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To: Health Overview and Scrutiny Committee – 30 October 2009

Subject: Item 5. Briefing Note. The Future of PCT Provider Services

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## Background

On 30 June 2008, the final report of Lord Darzi's NHS Next Stage Review, *High Quality Care for All*[1] was published. Soon after, on 3 July 2009, the companion report, *NHS Next Stage Review: Our Vision for Primary and Community Care* was published. This latter document set out the broad direction for the future development of PCT provider services (PCTPS):

> "We will support the NHS in making local decisions on the governance and organisational models that best underpin the development of flexible, responsive community services. Some PCTs have done this by developing arms length provider organisations that remain accountable to their Board. In other areas, the NHS is exploring other organisational options such as community foundation trusts, care trusts, social enterprises or integration with acute trusts or NHS Foundation Trusts. We will support local decision-making by drawing together and publishing advice on this range of organisational options and their implications for issues such as governance, patient choice, competition and employment, so that staff and PCTs can work together to identify the arrangements that best empower staff to improve patient care."[2]

This policy was developed further through the *Operating Framework 2009/10*[3] and the publication on 13 January 2009 of the policy document, *Transforming Community Services: Enabling new patterns of provision.*[4] A range of supporting material for the Transforming Community Services (TCS) policy has also been published.[5]

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[1] Department of Health, 30 June 2008, http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_085828.pdf

[2] Department of Health, 3 July 2008, p.44, http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_085947.pdf

[3] Department of Health, 8 December 2008, http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_091445

[4] Department of Health, 13 January 2009, http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_093197

[5] Department of Health, see the menu on the left-hand side for further documentation, http://www.dh.gov.uk/en/Healthcare/Primarycare/TCS/index.htm

## Timetable

The Department of Health Document, *Transforming Community Services: Enabling new patterns of provision,* set down a timetable for TCS:

- By April 2009, there should be an internal separation between the commissioning and provider functions of a PCT and a contractual relationship should exist between them.
- By October 2009, PCT commissioners, working closely with practice-based commissioners, have to develop a detailed plan for TCS, for agreement with the Strategic health Authority (SHA)[6].

However, on 30 July 2009, the NHS Chief Executive, David Nicholson wrote to all SHAs and PCTs explaining that instead of the October 2009 deadline there will be a "more flexible approach to the timetable for developing future organisational options for providing community services. . . . SHAs will determine the timetable for the development and assurance of the proposals for the future organisational form(s) of their PCT provider services."[7]

## Options for future organisational form

There has been no prescribed organisational form or type of model for TCS. A range of possible options was presented in the document *Transforming Community Services: Enabling new patterns of provision.* The following series of tables contains the name and description of the options set out in the document[8]:

| **NHS Organisations** | |
|---|---|
| **Direct Provision** | 1. Provision of services remains with the PCT but with separate governance arrangements so that the provider service is treated like any other provider.<br>2. An alternate approach would be for the PCT to agree with another PCT either to manage or to deliver their directly provided services: under a delegation arrangement the relevant functions are delegated to the other PCT.<br>A PCT can also commission services from another PCT; this could involve existing staff transferring to the provider PCT. |
| **Community Foundation Trust** | A Public Benefit Corporation consisting of members who may be in constituencies of the public, patients and staff. There is a Board or Council of Governors and a Board of Directors. |

[6] Department of Health, 13 January 2009, p.7, http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_093197

[7] Department of Health, Dear Colleague Letter 30 July 2009, *Transforming community services*, http://www.dh.gov.uk/en/Publicationsandstatistics/Lettersandcirculars/Dearcolleagueletters/DH_103459

[8] Department of Health, 13 January 2009, pp.43-54, http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_093197

| **Social Enterprises*** Social enterprises are businesses that trade primarily for social purposes, with profits reinvested into services it provides or into the wider community. There are several legal organisational forms, including, amongst others, a Community Interest Company, a Company Limited by Guarantee, and an Industrial and Provident Society. | |
|---|---|
| **Company Limited by Guarantee** | Usually non-profit distributing, often combined with charitable status. Members play a role similar to that of shareholders. Profits are retained within the company to be applied in accord with its purpose. |
| **Industrial and Provident Community Benefit Society (BenCom)** | BenComs are incorporated industrial and provident societies (IPS) that conduct business for the benefit of their community. Profits are not distributed amongst members, or external shareholders, but returned to the community. |
| **Industrial and Provident Societies (Bona Fide Co-operative)** | In a bona fide co-operative, eligibility for membership will be based on a common economic relationship with the society - employees in a worker co-operative, tenants in a housing co-operative, etc. The eligibility criteria will feature within the registered rules. |
| **Community Interest Company (CIC)** | Designed for the pursuit of community benefits, CICs can be either limited by guarantee or limited by shares and are additionally required to satisfy a 'community interest test'. |
| **Charitable Incorporated Organisation (CIO)** | This form becomes available by regulation in 2009. It is a separate legal entity with a constitution consisting of members who may have no liability or liability limited to a maximum amount. |

| **Commercial Enterprises** Although these forms may be contracted with by PCTs to provide community services, they are not available for PCT provider organisations to establish directly. |
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| **Contractual, partnership and joint working arrangements** In addition to direct contracts with PCTs by independent organisations to provide community services, there are also some possible arrangements between the same or different types of organisation, and do not, therefore, constitute organisations in themselves. Below are some models of how services might be arranged. | |
|---|---|
| **Vertical Integration** | These can be arrangements between NHS organisations and other bodies, whether other NHS organisations (eg NHS trusts, NHS Foundation Trusts), or local authorities or third sector organisations, typically, carrying out different stages of a patient or user pathway. These can be carried out through a contractual Joint Venture, a Community Interest Company, partnerships, or a Section 75 Agreement. There is no |

