

Primary Care Networks - Completing the Network Agreement

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The template [Network Agreement](#), [guidance](#) and [associated documents](#) for the establishment of Primary Care Networks (PCNs) have been published.

Here we consider some of the big questions that PCNs and commissioners are asking.

What are the timeframes?

There are challenging timeframes for emerging PCNs and commissioners to meet:

<p>By 15 May 2019</p>	<p>The following information needs to be submitted;</p> <ul style="list-style-type: none"> ○ Details of the practices in the PCN ○ Details of the PCN area, including list size and geographical map ○ The Clinical Director <p>The nominated payee (who will receive the funds flowing from the DES, on behalf of the PCN)</p>
<p>Between 16 May & 31 May 2019</p>	<p>Commissioners will seek to confirm and approve all network areas, to ensure 100% geographic coverage.</p>
<p>By 30 June 2019</p>	<p>The Network Agreement needs to be signed, with all relevant schedules populated. Failure to enter in the Net Agreement means payments to PCNs will not be made.</p>

What is the legal status of the Network Agreement?

The Network Agreement is a legally binding contract setting out how the parties signing will collaborate as a PCN. It is expressly stated not to be an NHS Contract so disputes relating to the Network Agreement cannot be referred to NHS Resolution.

Is a PCN a new legal entity?

No. A PCN is envisaged to be a contractual collaboration between GP practices and, where locally agreed, other organisations. The Network Agreement is therefore a form of collaboration agreement.

Who should enter into the Network Agreement?

The Network Agreement establishes a PCN and those signing become members of the PCN. GP practices that hold GMS, PMS or APMS contracts will be signatories. Those GP practices might be sole traders, partnerships (not a legal entity in its own right) or companies. This should be considered and reflected appropriately in the Network Agreement. There is scope for other organisations to become members of the PCN where this is agreed locally.

Can a GP federation, which has been set up as a company, be the PCN?

A GP federation cannot be a PCN. However, we have worked with a number of GP federations who are aligning their company documents to reflect the emerging governance arrangements for PCNs enabling the GP federation to be used as a vehicle to host shared assets (e.g. for the purchase of equipment, employing staff, etc.).

A PCN may consider it appropriate for a GP federation to be a member of a PCN and sign up to the Network Agreement. Alternatively, where a PCN wants to refer to how practices work with a GP federation, any contractual arrangements with the GP federation can be appended for information in Schedule 7 of the Network Agreement.

Are there restrictions on who can receive PCN payments (the “nominated payee”)?

Yes. Payments made to a PCN are the payments due to each GP practice that has signed up to the Network Contract DES. Rather than receive payments individually, the GP practices agree for payments to be made to a single nominated payee. The Network Contract DES specification states that the nominated payee must hold a primary care contract. If a PCN wants their GP federation to be the nominated payee, the GP federation would need to hold a GMS, PMS or APMS contract.

What should a PCN consider in relation to the nominated payee?

The nominated payee will be receiving payments on behalf of the GP practices that have signed up to the Network Contract DES. A PCN will want to ensure the nominated payee is a member of the PCN (i.e. signed up to the Network Agreement) and include in Schedule 4 of the Network Agreement clear obligations of the nominated payee in respect of those payments. PCNs should carefully consider if indemnities and limitation of liability provisions are appropriate.

What legal levers can be included in the Network Agreement to ensure proper performance of services by PCN members?

Schedule 3 of the Network Agreement is where PCNs set out details of service delivery. Service levels and KPIs can be included here to make clear the level of performance expected of each PCN member. The Network Agreement should also make clear what happens if expected performance levels are not achieved. This could include meetings of the PCN, requirements to develop remedial plans, potential financial consequences and/or triggering dispute resolution arrangements. In exceptional circumstances and where efforts to remedy under-performance have failed, the PCN may expel a member. Clauses 71 to 79 of the Network Agreement set out the process for any such expulsion.

How should the PCN make decisions? What are the options?

The template Network Agreement leaves the details of PCN decision-making to be locally agreed and recorded in Schedule 1. We have advised clients developing collaboration agreements on the different ways that decisions can be made, including by unanimity, majority voting or some combination of both. Where non-GP practices are members, PCNs may want to consider whether any decisions should be reserved to the Core Network Practices (i.e. the GP practices in the PCN that have signed up to the Network Contract DES).

There are advantages and disadvantages to each type of decision-making. For example, unanimous decision-making reduces potential for dispute and can lead to more successful implementation of the proposed action but it can be difficult and slow to achieve. Majority decision-making can speed up the process but dissenting members would be required to do something they do not agree. This can lead to deteriorating relationships. A hybrid model could mitigate these downsides; certain types of decisions could require unanimity and others a majority.

What should be included in the Schedules to the PCN agreement, and how much detail is “enough”?

Collaborations are often between organisations that have built up a relationship of trust and mutual support. In these circumstances, documentation is often light touch and may not always set out what will happen in the event that things go wrong. The Network Agreement is a legally binding arrangement involving significant sums of money and will often involve practices providing medical services on behalf of each other. The Network Agreement must set out in clear and unambiguous language who will do what in relation to each area of service delivery. Robust processes for dealing with service delivery failures must be included so practices that are accountable for those services can take the necessary actions. We have the experience and knowledge to advise what a robust Network Agreement would look like.

Should the Network Agreement contain provisions relating to data sharing?

No. The Network Agreement specifically states that, where relevant, a PCN will have in place a data sharing or data processing agreement. NHS England will shortly publish template data sharing and data processing agreements for PCNs to tailor and sign. PCNs will need to consider how personal data of patients is shared and ensure those arrangements are set out in the appropriate data sharing or data processing agreement. This will ensure compliance with data protection legislation including the GDPR.

How does the Network Agreement fit with the wider STP or Integrated Care System arrangements?

PCNs are the building blocks for an effective STP or Integrated Care System (ICS) and are central to better integration of the wider health and care system. The form and nature of this integration will depend on the individual STPs/ICSs. The Network Contract DES specification requires the Clinical Director of a PCN to work collaboratively with Clinical Directors from other PCNs within the STP/ICS area and to play a critical role in shaping and supporting the STP/ICS by helping to ensure full engagement of primary care in developing and implementing local system plans. PCNs could use the Network Agreement to capture further actions or ways of working that relate to the wider STP/ICS.

What if a member wants to leave the PCN?

Clauses 60 to 70 of the Network Agreement set out the process for a member to leave a PCN. A PCN can include additional requirements in Schedule 2 where locally agreed. PCNs will want to carefully consider the consequences of a member leaving the PCN: what this means for workforce, finances and service delivery arrangements. A variation of the Network

Agreement will always be necessary where a member leaves to remove that member from the PCN.

How can DAC Beachcroft assist with Network Agreements?

We work with many provider and commissioner organisations across the country on implementation of primary care networks, alliance arrangements and new business models. We have worked on all types of collaboration contracts within the NHS: drafting, developing and tailoring all forms of agreements between NHS and non-NHS organisations.

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