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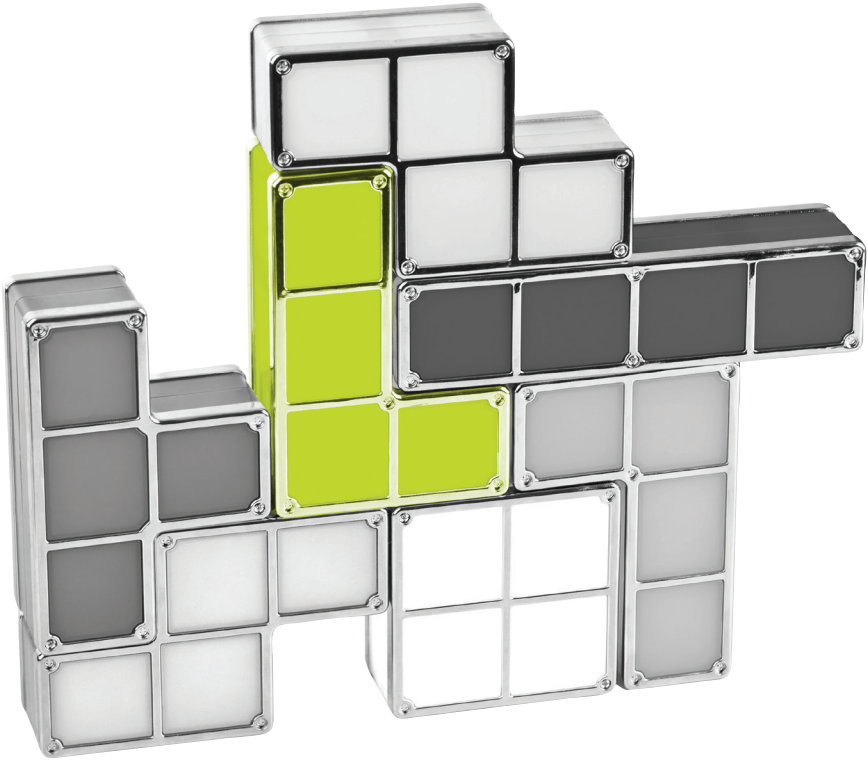
New care models:

A guide to making integration happen



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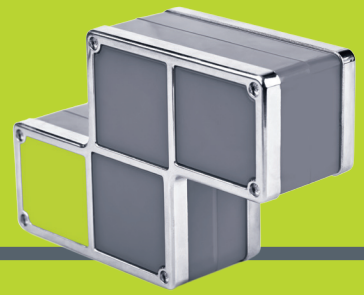
Introduction



At the Vanguard sites chosen to develop the models of care proposed by the NHS Five Year Forward View commissioners and providers of health and social care services are working together to redesign their local systems.

In other areas new models of care are also emerging, including in Greater Manchester where a Memorandum of Understanding has been signed to develop a framework for the devolution of health and social care responsibilities.

All of these developments aim to support improvement and integration of services by breaking down traditional divides between primary care, community services, secondary care and social care and by delivering increasingly personalised and integrated care for patients.

Commissioners and providers of NHS funded and local government funded services need to consider what they are trying to achieve and then choose a care model to deliver their objectives.

As a leader or participant in a model the key questions you will want to be able to answer are:

- What is the rationale for a new care model?
- What model of care will best support us to deliver our objectives?
- What legal flexibilities do we have to set up our chosen model of care?
- What are the barriers and risks?
- How do we address governance issues?
- Do we need a new type of organisational form for delivery and, if so, do the organisational forms suggested by The Dalton Review[1] provide the answers?
- How can we move quickly to get on with our plans?

Whether you are a Forward View Vanguard site or developing your own redesigned model of care, either as commissioner or provider, this guide is designed to help you to answer these questions.

[1] Examining new options and opportunities for providers of NHS care, The Dalton Review (2014)

This guide will help you understand the legal and commercial issues relevant to designing and implementing a new care model.

