

GOVERNANCE ARRANGEMENTS IN NEW CARE MODELS: THE LEGAL VIEWPOINT

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STRUCTURAL OPTIONS FOR NEW CARE MODELS



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NEW CARE MODELS



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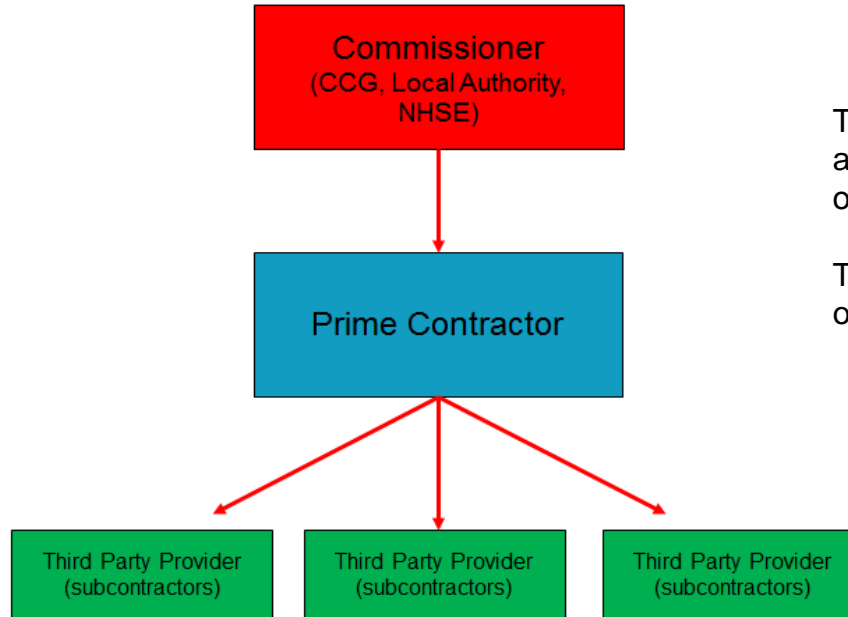
STRUCTURAL OPTIONS

- Prime Provider/Prime Contractor ('integrator')
- Provider Collaboration/Contractual Joint Venture
- Corporate Vehicle (Special Purpose Vehicle)
- Alliancing: Commissioners and Providers
- Merger – not being discussed today



STRUCTURAL OPTIONS

Prime Contractor

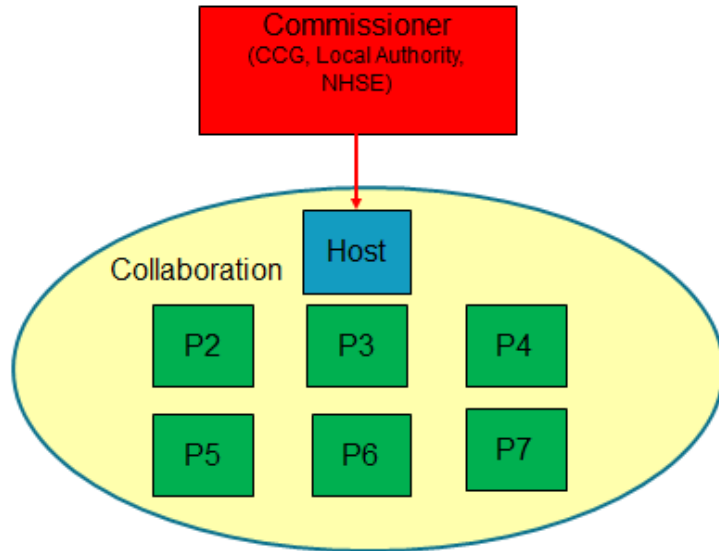


The commissioning contracts are combined and are awarded to one provider, the “Host” or ‘prime contractor’.

The prime contractor then contracts with other providers to deliver the services.

STRUCTURAL OPTIONS

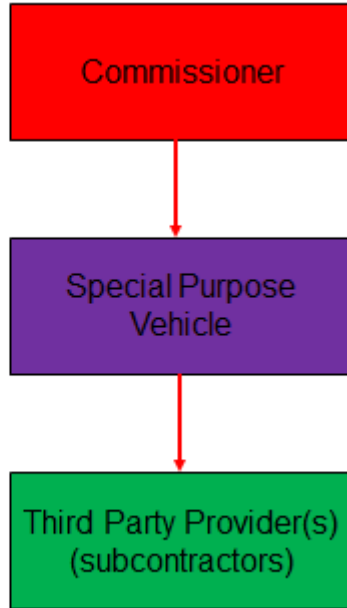
Provider Collaboration/ Contractual Joint Venture



The commissioner(s) contracts with and pays the Host and the Host sub-contracts as for the prime contract model above; in addition however, the Host and the other providers enter into a contractual joint venture arrangement which shares the risks and benefits under the commissioning contract across the providers

STRUCTURAL OPTIONS

SPV



Providers form a new corporate vehicle (SPV)

Could be limited company, LLP, CIC

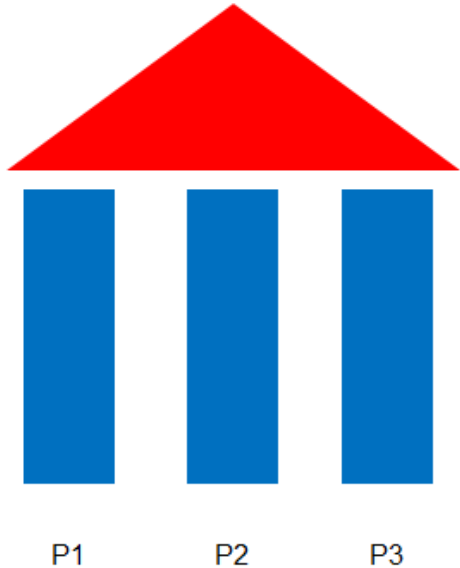
SPV holds contract with commissioners

Shareholders' or members' agreement sets out the governance arrangements for the vehicle including the basis on which the providers take decisions and documents the parties' agreement on the sharing of risk and benefit under the commissioning contract

The SPV may itself employ staff/own assets ('fat JV') or may sub-contract obligations ('thin JV')

STRUCTURAL OPTIONS

Alliancing



Overarching Alliance contract between **all parties** setting out governance arrangements, risk/reward mechanism and performance regime

Individual bi-lateral service contracts with Providers (P1, P2, P3 etc.) incorporating, for example, mandatory NHS Standard Contract terms

STRUCTURAL OPTIONS

- Combinations of the above:
 - Provider collaboration comprising multiple prime contractors (mental health, urgent care, community services, social care)
 - Corporate vehicle supplemented by provider collaboration(s)



GOVERNANCE AND ACCOUNTABILITY



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GOVERNANCE AND ACCOUNTABILITY

Opportunities presented by New Care Models:

- Can all deal with single budget/capitated budget
- Can be structured so as to incentivise outcomes/joint working
- Can all accommodate sharing of risks and rewards
- Utilise NHS standard contract

GOVERNANCE AND ACCOUNTABILITY

Challenges/considerations presented by New Care Models:

- Decision making and delegated authority
- Inherent conflicts of interest?
- Delegated commissioning? Ability to manage system?
- GMS/PMS – in or out?
- Commercially sensitive information – providers beware
- Procurement law – at outset and on service re-design
- Powers to form corporate vehicles – an issue for non-FTs
- VAT implications of corporate vehicle
- Need for guarantees or other assurances – esp. for corporate vehicle



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