, for example:
 - Formal commissioning consortia
 - Social enterprise company
 - Charity
 - Company limited by guarantee
 - Company limited by shares
 - Specialist personal medical services (SPMS) company
 - Informal network, governed or overseen by a representative Steering Group or Management Committee

Identifying and Agreeing the Collaborators

- Which General Practices will make up the organization?
- Do potential collaborators need to be approached and invited, and if so, how/by whom?
- Do you want selection criteria or baseline standards for interested Practices?
- What information do you want or need all interested Practices to provide e.g. current patient demographics, current premises profile, current service delivery profile, current workforce profile, current use of technologies, current contractual status, current financial profile, etc.?

Initiating Discussion and Achieving Consensus

- Where will this occur?
- How will it be facilitated?
- How will it be structured and documented?
- What should the key discussion items be?
- How will outcomes be followed-up?

Idea to Action

- Considering and agreeing all the tasks, actions, roles and responsibilities required to realise the federation
- Where will this occur?
- How will it be facilitated?
- How will it be structured and documented?
- How will outcomes be followed-up?

Initiation

- Do you need a Business Case for the proposed organization?
- Do you need a Business Plan for the proposed organization?
- Do you need a Project Plan for delivering and achieving the federation?
- Who will be responsible for documenting and managing/overseeing those plans?
- How will progress, obstacles, risks and issues be monitored, documented, communicated and addressed?
- What resources will you need to achieve this?
- Are you willing and/or able to use external sources of support and expertise?

The Legal and Financial Framework

- Does the organization require input from a supplier of legal advice and/or accountancy services?
- How will this be obtained?
- How will any associate costs be met?
- Who will be responsible for facilitating payment?

The Technical Framework

- Is there a technical infrastructure element to your proposed federation, e.g. shared IT systems and software? Shared telephony?
- Who will need to be involved in this?
- Is there a shared patient data element to your proposed organization?
- If so, what are the Information Governance issues and requirements for sharing patient data?

Communications

- Who are your stakeholders?
- Do you have internal and external stakeholders?
- With whom do you need to communicate?

- Why do you need to communicate?
- When do you need to communicate?
- How do you need to communicate?
- What do you need to communicate?
- Do you need a Communications Plan and Communications Strategy?
- Who will be responsible for communications?
- Do you want to create a brand image for the organization?
- How will you achieve this and what will be the resource/investment implications?
- Could external PR knowledge/support be useful, and if so, how could you identify a suitable source?

Measuring Success

- How will completion of establishing the organization be determined?
- How will you ensure the fully-formed provider organization is measurable against its original idea and business case?
- How will the organization be managed and administered?
- How will the effectiveness and success of the federation be measured as it commences its brief or purpose?
- Do you need subject matter expertise within the delivery of the organization's objectives e.g. bid-writing expertise for organizations focusing on tendering for enhanced services; advice and guidance on commissioners' prescribed tendering pathways; business development expertise for incrementally expanding entities?
- Do you need to make provision for adding to the organization's membership in the future?

How Can NHS England Help?

In addition to this guide, NHS England South West is developing a range of support mechanisms and approaches to assist General practices in considering the establishment of provider organizations:

Facilitation

Provision of guided facilitation to enable groups of General Practices to:

- Consider potential partnerships for networking or federation, and how to engage
- Consider the business case for formal organizing
- Agree and focus on key discussion items, to identify areas of contention and achieve consensus
- Consider next steps – how to initiate a provider organizations and consider all the required tasks and actions highlighted within this guide.

Information Packs

Provision of the following information resources for General Practice:

- General Practice Sustainability 'Health Check' Tool
- A Guide to Collaboration
- A Guide to Mergers
- A Guide to Networks and Federations
- A Guide to Provider Organisations
- A Guide to Setting Up and Managing a Project
- Examples of Innovation in General Practice

Advice and Guidance

Provision of advice and guidance for:

- Developing a Business Case
- Setting up and managing projects
- Project documents and templates
- Problem solving
- Enabling access to existing and on-going provider organization initiatives
- Sense-checking on progress and development

Who to Contact?

