

PCNs: challenges and opportunities – and the legal considerations

Key points

- PCN members collectively will take on a range of clinical services through directed enhanced services added to their existing contract.
- There will be opportunities for community providers to work with PCNs and offer them services.
- Providers should be aware of the legal aspects of entering into agreements with these new bodies.

Primary care networks – background

A central element of the NHS England Long Term Plan is the introduction of primary care networks (PCNs).

PCNs are intended to help dissolve the historic divide between primary and community healthcare services and to act as building blocks for integrated care systems.

PCNs comprise general medical practices which typically have a combined patient population of around 30,000 to 50,000 patients (although there is some flexibility over these numbers). The practices each sign up to the Network Directed Enhanced Service Contract (Network DES) and enter a network agreement which sets out how they will collectively deliver the Network DES services. In addition, PCNs are expected, over time, to have other “non-core” members to ensure integration of primary healthcare, social and community care and mental health services.

PCN activities

In the current contract year, the only clinical service under the Network DES is the provision of extended hours appointments. More services will be added in the next two contract years.

Funding is also being provided for additional roles. In the current year, there is funding for clinical pharmacists and social prescribing link workers. Future years will bring funding for physician associates, first contact physiotherapists and community paramedics.

Nature of the network contract

The Network DES is a bolt on to the general practice core contract. For this reason, the Network DES contract is between the commissioner and the individual practices rather than between the commissioner and the PCN (which is not a legal entity). There is understandably some nervousness on the part of practices as they are each reliant on other practices in the PCN (or third party providers where the Network DES provision is sub-contracted) in order to fulfil their collective obligations under the Network DES – a failure in performance of one practice could undermine the success of the PCN as a whole and render member practices jointly liable.

Aims of PCNs

The key aims of PCNs are:

- Better, more personalised care for patients, closer to home.
- Better coordinated support for individuals with complex conditions.
- Stronger support for patients to play a greater role in decisions about their own health.
- Building capacity and resilience of providers.
- A more stable workforce and multi-disciplinary working.
- Enabling “triple integration” – of primary and community care, physical and mental health services and health and social care.
- Driving up consistency in quality and outcomes.
- Increased focus on prevention, self-care and population health management.



Challenges and requirements for PCNs to succeed

PCNs are required to put in place organisational and clinical governance arrangements, which typically include establishing a governing body comprising practice representatives. Every PCN receives funding which is earmarked for a clinical director who is expected to play a key role in driving the PCN's strategy and development and ensuring integration with the wider healthcare system.

PCNs are new organisations and their member practices have limited capacity for additional work over and above their core service provision. There was pressure on practices to form PCNs before the 1 July 2019 Network DES commencement date and, as a result, many of the PCNs have not had the opportunity to give proper consideration to their governance arrangements, how they will work together to deliver clinical services or employ additional workforce. Many of the clinical directors are new and relatively inexperienced in strategic leadership roles. PCNs do not as yet have dedicated premises and the implications of sharing premises and staff are yet to be thought through and resolved by many PCNs. All of this could make it difficult for PCNs to achieve their aims.

Given these challenges and the emphasis on integration, PCNs will need to work effectively with other providers of community services if they are to achieve their aims. There are inevitably some challenges to be overcome, not least around geography – PCN boundaries are not necessarily entirely consistent with the boundaries of other providers.

Opportunities for community service providers

There are various opportunities for community providers to support and work collaboratively with PCNs, including:

- Assisting with workforce and employment arrangements for the new roles which PCNs are expected to provide.
- Supporting the development of governance and decision-making arrangements which enable input from other parts of the system.
- Sitting on the PCN governing body.
- Designing clinical governance arrangements.
- Providing financial, organisational and back office support.
- Contributing to service delivery arrangements.
- Training clinical directors and other members of the PCN governing body.
- Sharing premises.

Community providers could fulfil these roles in a variety of capacities, including as:

- Non-core members of the PCN.
- Sub-contractors of clinical services.
- Providers of management/organisational support.
- Employers of PCN workforce.
- Landlords or licensors of premises space.

Legal considerations

There are obviously a number of legal considerations when working with PCNs. These include:

- Non-core members of PCNs will be expected to sign up to the PCN's network agreement. Community providers should review carefully the terms and conditions applicable to non-core members in the network agreement. In particular, they should ensure that they are not responsible for PCN liabilities other than those that they specifically agree to take on.



- If acting as a sub-contractor of clinical services, providers should ensure that their rights and obligations are properly defined and that the sub-contract clearly spells out any obligations of the PCN practices on which their service delivery is dependent. They should bear in mind that the applicable service standards are those under the primary care contract rather than the NHS standard contract under which community providers are more used to providing services. The primary care contracts have specific requirements for sub-contracting, including that the head contractor must notify the commissioner prior to sub-contracting services.
- As provider of management/organisational support, there should be a contract for service provision which clearly sets out what providers are to deliver and on what terms. As for a clinical sub-contract, it should spell out any obligations of the PCN practices on which service delivery is dependent.
- As employer of PCN staff, there should again be a contractual arrangement setting out the terms on which providers will employ staff. Matters to consider include:
 - Who is responsible for recruitment and selection – will the PCN have a say?
 - Who will meet the employment costs – will the PCN fund 100 per cent or just a proportion of the costs?
 - Where will the staff be based?
 - What policies and procedures apply to the staff when working in or for PCN practices?
 - Who is responsible for determining work priorities, training and supervision?
 - Who is responsible for grievance and disciplinary matters?
 - Who is liable for employment claims and redundancy costs?
- As a landlord or licensor of premises, providers will need to ensure that there is an appropriate lease, sub-lease or premises licence in place. They should ensure the rights and obligations of the parties are clearly documented and that they are able to terminate the arrangements if required. They will also need to ensure that they have any necessary consents to grant the occupation rights that they are granting.
- Be mindful that the PCN is not a legal entity, so any contracts should be with the individual practices rather than with the PCN.
- Although not strictly a legal issue, some service provision might be a VATable supply and obtaining tax advice is recommended.

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