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Welcome

Welcome to the Healthcare Focus. This newsletter aims to keep healthcare professionals updated on changes in the law and topical issues affecting the healthcare profession.

In this edition we focus on the Government's Equity and Excellence White Paper and the issues that may arise for GPs.

We look at what we believe are the key issues raised in the White Paper and we highlight matters that GPs should consider. If you would like to receive email updates that we prepare on this topic or other topics affecting healthcare professionals please email marketing@georgedavies.co.uk and we will add your details to our distribution list.

If you have any queries on the matters raised in the newsletter or if you would like to discuss any other matters please contact me or my colleagues using the details below.

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Kind regards

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NHS White Paper – some points to consider

Since the White Paper setting out the Government's plans for GP Commissioning was issued back in July of this year one of the major criticisms (aside from the possible effects) has been the lack of details. The GPC has issued some observations and using this and our experience in dealing with the GP sector we have set out some initial thoughts on what we see to be the key legal issues below:

1. What sort of body will the consortia be?

You have to be some sort of legal entity in order to be able to enter into binding contracts. There are a number of different options from being an individual in a partnership to a limited company or a limited liability partnership (LLP) or a Community Interest Company (this type of company has grown in popularity in the last 12 months). There is currently no guidance (and it is thought unlikely that there will be any) as to which body is the preferred choice for consortia.

In addition it is thought that there might be consortia of consortia for larger areas and also to make savings through economies of scale for strategic planning, contracting and human resources. Again there is no guidance as to what sort of legal entity should be used although it is thought that the risk of these entities failing will lie with the individual consortia as does the responsibility for the provision of services.

There are a number of concerns here but certainly as a starting point you will want to

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ensure that you are not personally liable for the consortia.

2. How will the governance work?

The GPC Guidance envisages a complex structure of individual members, leaders, a Board, executive appointments and a separate Board to make the executive appointments. Organisations such as your Local Medical Committee could have a role in appointments while the National Commissioning Board will hold the consortia to account.

There will need to be different structures for different size areas but it is clear that there needs to be a level of accountability, clearly defined processes and the individual members must give a proper mandate to the leaders of the consortia. Concerns about risk and conflict of interests must be foremost when considering the structure.

3. Who will bear the risk?

We suspect that this question is going to be one of the major sticking points in putting these

proposals into practice. What happens if there is a major accident in your area? What about planned and unplanned debt? What about pre-existing debts and pre-agreed contracts?

This is one of the areas where much greater clarification and much more thought is required. Before entering into any agreement regarding a consortium you must be sure that you know exactly what risks you are taking on and whether you will ever be personally liable.

There are two points which the GPC rightly makes in its guidance – 1) you must ensure a divide between practice and consortium accounts and 2) you must have a due process and proper audit of decision making. Where there is so much uncertainty these are key points to remember.

4. Employment

Your practice will employ staff, your consortium may employ staff and your lead consortium may employ staff. You must be sure that you know who is the employer and that all regulations are being properly followed.

Whether the consortia require the PCT staff or not you must consider the application of the Transfer of Undertakings (Protection of Employment) (TUPE) provisions which provide that employees of one organisation can transfer to another in certain circumstances. You should also consider the various pros and cons of buying in services against employing your own staff.

5. Involvement and Collaboration

It would appear that, if the proposals go ahead, you will have little choice in being involved as every GP is expected to participate to a greater or lesser extent. However there is no statement as to what the penalties would be for non-involvement.

This leads to the question as to who within your practice becomes more involved and who retains more of the original GP role and what the respective rewards are. It is likely that GPs

will be encouraged to be actively involved in consortia and in GP work but it will remain to be seen whether this is workable. This is something that you will need to consider in your partnership agreement in your practice.

It is also expected that the whole country will have its healthcare needs provided via consortia but there is no guidance as to what would happen if any one area is not provided for – perhaps due to a conflict in boundaries between consortia.

It seems therefore that individual practices will need to collaborate much more than they currently do either in their own consortium or with other consortia. Again the decision making process needs to be clear and transparent to avoid charges of conflict of interests or disputes.

6. Early Adopters

Early adopters are going to be vital particularly as no pilot consortia are envisaged. However being an early adopter will be a difficult job. Although you will have the guidance of bodies such as the GPC and professionals who work with GPs such as George Davies, no one will be able to say definitively what will work and what will be effective in both protecting you as an individual or practice and providing healthcare to your region. It will be a case of trial and error and as yet there is no confirmation on the issues of funding during the period of shadowing PCTs or where the risk for any mistakes will lie.

There remains therefore a great deal of uncertainty. If the White Paper is voted through by Parliament then there is likely to be many months of planning and guidance before GPs can confidently enter into consortia fully aware of the risks and responsibilities.

If you are thinking about how the White Paper will affect you and would like to discuss some of the possibilities please contact us.

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