NHS England's GP Sustainability and Transformation initiative is part of the NHS England South (South West) Primary Care Team's work programme. Heads of Primary Care are **Marina Muirhead** (BNSSSG) and **Julia Cory** (DCIOS).

Marina Muirhead can be contacted on **0113 8253 605** or **07525 495691** or by email at marinamuirhead@nhs.net

Julia Cory can be contacted on **0113 8248 967** or **07900 715328** or by email at julia.cory@nhs.net

Appendices

Appendix 1 – Options for Formation of Provider Organizations

Regardless of preferred formal entity, it is suggested that groups of practices seek legal advice prior to reaching agreement on which form their proposed venture will take.

Private Company Limited by Shares

These companies are generally formed when a group of private individuals wish to form a business into which they, or the practices they represent, will each contribute but in doing so wish to protect the interests of their respective practices.

Although there are numerous ways of structuring such a company, the general principle sees a nominated partner of each of the constituent practices being allocated a share or an agreed number of shares in the company. These shares are held on trust by the nominated partners for the constituent practice they represent. Such trust arrangement must be covered off in the partnership deed of each constituent practice. The liability of each practice is then limited to the nominal price paid for its share(s).

In order to both ensure the mutual involvement and motivation of all constituent practices and to avoid the potential impact associated with a dominant shareholder emerging, it is often preferable for each constituent practice to be allocated one or (depending on their respective patient list size) possibly two shares. Despite this, it is often desirable for the company to be structured so that the split of profits is more reflective of each constituent practice's patient list size (as it is generally the case that a larger practice will be required to contribute a greater level of resource). To achieve this, additional 'non-voting' shares can also be issued which take into account patient list size and attract rights to dividend payments. It would be highly advantageous for this discussion to occur during consideration of preferred and most appropriate legal entity to form.

The fundamental benefit of having a separate company with its own share capital is that the liability of each constituent practice is limited to the nominal price paid for its share(s). This ultimately means that the assets of each constituent practice, and the partnership which runs the same, are protected in the event that anything happens to the network in the future as well as ensuring that each practice retains an equal influence over the network company.

In addition to this, the company can be formed so that it enables individual practices to exit with ease at any point in the future. It also prevents shares from being sold so as to protect the network from future takeover or exploitation by third parties, and it ensures that each constituent practice, regardless of size, is properly and fairly represented.

Ultimately although the arrangement is highly flexible in the way in which constituent practices can come together, it is strongly advisable that the relationship between the practices is documented in a written shareholders agreement.

Potential Advantages

- Limited liability
- Flexibility – subject to less exacting regulations
- Easy to set up
- Can return profit to practices in the form of dividend payments
- Access to debt and equity finance
- NHS Pension Scheme eligibility for GMS/PMS contracting (subject to ownership)
- All practices have a single “ownership” share
- Extremely flexible when it comes to the way in which it is structured

Potential Disadvantages

- Must be floated by members’ own capital (or their debt)
- Requirements to publish information at Companies House on formation, and annually thereafter

Private Company Limited by Guarantee

This structure could be used when there are no funds required for the running of the business, or where the necessary funds come from an alternative source such as endowments, donations or subscriptions.

In a company limited by guarantee, there are no shares. Instead, the company will have members bound by a guarantee in the company’s articles of association, which requires them to pay the company’s debts up to a fixed sum – usually £1. Again this protects the assets of the individual partnerships which constitute the network.

Companies limited by guarantee will be run by all the members (who each have one vote when it comes to deciding matters) or by an appointed executive board.