1. What are you trying to achieve?

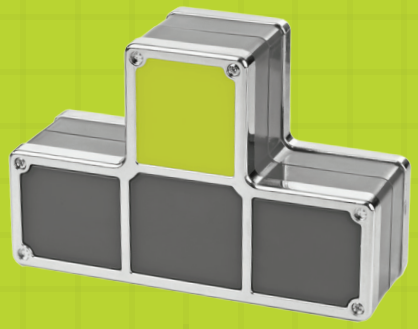
2. Integrating primary care with community and acute services

3. Integrating health and social care services

4. Integrating acute services across multiple organisations and sites

5. Ten legal and commercial issues

- Choosing the right organisational form and legal model
- Making changes to the way services are delivered
- Getting the governance right
- Sharing information and integrating technology
- Complying with procurement law
- Contracting options
- Complying with competition law
- Workforce implications
- Making the most of estate opportunities
- Regulatory compliance



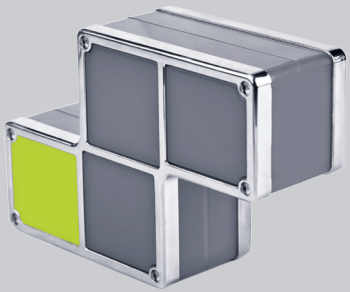
What are you trying to achieve?

Before deciding on a new care model or organisational form to deliver integration, commissioners and providers need to be clear about which challenges they are seeking to address as a priority.

Organisations then need to decide how ambitious and radical they want to be in redesigning their system to meet the challenges they have identified.

Ambitious and radical plans might involve:

- One organisation taking on accountability for the whole health needs of a registered list of patients under a delegated capitated budget – an Accountable Care Organisation;
- Significant transformation in the way services are provided to patients;
- Major transfers of staff, estates and/or equipment between organisations.



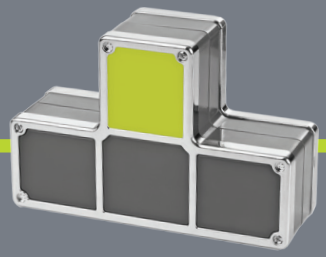
Alternatively, organisations might want to take a stepped approach to redesign by addressing specific challenges separately, for example:

- Bidding for particular contracts with partners (e.g. community health service contracts);
- Setting up shared services arrangements to deliver back office efficiencies;
- Consolidating clinical services on one site or setting up other models of acute care collaboration;
- Improving staff engagement to drive productivity improvements;
- Seeking investment to redevelop and refurbish estate.

The scale of ambition will depend to some degree on the skills and capacity of the participating organisations to deliver change, in particular:

- Leadership with vision for the changes needed and the ability to communicate this to staff and bring them along;
- Project management support including to deliver commissioning and contracting models;
- An understanding of governance structures and what robust governance looks like;
- Relationships to facilitate effective engagement with stakeholders and service users;
- Access to the right advice and support.

Integrating primary care with community and acute services



GPs are responding to the need to strengthen primary care by setting up federations, provider groups and provider networks. Together with trusts and other providers they are also looking to integrate primary care, community and acute services, including in the form of the Forward View's Primary and Acute Care Systems (PACS) and Multispecialty Community Provider (MCP) models.

So how easy is it to integrate services in this way? Most importantly, there is no legal barrier to this type of integration. But as primary care is subject to its own regulatory regime there are detailed issues that will need to be addressed.

In particular, GPs operate under independent contractor status which, depending on their contracting regime, can offer the benefits of the Minimum Protected Income Guarantee, rent reimbursement and indeterminate contracts. GPs also have long-term interests in their premises.

Individual GP practices, federations, other primary care and community providers and acute, community and mental health trusts need to understand how they can work together to deliver integration of services.

Five key questions

1. Will local GPs integrate with other services through their individual practices or their federations?

2. Will GPs agree to move away from 'independent contractor' status by transferring their practices to trusts?

3. Will transferring practices to trusts allow expansion of primary care service delivery and the upgrading of primary care infrastructure?

