

Partnerships and collaborations

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NHS England and ICBs will expect providers to work in new ways to meet the challenges facing health and social care. Provider reform will be as significant as NHS leadership and commissioning reform, but through partnership and collaboration of existing NHS trusts, foundation trusts, VCSE and independent sector, rather than HCA dissolution of existing bodies and establishment of new bodies.

NHS trusts are here to stay. Gone is the statutory imperative for them to become FTs. Instead the HCA confirms the Secretary of State's power to establish new NHS trusts; puts NHS trusts and FTs on the same regulatory footing for provider licences; and even enables NHS trusts (in effect) to acquire FTs.

The FT legal framework remains largely intact. In some respects their autonomy has been brought into line with NHS trusts, including provisions for joint exercise of powers, wider effect of decisions and (subject to safeguards) capital spending limits.

For NHS trusts and FTs, perhaps the most significant HCA and related innovations are:

- New powers to delegate, share decision-making and pool budgets that will facilitate partnership and collaboration, and
- A new Provider Selection Regime (PSR) to replace the current procurement rules for NHS healthcare services.

How might NHS providers take advantage of innovations? Place-based partnerships are expected to comprise providers operating within (typically) a local authority area or similar footprint. Provider collaboratives are expected to comprise acute and mental health providers operating across multiple places which may together be a system or multiple systems.

There is plenty of scope for flexible design of partnerships and collaborations, but there is also a fixed policy deadline of 1 April 2023 by when they must be in place, so the next year 2022-23 is an opportunity to be grabbed not only to develop such arrangements but also to run them in trial mode before they are load bearing.

We are already working with clients around the country on partnerships and collaborations. Key issues on which we are supporting them include:

- Steps needed to be recognised as a place-based partnership or provider collaborative
- Models of governance
- Legal relationship with the ICB
- Impact of and potential scope for delegated powers
- Lead and sub contract arrangements if applicable
- What it means for current individual and organisational statutory responsibilities and accountabilities
- Roles of core and associate members
- Entry and exit rules
- Potential organisational form(s) and their impact

- Compliance with current procurement rules and, in the future, the new PSR – see more about this in our separate section about procurement.

One of the aims of policy underlying NHS legal reform has been to cut out complexity and bureaucracy of existing workaround arrangements, but in developing new arrangements, there are real risks of substituting new for old complexity and bureaucracy.

Our legal support for partnerships and collaborations enables clients to cut through to what really needs to be done, so they can keep arrangements simple, have clear responsibilities and accountabilities, and are ready to take advantage of NHS legal reform to put them in control of service provision.

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