NHS IMAS – Policy and Guidance Developments Post Covid-19

National Policy Update

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National Policy Update

- What should you watch out for post COVID-19?
- New CCG guidance on constitutional change, merger and dissolution
- New Who Pays? Guidance
  - Should make position clearer and maker resolution of issues easier
- New CHC process
  - Significant changes to streamline and reduce reviews/challenges
  - How will health and social care interact?
  - Linked to above and question of who will lead
- New Service Reconfiguration guidance
  - Updated
- New statutes
  - Amending Coronavirus Act
  - Amending NHS Act

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National Policy Update - ICSs

- Functions in an ICS
  - Statutory and Policy functions
  - Establishing Governance for – ICS Partnership; Strategic Commissioning; Provider Alliance/Collaboration; Place based decision making; role of PCNs/neighbourhood
  - Regulation and accountability (local/regional/national)
- System by Default
  - Movement away from central decision-making
  - Follows intention of devolution process
  - Should enable a focussed regional approach to regional need
- Backlog
  - Organisation or ICS? And independent health providers role
- Money
- Statue and Policy
  - ICS legal entity or not?

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ICS Provider- alliance/ collaboration

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Policy Context – System and Place

- Updated Future Vision for health and care integration
  - Offer to local population in Place and System
  - System – Provider Collaborative and system working
  - Place – Provider Alliances
- System Offer – everyone entitled to:
  - access full range of high-quality acute hospital and mental health services
  - fair access to these services, with access according to need
- Place Offer – everyone entitled to:
  - access clear advice on staying well
  - access a range of preventative services
  - access simple and joined up services for care and treatment when they need it
  - the vulnerable and high risk are entitled to simple, active support to keep
  - expect the NHS, through employment, training, procurement and volunteering, to play a full part in social and economic development

NHST and NHSFT collaboration: first principles and key NHSA legal issues

Starting at first principles

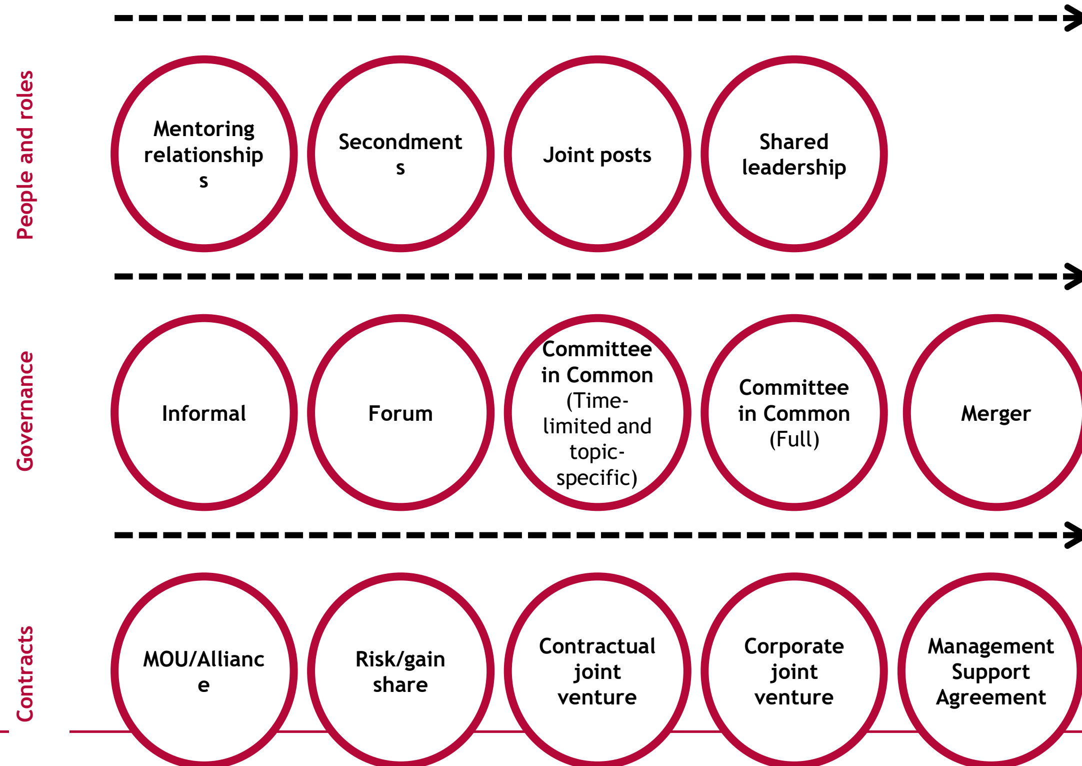
- Ordinarily an NHS body operates as an autonomous body that operates independently to make decisions for itself
- One NHS body (A) cannot make decisions for another NHS body (B) without B's consent or other exceptional statutory authority (eg directions or trust special administration)
- NHSA strictly controls how B may consent to A making decisions for it. If B unlawfully purports to permit A to make decisions for it, then B's decision-making will be at high risk of successful challenge

…and key NHSA legal issues

- NHSTs and NHSFTs boards of directors are principal decision-makers for their organisations
- Boards can delegate decision-making only as permitted by the NHSA
- NHSTs can delegate decision-making to individual EDs and NEDs and Committees
- NHSFTs can delegate decision-making to individual EDs and Committees but not individual NEDs
- NHSTs and NHSFTs cannot delegate decision-making to a third party or set up joint committees except under s75 of the NHSA – not applicable to PFB
- SoS can direct NHSE (and other specified bodies) to exercise any function conferred on another body or person under or by virtue of the NHSA (eg NHST or NHSFT) for a specified period…

Key elements of provider group working

There are three key elements of provider group working arrangements to consider: people and roles; governance and how decision makers interact, and contracts that formalise and help bind together agreed arrangements. They are not mutually exclusive and different elements may combine together.



