

Primary Care Networks

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Top five frequently asked
legal questions



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What are PCNs asking us?

1) Should we form a limited company?

Many PCNs are considering incorporation, which is forming a company to employ staff and to provide DES services as a subcontractor of the PCN practices. There are indications that PCNs will become the preferred vehicle for delivering other local services from 2023/4, so having a separate legal entity may make it easier. Also limited liability is an important aspect as a PCN employs more people and partners have less direct oversight. Being able to shelter surpluses from the taxman is also an attraction.

Consideration needs to be given before incorporating to matters such as:

- **NHS pensions access:** currently a subcontract of DES services does not automatically confer NHS employing authority status, but a PCN company can apply for temporary pensions access from the NHS pensions agency. The longer term mechanism for pensions access for companies providing DES services under a subcontract remains unclear, but we would expect the current temporary arrangements to be extended or the NHS pensions regulations to be amended to allow PCN companies to provide access to the pension scheme
- **CQC registration:** if a PCN company is providing the DES services or any other regulated activities as a subcontractor of the PCN, it will need to be registered with the CQC
- **VAT:** certain supplies by a PCN company to the PCN practices could be subject to VAT, although an exemption is available for PCN companies which operate as a VAT cost sharing group. Specialist VAT advice should be sought to ensure that the relevant requirements are satisfied

2) How can our PCN work with our GP federation?

There is no formal link between existing GP federations and PCNs. However, in many areas of the country, existing federations are working closely with PCNs.

In some cases, existing federation membership

corresponds to the membership of a PCN or a number of PCNs and the federation is evolving its governance structures to support the PCNs. Where the federation itself holds a primary care contract, it might be a core practice member of a PCN in its own right. Many federations have been appointed as subcontractors of PCNs or as employment vehicles for PCN staff, particularly where they already have NHS employing authority status and CQC registration.

However, where a federation's employing authority status is by virtue of a time limited contract, there is a risk this might not be a long-term solution.

3) Who should employ PCN staff?

As PCNs are not legal entities, they cannot employ staff in their own right. There are three main options for employing PCN staff:

- practices jointly employ PCN staff
- one practice employs staff on behalf of the PCN
- a third party organisation employs PCN staff under a contract with the PCN practices

No single option is ideal. Joint employment arrangements are unwieldy, and a separate partnership could be created inadvertently between the employing practices. If one practice or a third party (e.g. a company or the GP federation) employs staff on behalf of the PCN and supplies the staff to the PCN practices (rather than providing a managed medical service) there is a risk that the employing body could be acting as an employment business (which requires compliance with certain legal requirements) and the supply could be subject to VAT. Whatever employment arrangements are put in place, it is important that the PCN's network agreement covers matters such as:

- who decides that PCN staff are to be engaged and who will employ them
- what policies, procedures and terms and conditions will apply to PCN staff
- who will be responsible for matters such as discipline and grievances
- how staff liabilities will be shared

4) Do we need to update our network agreement schedules?

A number of template schedules were issued around the time that PCNs were formed in 2019 and many PCNs understandably took advantage of using these in the run up to the initial registration deadline. However, we strongly advise that you review these if you have not already done so. This is for six main reasons:

1. There are a number of gaps in many of the template schedules, particularly around matters such as risk and liability sharing and exit terms
2. It is important that your member practices engage in discussions about how your PCN operates – this process is to ensure that all the practices feel properly engaged in your PCN rather than just adopting generic arrangements which might not be best suited to their local situation
3. Provision should be made for bringing in new (non-practice) members as you move towards being a more developed integrated care organisation
4. Ensure that the schedules are legally binding on your members; this means that care needs to be taken to ensure that the provisions in the schedules are clear and unambiguous, that the members are clearly identified and that they correctly execute the agreement incorporating the schedules. Many agreements that we have reviewed do not satisfy this test
5. Over time, your PCN is likely to have changed the way it works both internally and with external organisations, and your schedules should reflect these arrangements
6. There have been changes to the DES requirements and the available funding. You need to ensure that your schedules clearly describe how the PCN will deliver the revised DES requirements and allocate the various funding lines and/or includes mechanisms for deciding these matters, and dealing with any surplus

5) What is next for PCNs?

A key objective of PCNs is to ensure that general practice engages with the wider health and care system in order to achieve more integrated health and social care.

PCNs need to work collaboratively with other providers of community, mental health and social care services. If you are delivering services jointly with other organisations, you should have a collaboration agreement setting out your respective responsibilities.

Going forwards, primary care providers will need to work together at place level (generally, based on city or town boundaries and surrounding areas covering populations of 250,000 to 500,000) as well as participating in ICSs (populations of 1 to 3 million). A place is likely to involve multiple PCNs and you should be planning now with other PCNs so that general practice will effectively represent primary care at “place” level. This is another area where existing GP federations might have an important role to play, as many of these cover areas which could be defined as “place”.

For more information and advice for your PCN please contact us.

NHS England has published useful FAQs which can be found on their website:

<https://www.england.nhs.uk/primary-care/primary-care-networks/pcn-faqs/>

Our frequently asked legal questions supplement those published by NHS England.

Legal helpline

We provide a legal helpline offering an initial confidential telephone conversation to discuss any of these issues. Dial **020 7839 0278** and ask for the GP advice line for ten minutes' free preliminary advice from one of our GP legal team, or please contact:

Key contacts



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