



## Primary Care Networks

# Guidance Note 3: Governance, Accountability, Liabilities & Internal Arrangements

In this note, we look at the question of the accountability of network practices for the performance of network activity, and suggest some ways to ensure a fair distribution of any risks. We use “GP contract” to describe any primary medical services contract (GMS, PMS or APMS) that covers essential services.

### WHAT ARE THE ISSUES?

As discussed in Guidance Note 4 – Contracts, Sub-Contracts & Service Delivery, each network practice is primarily liable, under its own GP contract, to its commissioner for the delivery of network activity. However, because network practices will be relying on other network practices (at least) to deliver part of that activity, each practice is reliant on others for some of its own obligations under its individual GP contract. In addition, a practice taking on such activity (e.g. employing the Clinical Pharmacist) could face costs that it would be unfair for it to face alone. In fact, in any case where a practice is ‘carrying the can’ for the network as a whole, it would be fair to arrange for all practices in the network to share those risks. We look at:

- each network’s contract obligations to its commissioner under the GP contract
- risk of commissioners withholding network funding
- risks with other third parties (e.g. sub-contractors of network activity)
- clinical risk.

Allocation of employment risk is dealt with in Guidance Note 2 – Employment & Pensions.

This is in the context of initial PCN funding for 2019/20, and so different approaches may be warranted as funding and network activity develop in future years.

### GP CONTRACT

In principle, each practice is separately responsible to its commissioner under the GP contract for the delivery of the DES Network Specification, even though that is necessarily a joint endeavour. Where a practice has properly participated in a PCN and issues arise that



are clearly attributable to the actions of other practices, we would not expect the commissioner to view that as a breach of the GP contract by the first practice. This is because the GP contract does not establish joint liability among the participating practices and because (given the ambition to support PCNs) a collaborative approach is likely to be more productive. Ultimately, any disputes between a practice and the commissioner concerning the operation of the PCN would be subject to the dispute resolution procedure in the GP contract.

### **COMMISSIONER WITHHOLDING FUNDS**

The DES Network Specification provides that commissioners can withhold funds in certain situations (e.g. failure to submit workforce information or other returns, or to deliver required extended hours access). This should be rare, and we expect commissioners to act reasonably where any information deficiencies are attributable to teething problems or other administrative delays in this initial period. However, the Network Agreement needs to address what would happen should a commissioner actually withhold funds, for example, by:

- requiring any practice that has not complied with a requirement (e.g. reporting) to do so promptly
- where a withholding is clearly attributable to the disregard of a practice of its obligations, to require that practice to reimburse any other practices for any funding lost (this will be particularly relevant where that other practice is committed to network expenditure, for example, it is employing the additional workforce).

### **RISKS WITH THIRD PARTIES**

Where a PCN entrusts network activity to a sub-contractor (whether a Federation, community trust or other provider), then there are the following key risks: contractual disputes (including around payment) with the sub-contractor; poor performance and sub-contractor insolvency; and changes to the DES Network Specification.

These are common issues for any sub-contracting arrangement, and can be addressed by a suitable sub-contract that allows for termination or variation in response to changing DES Network Specification requirements or sub-contractor default or insolvency, and which imposes suitable service levels and reporting requirements on the sub-contractor. If the PCN suffers any losses resulting from sub-contracting that cannot be clawed back from the sub-contractor, it will generally be appropriate for those losses to be borne across all practices, rather than solely by the practice nominated to hold the sub-contract. It would even be possible for all practices to be parties to the sub-contract, as joint purchasers of the sub-contracted service.



## CLINICAL RISK

Similar considerations apply to PCN activity as to any patient-facing services under the GP contract. Where that activity is performed by practices themselves, the position has been simplified very recently by the introduction by NHS Resolve of the automatically applicable state-backed indemnity scheme for general practice. That scheme also applies to activities ancillary to general practice, and to sub-contractors of primary medical services and such ancillary services. Therefore, the introduction of the DES Network Specification does not create additional issues for clinical negligence, but any PCN should of course: carry out appropriate due diligence on any sub-contractor of any patient-facing services; monitor sub-contractor performance; and ensure that any sub-contractor is required to avoid any actions that could jeopardise the application of this indemnity (such as admitting liability without NHS Resolve prior agreement). A PCN may decide that additional insurances are required for some network roles to cover for example advice and representation, and it may be decided that those costs should be shared across the network.

## GOVERNANCE

In order to give practices visibility of any risks, a PCN board and a clear reporting structure should be set out in the Network Agreement, to give early notice of any clinical issues, potential commissioner disputes (including withholding of network funding), disputes with sub-contractors, and any issues affecting the continued operation of a practice.