



## Primary Care Networks

# Guidance Note 4: Contracts, Sub-Contracts & Service Delivery

This note gives a quick overview of how contract structures will fit together for PCNs and some considerations on service delivery, and supplements guidance produced by other stakeholders. In this note, we use “GP contract” to describe any primary medical services contract (GMS, PMS or APMS) that covers essential services.

### DO WE NEED TO PUT TOGETHER ANY CONTRACTS?

It is important to understand that the basic contractual obligation on a network practice to participate in a PCN and deliver PCN activity does not come from the Network Agreement: those are obligations on a practice to its commissioner under the GP contract containing the DES Network Specification, and so that requirement is on similar footing to any other activity under that contract (including any other DES specifications).

By contrast, the Network Agreement is a form of collaboration agreement between practices as to how they will together deliver the PCN activity that each practice is committed to deliver under its GP contract.

Therefore, if all PCN activity is being carried out by the practices themselves, no additional contracts are needed (beyond the employment contracts of new workforce), since the Network Agreement will describe how the various PCN roles and responsibilities will be allocated between network practices, thereby allowing each practice to meet its individual requirements to the commissioner under its GP contract.

### WHAT ABOUT USING A SUB-CONTRACTOR?

In principle, practices can ‘outsource’ the provision of all or part of the PCN activity to one or more bodies that are not network practices. That would be a sub-contracting of some obligations under the GP contract. This is possible, but some points should be noted:

- unless suitable sub-contractors are already identified and standing by (with necessary CQC registration etc.), this is not likely to be practicable for the start of the 2019/20 PCN activity – and a suitable form of sub-contract would also be needed
- the GP contract (in whichever form) has controls on sub-contracting (including prior commissioner consent) that would need to be considered and complied with



- the network practices remain responsible (under their GP contracts) for the provision of the PCN activity
- it appears (from the DES Network Specification) that for the additional 2019/20 PCN roles (Clinical Pharmacist, Social Prescribing Link Worker) the payment to the PCN is of actual employment costs (at 70% and 100%). Therefore (in addition to managing the 30% shortfall) the PCN would need to control the level of payment to a sub-contractor as against the reimbursement available for the relevant activity.

### **CAN ANOTHER ENTITY HOLD THE 'PCN CONTRACT' FOR THE NETWORK PRACTICES?**

As noted above, there is no 'PCN contract' as such, but only separate obligations included within each network practice's GP contract (which contains the DES Network Specification). Therefore, practices cannot come together and establish a new legal entity to hold the 'PCN contract', since that entity would need itself to hold a GP contract (registered list, essential services), which is precisely what the network practices themselves do. This is very different, therefore, from the common scenario of a CCG tendering for an integrated secondary care service, in response to which a consortium (e.g. a foundation trust, primary care practice and social enterprise) may form a distinct jointly owned legal entity in order for that legal entity to hold the contract with the CCG.

### **WHAT ABOUT NETWORK MEMBERS (OTHER THAN A GP FEDERATION) THAT ARE NOT NETWORK PRACTICES?**

In Guidance Note 1- Completing the Mandatory Network Agreement and its Schedules, we suggest that it is sufficient at this early stage that the parties to that agreement are just the network practices themselves. Any other stakeholders will not be bound (as the network practices are) by the DES Network Specification under the GP contract. As far as relationships with such third parties are concerned:

- where these are sub-contractors providing any PCN activity (i.e. a part of the DES Network Specification), there will need to be a sub-contract in place with that party (held either with all network practices jointly, or by one practice acting on behalf of all of them), but that would be a separate contract and it would be difficult and complex to mix sub-contract obligations into the Network Agreement – the sub-contract itself is best kept separate
- where there is no contractual arrangement between the PCN and a third-party stakeholder, then other co-operative working arrangements can be recorded in a memorandum or similar form, but that would not require those other stakeholders to be parties to the Network Agreement
- if the network practices at any point consider that more formal co-working arrangements are needed with other stakeholders, then in principle the network practices could enter



into other contracts to document those arrangements or, according to circumstances, invite those other stakeholders to join the Network Agreement as non-core members.

Therefore, although the ways in which other parties interact with PCNs is likely to develop over time, we suggest at this early stage there is no need to go beyond the network practices being included in the Network Agreement.

### SERVICE DELIVERY

GP practices will, of course, wish to deliver all PCN activity to the same high standards that they apply to their essential services and any other enhanced services. Where the PCN activity is allocated between network practices, each practice is already (under its GP contract) required to deliver all services (including under the DES Network Specification) to relevant standards. As such, on a basic level, the Network Agreement need not add to that, although practices may wish that agreement to provide for proportionate reporting of activity and outcomes.

Where PCN activity is entrusted to a sub-contractor, the sub-contract must require appropriate standards of service delivery, and it is important that it should allow the PCN suitable rights and remedies for sub-standard performance (since the performance of the sub-contractor is taken as the performance of the network practices themselves under the GP contract). This should include a right to terminate the sub-contract if required by the commissioner under the GP contract, and it could include the requirement for the sub-contractor to address issues and provide an appropriate remediation plan for less serious issues. Again, the sub-contract should provide sufficient reporting obligations on the sub-contractor for network practices to be able to verify performance and activity.