4. How will trusts deal with the long-term liabilities of GPs if they acquire GP practices?

5. What are the benefits to setting up joint ventures between GPs or federations and trusts as an alternative?

Integrating health and social care

While the NHS and local authorities have been subject to general duties to collaborate with each for some time, NHS England now has the power to direct CCGs to use some of their funding allocation for purposes relating to service integration under the Better Care Fund initiative.

CCGs and local authorities can now build on existing Better Care Fund plans to reduce avoidable admissions to hospital by commissioning more out of hospital care, for example under the Forward View's enhanced health in care homes model.

NHS trusts and foundation trusts need to ensure they engage with CCGs and local authorities developing Better Care Fund plans. Separately, they can also set up their own arrangements with local authorities to deliver integrated health and social care services.

Existing legal powers exist for CCGs, local authorities and trusts to integrate services in these ways; these powers are set out in section 75 of the NHS Act 2006 and the arrangements are usually documented in section 75 agreements.

Five key questions

1. Do NHS bodies and local authorities intend to delegate any functions to enable them to exercise both health and social care functions?

2. Are you setting up a pooled fund of mixed health and social care monies?

3. Are you setting up a partnership board to oversee the arrangements and, if so, will it be a joint committee or just a working group?

4. Are you contributing staff, premises, equipment or other assets to the arrangements?

5. What monitoring arrangements do you need to put in place for governance purposes?

Integrating acute services across multiple organisations and sites

NHS England's commissioning intentions and the Forward View indicate a continuing desire to develop consolidated centres of excellence for specialised services where quality and patient volumes are strongly related.

But the Forward View also suggests that this should not be at the expense of the local acute hospital model. There are opportunities for all types of hospital providers to set up new models of acute care collaboration including for example:

- Networks of centres of excellence for specialised services and accountable clinical networks
- Networks of local acute hospitals sharing back office services to standardise processes and deliver efficiencies
- Specialised trusts delivering services at local acute hospitals, either for those hospitals under NHS service franchises or as satellite centres for their own services
- Leading trusts sharing their management expertise with local acute hospitals, either on a one-off basis or through the establishment of multi-service chains or foundation-groups (as referred to in the Dalton Review)

There are a number of different organisational forms that can be used to deliver these new care models for acute services. At the simpler end of the spectrum are contractual joint ventures between partners. At the more complex end are corporate joint ventures or mergers or acquisitions. All of these organisational forms can deliver integrated services.

Five key questions

1. Which model of care for future delivery of acute services best fits your type of organisation and its strategy?

2. Do you have the skills and capacity to expand acute services at other sites and/or to provide management expertise for other organisations?

3. What organisational form should you use to set up your new care model for integrating acute services?

4. Have you considered the competition implications of integrating acute services, especially with geographically proximate organisations and where there is cross-over in services?

5. How will you be commissioned and funded to deliver expanded acute services?

Ten legal and commercial issues

1. Choosing the right organisational form and legal model

There is no 'right answer' to the question of which organisational form best suits a particular model; the much-quoted 'form follows function' really is true here. Once the preferred organisational form has been identified it will be necessary to work out which legal model will be used to set it up. The legal model will depend largely on the speed at which the parties involved want to set up the new care model, their respective legal powers and the degree of organisational integration they want.

2. Making changes to the way services are delivered

Delivery of more personalised, integrated care for service users under a new care model may well impact on the way in which services are delivered. Engagement may be needed with patients and the public, local authorities, NHS England and other stakeholders. Early consideration should be given to statutory duties to involve and consult.

3. Getting the governance right

Robust governance will be essential if organisations are to work closely together to integrate services. Leadership will play a crucial role in assuring the rationale for change, setting the vision and values and determining scale of ambition and appetite for risk in a new care model. Governance structures that allow collaboration, including new partnership boards set up by different organisations, should be clear, documented and effective.