Multi-organisational group structure

There is a range of forms for multi-organisational group structure, each with advantages and disadvantages. In summary the main options are:

Option	Summary description	Examples
MoU	• A group of providers agree to a scope of services and a common set of aims and objectives • Each provider remains exclusively responsible for the services that it provides • This is a non-legally binding, loose collaboration	• Numerous examples
Joint Management Team	• Two or more providers share one or more board positions including (usually) CEO and / or Chair • Each provider operates as an independent body but together are able to align their decision-making • A joint management team is often a pre-cursor of merger	• Mid and South Essex Hospitals NHSFT (pre-merger joint management team group structure) • Royal Bournemouth and Christchurch Hospitals NHSFT / Poole Hospital NHSFT (pending proposed merger)
Alliance Contract	• Two or more providers and commissioner(s) enter into a single arrangement which overlaps their service contracts • Participants in the alliance share a vision and may agree gain / risk sharing for meeting agreed outcomes • Each provider retains sole responsibility for providing services that they have contracted with a commissioner to provide	• South Yorkshire and Bassetlaw • Healthier Wigan Partnership • Berkshire West • One Croydon Alliance
Lead Provider	• One provider is contracted to deliver a range of services • The lead provider may deliver the majority of services itself, or act as an "integrator" and sub-contract some elements of care	• Salford Integrated Care Organisation
Management agreement	• A provider is engaged to provide management support to another provider • The supporting provider may second personnel but the providers retain complete autonomy	• Manchester University NHSFT / Pennine Acute Hospitals NHST (North Manchester General Hospital) • Guy's and St Thomas' Hospitals NHSFT / Dartford and Gravesham NHST • Northern Care Alliance

Multi-organisational group structure Continued

Option	Summary description	Examples
Collaboration or federation agreement	• A group of providers enter into governance arrangements for collective system decision-making • Each provider retains full autonomy for services that it provides	• Greater Manchester Provider Federation Board • West Yorkshire Association of Acute Trusts
Place delegation agreement	• One or more providers enter into governance arrangements with commissioners for management of a delegated population health budget for defined services within a defined place	• Croydon Health and Care Board
Contractual joint venture (JV)	• A group of providers enter into a contractual JV to share responsibility to provide specified services • A lead provider is nominated for each contract with commissioners • The JV partners appoint a group board to act as the system integrator with joint responsibility for transformation / oversight / performance management of all services within the JV	• This model to date has generally been used for service specific partnerships to deliver a tightly defined range of services – eg diagnostic services, back and middle office services, etc • The model has so far not been used for collective provision of whole system services

Discussion – which of the above multi-organisational group structures mostly closely reflects the ICS group board?

Single organisation group structure

There are many examples of a single organisation group structure which generally fall into one of two types:

Option	Summary description	Examples
Corporate Joint Venture (JV)	• A corporate JV involves setting up a jointly owned corporate vehicle between two or more organisations • It is important to consider the advantages and disadvantages of using a corporate vehicle	• Symphony Healthcare • 3Sixty Care Partnership
Single merged provider	• Providers merge to establish a single corporate body that is contracted to deliver services • The provider organises itself by a group board with subsidiary hospital / care units	• Manchester University NHSFT • King's College Hospital NHSFT • Mid and South Essex NHSFT • University College London Hospitals NHSFT • Royal Free London NHSFT

For one or more of a number of reasons corporate JVs may be unacceptable. They may be complex, beyond an NHST's powers, VAT inefficient and politically unacceptable to patients and the public.

They also have onerous assurance requirements under NHSEI's Integrated Strategic Assurance Process (ISAP).

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Potential governance limitations on multi organization group provider model

Organisational boundaries - NHSFTs are autonomous bodies with legal limits on delegation: the powers of an FT must be exercised by the board, a committee of directors or an executive director

NHSFTs cannot delegate decision-making to a third party or a committee that comprises or includes third parties (cp NHSTs which can)

The general duty of an NHSFT board, and of each director individually, is to act with a view to promoting the success of the NHSFT so as to maximise the benefits for the members of the NHSFT as a whole and for the public (cp NHSTs which have no express equivalent general duty)

Competition and procurement law may run counter to collaborative working but are not show-stoppers if they are risk-managed

Discussion: how can the group ensure that all providers agree a binding decision-making process that balances their individual and collective interests without falling foul of procurement and competition law?

How providers can operate a group board

Identify ICS group board business, eg:

- Strategic leadership and relationships
- Change coordination
- 3rd party stakeholder management
- Enabler development
- Back and middle office support
- System integration
- Performance management

Identify how decisions can be made, eg:

- Committees in common - each provider operates a committee in parallel
- Delegation to the CEO or other executive director

Discussion: What will be the business of the ICS group board? Who will have decision-making authority? How will providers be committed to decision-making?

Conclusions

- Covid-19 is lightly to have a profound impact on the future delivery of health and social care services
- It is clear legislative change is needed to enable the development of integrated care systems BUT should it be TOP DOWN or BOTTOM UP?
- New guidance to support development and reduce bureaucracy
- ICS development is now moving focus from commissioning to provision
- Updated Future Vision
  - System and Place Offer
  - Place NHS Lead to reflect LA lead
  - Access is key
- Lot to do…………………

Any questions?

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