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|---|---|
| | prescribed form for vertical integration. Proposals for vertical integration must be compliant with the requirements of the *Principles and Rules for Cooperation and Competition.* |
| **Horizontal Integration between PCT providers and/or LAs.** | PCTs enter joint arrangements or services are transferred to ("hosted by") another PCT. PCTs and LAs enter section 75 partnership arrangements whereby the LA performs the PCT's community health services function. Typically such arrangements are developed between providers delivering the same part of a patient pathway or service. Proposals for horizontal integration must be compliant with the requirements of the *Principles and Rules for Cooperation and Competition.* |
| **Partnership arrangements under s.75 of the NHS Act 2006** | Under these arrangements a local authority provides the relevant former PCT community health services. |
| **Services provided on behalf of a PCT by a third party.** | Options for these include joint or delegation arrangements with another PCT (see 'horizontal integration' above). For external bodies other than another PCT, the PCT cannot delegate functions to such a body. |
| **Integrated Care Pilot (ICP)** | An entity that takes overall responsibility for ensuring coordinated care for a defined and registered (GP) population wherever that care is to be provided i.e., across part or the whole patient pathway, irrespective of sector. These are being piloted following the NSR (Next Stage Review). |
| **Primary Care Contracts** | May still be used for the purposes they were originally intended. |
| **NHS Contracted Arrangement** | An existing hospital Foundation Trust managing some community services (Downwards). Primary and community care organisations managing some acute services from community base (Upwards). |

* Social enterprises – PCT staff are entitled to declare an interest in establishing a social enterprise, which might apply to a part or the whole of the current provider organisation. Any request should "have been considered and approved or rejected within 6 months of the request being made."[9] Further information about this policy was set out in *Social Enterprise - Making a Difference: a guide to the Right to Request*.[10]

Where a PCT decides to continue direct provision of community services, it should review its service periodically.[11]

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[9] Ibid, p.26.
[10] Department of Health, 20 November 2008, http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_090460
[11] Department of Health, 13 January 2009, p.13, http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_093197

**Annual Health Check 2008/09**

On 15 October, the results of the Annual Health Check for 2008/09 were published. For the first time a separate score was given to PCTs for compliance with the core standards as commissioners and providers.

For providing services, they were given one of four scores:

Fully Met Almost Met Partly Met Not Met

Table 1: Annual Health Check 2008/09 scores for providing services

| PCT | Score |
|---|---|
| NHS Eastern and Coastal Kent[12] | Almost Met |
| NHS Medway[13] | Almost Met |
| NHS West Kent[14] | Fully Met |

For reference, in the Annual Health Check, PCTs were given one of the following four overall scores for "quality of commissioning services" and "quality of financial management." These scores were one of:

Excellent Good Fair Weak

Table 2 - Annual Health Check 2008/09 scores for quality of commissioning services and financial management.

| PCT | Quality of Commissioning | Quality of financial management |
|---|---|---|
| NHS Eastern and Coastal Kent | Fair | Good |
| NHS Medway | Fair | Good |
| NHS West Kent | Fair | Fair |

[12] Annual Health Check results for NHS Eastern and Coastal Kent available from the Care Quality Commission at: http://2009ratings.cqc.org.uk/findcareservices/informationabouthealthcareservices/overallperformance/searchfororganisation.cfm?widCall1=customWidgets.content_view_1&cit_id=5QA&element=P_QUAL

[13] Annual Health Check results for NHS Medway available from the Care Quality Commission at: http://2009ratings.cqc.org.uk//findcareservices/informationabouthealthcareservices/overallperformance/searchfororganisation.cfm?FaArea1=customWidgets.content_view_1&cit_id=5L3&element=P_QUAL

[14] Annual Health Check results for NHS West Kent available from the Care Quality Commission at: http://2009ratings.cqc.org.uk/findcareservices/informationabouthealthcareservices/overallperformance/searchfororganisation.cfm?widCall1=customWidgets.content_view_1&cit_id=5P9&element=P_QUAL

**Select Glossary**

***Commissioning*** The full set of activities that local authorities and Primary Care Trusts (PCTs) undertake to make sure that services funded by them, on behalf of the public, are used to meet the needs of the individual fairly, efficiently and effectively.

***Provider*** A generic term for an organisation that delivers a healthcare or care service.

***Primary Care Trusts (PCTs)*** Freestanding statutory NHS bodies with responsibility for delivering healthcare and health improvements to their local areas. They commission or directly provide a range of community health services as part of their functions.

***Service level agreement (SLA)*** This is a formal written agreement made between a provider and the commissioner of a service. It specifies in detail how and what services will be provided, including the quality standards that the service should maintain.

***Strategic Health Authority (SHA)*** The local headquarters of the NHS, responsible for ensuring that national priorities are integrated into local plans and for ensuring that Primary Care Trusts (PCTs) are performing well. They are the link between the Department of Health and the NHS.[15]

[15] All of these definitions taken from: Department of Health, 13 July 2006, *Health reform in England - update and commissioning framework: annex - the commissioning framework*, pp.73-77, http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_4137230.pdf