



PRIMARY CARE NETWORKS (PCNs) – WHAT ARE THE ISSUES INVOLVED IN INCORPORATION ?

BACKGROUND

- The **Primary Care Network (PCN)** is the newest structure operating locally as part of recent Primary care changes – and will be taking over some or all of the activities of current GP Federations !
- PCNs are a structure established as a means for Primary Care to work at scale i.e. it is generally not feasible for **ONE GP Practice (alone)** to have the skills or resources to deliver all of the wide ranging activities.
- While PCNs were operating at a small scale it made sense to keep them simple, and therefore many are currently operating on an unincorporated basis and using the '**Lead Practice**' model.
- With the necessity for the PCN's to take on more contractual responsibilities in 2022 (over and above the Direct Enhanced Service (DES)), by taking increasing responsibility to address local healthcare issues, the likelihood is that fairly quickly the average PCN will have a spend of circa £1.0m per annum.
- This also means an urgent requirement to plan for, and develop, management structures characteristic of a well-run business.
- For many PCNs, this is likely to require a decision on forming some type of incorporated entity with a separate legal structure to better manage the PCN activity(ies) more '**professionally**' - **while also containing risk outside of the GP Practices !**

REASONS TO CONSIDER INCORPORATION

Using a non incorporated structure, a PCN faces a number of practical and technical issues, including

1. **Risk** – the level of risk applicable to the '**Lead practice**' in the current PCN structure, may be such that as the levels of activity and '**spend**' increase materially, the GP Practice may be unwilling to bear that risk
2. **Employees** - staff operating under the same PCN who are often employed in different member GP Practices – and who may each have with different employment '**terms and conditions**'. Not to mention the usual Employment complexities that are present e.g. performance, suitability, availability etc even where directly employed !
3. **VAT** - questions may arise as to whether VAT may be applicable on certain '**cross charged**' or '**recharged**' services between the PCN and GP Practices i.e. non clinical services
4. **Governance** – as the complexity of the PCN activities increases, alongside material increases in the value and level(s) of funding, there may be concerns around formal or proper governance and/or where responsibility sits among the various GP Practices



5. **New Funding (non DES income)** - Contracts for new streams of must be entered into by the existing GP Practice(s) (which are usually unlimited liability partnerships), because there is no 'PCN Entity'.
6. **Other** – there may be specific cyber and data security issues and risks applicable to PCN activities, '**accidental**' partnership and issues of (unlimited) liability etc

With an incorporated PCN Limited company this would potentially resolve most of the technical problems e.g.

- **All ARRS and PCN staff and costs** would be moved from the individual GP Practices into the new limited company
- The PCN limited company is operated as a '**non profit making**' business providing **services** back to the core GP Practices
- **All business and other operational risks** are largely contained within the limited company
- The '**irrecoverable**' VAT issue is avoided by structuring the limited company's activities such that there is a '**VAT Cost Sharing Group**' in place with the individual GP Practices

The incorporation option may not appropriate for all PCNs, however it appears to be the solution for PCNs that are employing staff themselves, or that want to contact for additional income streams, **BUT** perhaps less so for those PCNs working closely with a GP Federation etc.

WHAT ARE THE KEY ISSUES IN INCORPORATION ?

- Establishing and running a limited company is a more complex and expensive option than a partnership, but it does allow for being jointly owned by various GP Practices so that they all have an ownership stake.
- Obviously it is important that the PCN limited company is able to successfully manage it's own affairs separate from the various GP Practices, however care should always be taken to ensure that the PCN does not develop a '**mind of it's own**' – but with proper governance structures are in place then this should not happen.
- The key issues for PCNs when considering the setup of a new limited company to take on these increased responsibilities, will generally include:
 1. agreeing on the ownership arrangements of the PCN entity, ensuring that these are all contained in the appropriate legal form, **AND** to confirm that these documents and that of the entity itself are **NOT** in conflict with any specific NHS Regulatory requirements etc
 2. agreeing on a PCN representative (from each Practice), who also acts as the nominated shareholder and Director i.e. **ALL** roles should be the same person for simplicity purposes
 3. formally entering into provider NHS contracts
 4. agreeing a DES Sub contract arrangement with the GP Practices



5. providing the structure(s) for the appropriate level of governance within the PCN
6. planning for and resolving any legal or other technical issues around the **'transfer'** of activity(ies) from the existing PCN entity
7. ensuring that the appropriate Contracts of service and employment are in place
8. securing eligibility and/or submitting an application for membership of the NHS pension scheme for it's employees
9. obtaining the appropriate tax advice at the right point in time to ensure there are no issues with ownership issues, goodwill, or other tax related issues
10. ensuring that VAT, payroll and other standard business compliance issues are dealt with in good time (including a VAT Cost Sharing arrangement where necessary)
11. establishing and agreeing on relevant expense-sharing arrangements with GP Practices for delivery of activity etc.
12. ensure the submission of any relevant application for the PCN limited company with the CQC

Where you need more assistance with setting up a PCN limited company, or alternatively managing the 'day to day' activity of your Primary Care Network (PCN), let the SAKURA Team know, and where necessary we can provide additional information on how we help other Clients !

Contact us on 0207 952 1230 or damian@sakurabusiness.co.uk