Potential Advantages

- Minimises the risk and liability of members
- Has formal democratic controls by its members enshrined in its articles of association
- Eligible for charitable status where this is appropriate
- Potential to set up a subsidiary company to hold capital and conduct non-charitable trading

Potential Disadvantages

- Not generally used by profit making businesses due to inflexibilities not seen within companies limited by shares
- Not appropriate for businesses that need capital or wish to enter into profit share arrangements

Limited Liability Partnership (LLP)

An LLP is a hybrid entity which takes on characteristics of both a limited company and traditional partnership. As a separate legal entity, it can form a legal relationship in its own right and will continue in existence despite any change in membership. Currently, regulations only allow for PMS contract-holders to form LLPs.

A specific element is that the members of an LLP have a collective responsibility but no individual responsibility for each other's actions. As with a limited company, members in an LLP cannot lose more than they invest. Accordingly, the establishment of an LLP can be an effective means of protecting the financial assets of the respective constituent practices (and their respective) partners that make up the same.

Subject to the members agreeing and documenting arrangements in a written LLP agreement, the LLP has organisational flexibility and the members are free to decide key items such as how profits are shared, how decisions are taken and who runs the LLP. However, it might be advantageous to agree general parity between members in relation to their ability to influence decisions.

Potential Advantages

- Limited liability
- Organisational flexibility
- Similarities to an ordinary partnership

Potential Disadvantages

- LLPs may be more complicated and costly to set up and run
- Reporting requirements include annual returns
- There may be tax implications if limited companies form an LLP
- As the regulations currently stand, GMS practices would be prevented from forming LLPs
- No access to equity finance

Social Enterprise Organisations

Social enterprises can be defined as businesses with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community, rather than being driven by the need to maximise profit for shareholders and owners.

In practice there is no simple definition of a social enterprise, but rather a core value, or common set of principles and behaviours:

- They are businesses driven by a social or environmental vision and purpose rather than a profit for private shareholder goal
- They compete to deliver goods and services. The difference is that social purpose is at the heart of what they do, and any profit or 'surpluses' made are largely reinvested towards achieving that purpose
- They generally need to retain some profit or 'surplus' in order to maintain an acceptable level of liquidity – however they will typically operate at much smaller profit margins than the independent sector and will not pay a shareholder dividend
- Their constitution will generally contain an asset distribution clause or asset lock
- Social enterprise organisations seeking to promote these values can hold the Social Mark
- Social enterprises can be legally structured in a number of ways. The most common forms are below:

Community Interest Company (CIC) - A legal entity 'vehicle' created specifically for social enterprises. It has a social objective that is "regulated" ensuring that the organisation cannot deviate from its social mission and that its assets are protected. The defining characteristic of CICs is that they include an asset lock preventing the distribution of profits, which must be reinvested within the company.

Industrial and Provident Society (IPS) - The usual form for co-operatives and community benefit societies, and is democratically controlled by the members in order to ensure their involvement in the decisions of the business.

Charitable Incorporated Organisation (CIO) - A relatively new legal form, designed for charities registered in England and Wales and operating in a way more similar to a business than other charity forms.

Companies Limited by Guarantee or Shares - Possibly the most common legal structures for businesses and potentially the most flexible - while they can ensure they have a social mission written into their Memorandum and Articles of Association, this is not regulated.

Potential Advantages

- Flexibility and limited liability of members
- More lightly regulated than a charity

- Not-for-profit objectives are clear, and help patients and Local Authorities to feel more relaxed about their existence
- CICs have access to equity (in the case of a company limited by shares) and debt markets
- Social enterprises receive public recognition. Surveys have shown that the general public is strongly in favour of services with a social enterprise ethos
- Potential to convert to a charitable incorporated organisation from 2014
- Can qualify as an Employing Authority for the purposes of accessing the NHS Pension Scheme, however this will depend on the structure used

Potential Disadvantages

- Does not share the tax advantages of charities
- Not suitable for direct profit-making but can make a surplus that can be used to support general practice
- Must file an annual community interest report