4. Sharing information and integrating technology

Plans to redesign local health systems can only succeed if the organisations involved are able to access patient records and other service information efficiently. This might mean creating integrated patient records or, where that is not yet possible, ensuring information governance processes are in place that allow lawful sharing of data. For electronic records, that may mean finding a way of integrating information management and technology systems.

5. Complying with procurement law

Commissioners need to consider what their strategy is going to be for commissioning particular services/care pathways under a new care model. This requires an understanding of assets that might need to transfer from existing service providers to new providers and decision-making about funding, risk/reward and accountability arrangements under new contracts. Commissioners need to comply with procurement law duties in implementing the strategy. If providers can demonstrate a robust integrated care model then commissioners might be able to award contracts without running competitive tenders, but this will depend on what is being commissioned and the local healthcare market.

6. Contracting options

The NHS is becoming more innovative in the way it contracts. Commissioners and providers need to consider which contracting model will best allow them to drive service transformation and integration, including prime contractor, prime provider and alliance contracting models. If organisations want to work together to respond to commissioning plans they will need to consider how they set themselves up. This could be through a network of contracting arrangements, corporate joint ventures or both. The key is to ensure that the contracting model is developed in response to commissioner plans and not the other way round.

7. Complying with competition law

Competition law is not a barrier to intergration but it does need to be considered when setting up a new care model which involves two or more competitor organisations collaborating or merging into a single entity. Generally, the more permanent and formal a change, the more competition law needs to be taken seriously. There is unlikely to be a competition issue where integration involves the coming together of organisations which do not provide competing services. But when organisations which do offer the same or similar services come together, then there may be competition implications from either a merger or a behavioural point of view.

8. Workforce implications

Organisations will need to make sure their workforce have the right skills, values and behaviours to deliver new care models. This requires focus on improving staff health and wellbeing, reducing obstacles to better performance and looking at whether terms and conditions support high performance. Organisations might also need a different skill mix to deliver new care models, including by GPs employing or partnering with hospital consultants and trusts credentialling GPs to admit patients to hospitals. If new care models result in changes in the organisations delivering services then TUPE, pensions and redundancy implications will need to be considered.

9. Making the most of estate opportunities

New care models may lead to changes to the location of services and opportunities to escape from the constraints of some of an organisation's existing premises, for example through the expansion of primary and community services at a hospital site, expansion by trusts of primary and community services in GP premises and expansion by GPs and other providers of services in community and home settings. In changing the way estate is used consideration needs to be given to how to deal with existing premises liabilities, requirements for capital investment, restrictions on disposals of NHS property and whether there are any benefits to securing a strategic estates partner.

10. Regulatory compliance

Organisations working together in new care models will need to consider their CQC registration requirements, especially if new entities are set up, if subsidiary or franchise arrangements are developed or if organisations change the services they provide. Requirements for a provider licence from Monitor and the impact on risk ratings for existing licence holders also need to be considered, as do registrations with the Information Commissioner's Office where personal data is shared. In delivering services organisations also need to consider how they can comply with the fit and proper persons test and fundamental standards of care for regulated activities.

Hempsons experience

Whether you are a Vanguard site or developing your own redesigned model of care, either as a commissioner or provider, Hempsons can help you to get your model up and running.

We have worked on a range of projects to set up new care models and organisational forms for innovative and integrated ways of delivering services, including for example:

- **Engaging the public and other stakeholders in changes to the way services are delivered:** advising Greater Manchester commissioners on the current Healthier Together service transformation proposals as well as previous reconfigurations in Greater Manchester
- **Integrating health and social care services:** advising on Better Care Fund arrangements across the country for joint commissioning of services; advising on arrangements for integrated provision of children's community health and social care services in Suffolk; advising a commissioner on integrated discharge arrangements
- **Whole system integration:** advising on arrangements to support the development of Lambeth Living Well Collaborative, a health, social care and wellbeing collaborative involving service users, carers, GPs, NHS and local authority commissioners and providers from the public and third sectors
- **Integrating primary and secondary care services:** advising on integrating primary and secondary care through joint ventures, particularly through special purpose joint venture companies; we have advised on the choice and competition implications of vertical integration arrangements
- **Expanding acute services across multiple sites:** advising on expansion of acute services through mergers and acquisitions (Royal Free London FT / Barnet and Chase Farm Hospitals NHS Trust and Ealing Hospital / North West London Hospitals NHS Trusts), networks (Moorfields FT's delivery of services at Croydon Health Services NHS Trust) and estates developments (the establishment by Guy's and St Thomas's FT of a satellite centre for cancer services at one of Oxleas FT's sites)
- **Redesigning urgent and emergency care access:** advising Croydon Health Services NHS Trust on the urgent care centre at its main hospital site; advising commissioners on procuring urgent care services, 111 services and patient transport services
- **Innovative commissioning and contracting arrangements:** advising on outcomes based commissioning arrangements and prime/sub-contractor and alliance contracting arrangements, including advising Trust and GP provider group clients participating in Bedfordshire CCG's integrated musculoskeletal services contract and Cambridgeshire and Peterborough CCG's integrated older people's pathway and adult community services procurement.
- **New organisational forms:** advising Blackpool Fylde and Wyre Hospitals FT on setting up a spin out company to deliver clinical services; advising foundation trusts on setting up subsidiary companies to deliver outpatient pharmacy services; advising two acute trusts on the Mutuals in Health programme for delivering the benefits of public service mutuals in acute hospitals
- **Integrating back office services:** advising on managed service arrangements for Northamptonshire Healthcare FT's IT services; advising on contracting arrangements for ELFS Shared Services (hosted by Calderstones Partnership FT)
- **Leveraging new technology:** advising on development of apps for service users, including NHS Northern England Strategic Clinical Networks' Deciding Right app for making care decisions and South East CSU's Health Help Now app to enable users to find the right service for their health needs; advising SH:24, a social enterprise, on provision of sexual and reproductive health services online; establishing companies for Trust Tech, the innovation hub in the North West, to exploit NHS intellectual property
- **Strengthening primary and out of hospital care:** advising GPs across the country on transforming primary care by setting up over 50 GP provider organisations or federations to extend primary and out of hospital care services; these organisations represent a patient population in excess of 12 million and include Iceni Healthcare with 174 practices across Norfolk and Waveney, Somerset Primary Care (94 Practices) and BIG Practice (Birmingham Integrated General Practice of over 100 Practices)
- **Strategic estates developments:** advising on the formation of strategic estates Development Partnerships for provider Trusts and private sector partners to deliver new or refurbished premises, including for University Hospitals Southampton FT and Lancashire Care FT; advising on joint planning and funding, co-location and shared operation of local authority, NHS and University facilities in Stockton, Selby and other locations.

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About Hempsons

Hempsons is a leading national law firm specialising in health and social care, practitioners, real estate, charities and social enterprise sectors across the UK. Our highly experienced lawyers provide cost-effective solutions for a range of private and public healthcare organisations, from employment law through to clinical negligence.

We aim to achieve our clients' objectives and provide support down to the last detail whether the issue is big or small, challenging or simple. We work with over 200 NHS organisations including NHS Trusts, Foundation Trusts and commissioning bodies, with services delivered by a team of over 140 specialist healthcare lawyers. A significant number of our employees hold dual qualifications, combining medical, dental or nursing qualifications with their legal credentials.

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For more information please contact:

Christian Dingwall
Partner, London
t: 020 7484 7525
e: c.dingwall@hempsons.co.uk

Jamie Foster
Partner, London
t: 020 7484 7594
e: j.foster@hempsons.co.uk

Faisal Dhalla
Partner, Harrogate
t: 01423 724019
e: f.dhalla@hempsons.co.uk

Jane Donnison
Partner, Manchester
t: 0161 234 2468
e: j.donnison@hempsons.co.uk