

FEDERATION OPTIONS

BRIGHTON AND HOVE INTEGRATED CARE SERVICES LTD

1. BACKGROUND

- 1.1 We have been instructed by Brighton and Hove Integrated Care Services Ltd (“BICS”) to advise on matters relating to proposed changes to its governance and shareholding arrangements.
- 1.2 BICS are an operational primary care federation and provider of community services, and one of the more mature operational organisations in the country in this area. We understand that a Federation Working Group has been set up including representation from GP clusters (groups of practices based on localities) in the Brighton and Hove area. The Federation Working Group is being advising by consultants trading as “Excellence in Business” (“EiB”) on a project to set up a “City Wide Federation”. EiB have produced an options paper, setting out a range of different potential legal forms for collaboration, and subsequently, a heads of terms document, setting out a proposed legal structure for a new GP-led organisation that could be the City Wide Federation. We understand that BICS members have expressed an open stance to the discussions on federating and agreed to work collaboratively with the Federation Working Group to explore options, once their process is complete.
- 1.3 The heads of terms do not reference BICS, and are essentially based on setting up a new legal entity, similar to many basic GP federation models that we have seen emerging across the country in the last couple of years. However, we understand that one option suggested for discussion by the Federation Working Group would be for BICS to essentially change its management structure, its corporate set up and its shareholding arrangements to fit with the arrangements set out in the heads of terms.
- 1.4 From the documentation we have reviewed (including the options paper prepared by EiB and the heads of terms), the objectives of the proposed new GP organisation are not entirely clear to us. As a general comment, based on our experience advising on various other GP federations across the country, we consider that the objectives and vision (i.e. the function) of the proposed organisation are issues that need to be considered prior to considering the legal form.
- 1.5 We understand the key drivers for seeking to create a GP-focussed forum or organisation are as follows:
- (i) GP clusters wish to have autonomy over decision making for matters that relate to general practice (e.g. Pro Active Care and LCS);
 - (ii) More accountability for decision making, where such decisions relate to general practice, to GP practices themselves;
 - (iii) BICS carry out a broad range of services, some of which are not necessarily of interest to GP clusters (e.g. MSK and Wellbeing services) and therefore is not solely GP-focussed.
- 1.6 This options paper sets out four high level options relating to the proposals of the Federation Working Group for consideration by BICS. We recommend that if any of the proposed options is considered as a solution, it will require further consideration and due diligence to understand the full impact of implementation.

2. OPTIONS

- 2.1 From our review of the papers, we have drafted high level options, as set out in Table 1 below.

Table 1 - High level options

#	Proposed option	Practical implications
1	<p>GP cluster-led sub-committee</p> <p>BICS creates a sub-committee of its Board, delegating decision making for defined matters to GP cluster leads (i.e. non-Directors of BICS).</p> <p>BICS largely retains its corporate structure save for some new governance arrangements at sub-committee level.</p> <p>Current management and control of BICS remains.</p> <p>No new legal entity is formed.</p>	<p>GP cluster leads given decision making authority for defined matters.</p> <p>GP cluster leads able to utilise BICS trading history, CQC registration, insurance arrangements, corporate services and expertise.</p> <p>Avoids creating two separate (and potentially competing) organisations focussed on primary care in Brighton and Hove.</p> <p>BICS overall management and control remains in place, and remains ultimately responsible for the range of contracts currently in place with commissioners and other providers (e.g. MSK and wellbeing).</p> <p>Sub-committee terms of reference would need to be drafted to clearly set out the parameters and operational details for the sub-committee and any limitations on decision making (i.e. what decisions need to be agreed at BICS’ Board).</p> <p>No amendments to shareholding arrangements, therefore GP practices would not be the only shareholders and would not have ultimate control and accountability for all of BICS’ activities.</p>
2	<p>New joint venture company created</p> <p>New corporate vehicle (“JVCo”) set up with GP shareholders and BICS (as a company) as a shareholder.</p> <p>BICS retains its current management and corporate structure.</p>	<p>JVCo would need bespoke articles of association to be drafted, and a shareholders' agreement between BICS and the GP shareholders would be required.</p> <p>It would offer a clear legal and functional separation between GP cluster lead interests (sitting in JVCo) and BICS, while also allowing BICS to provide various services (e.g. corporate services, staffing, management and bidding expertise to JVCo) under contractual arrangements between BICS and JVCo.</p> <p>BICS would be a shareholder in JVCo alongside GP shareholders and it would be open to the shareholders to agree certain matters that are reserved for the approval of BICS and/or the GP shareholders. This option would not set up two rival organisations competing with each other. Instead, JVCo could focus on particular general practice issues defined between the two parties.</p> <p>In practice, JVCo could be set up with the GP cluster leads as Directors responsible for the day-to-day running and decision making.</p>

#	Proposed option	Practical implications
3	<p>Completely separate GP-only federation + partnership agreement with BICS</p> <p>New corporate vehicle set up, as per heads of terms, completely separate to BICS.</p> <p>BICS and new organisation agree up front how they will collaborate with each other on projects, and (subject to competition law compliance) any non-compete obligations.</p>	<p>This option would allow complete autonomy for the GP cluster leads and GP practices to define their objectives and ambition, and bid for services in their own right.</p> <p>It would require the set-up of a new corporate vehicle (articles of association and shareholders agreement), and potentially application for CQC registration (depending on services it seeks to provide), consideration of issues such as insurance arrangements, pensions and VAT.</p> <p>The practical implications will largely depend upon the purpose of the new corporate vehicle. Would it be a service integrator, or would it hold contracts for services and sub-contract to individual GP practices (for example, in respect of LCS)?</p> <p>However, it does have the potential to create two competing organisations in Brighton and Hove, and if the ambition is for this to be avoided, we would suggest that BICS and the new organisation enter into contractual arrangements setting out how they will collaborate, and share services (e.g. corporate services, premises, staff, etc.)</p>
4	<p>BICS adopts all proposals set out in the heads of terms</p> <p>BICS would need to completely re-work its articles of association and all of its governance arrangements, to essentially create a new organisational structure, based on the GP-led, practice list based shareholding.</p> <p>Whilst not creating a new legal entity at law, it would essentially create an organisation with a wholly different governance and shareholding structure, without reference to BICS' current strategic ambitions.</p>	<p>This would require a complete re-working of the entirety of BICS' management and shareholding arrangements. It would mean that those shareholders that are not GPs would need to give up their shares and accordingly their stake in BICS.</p> <p>It may have an impact on BICS' existing contractual arrangements (in terms of change in control provisions), and this would require due diligence across all material contracts of BICS.</p> <p>It may jeopardise current relationships with other providers (e.g. MSK contracts) and narrow the scope of BICS to becoming solely focused on GP issues.</p> <p>The impact of changing both the membership, the governance arrangements, and the board composition of BICS is unquantifiable, although we consider that it is bound to be significant. There will be financial costs, and the ethos and culture of the organisation will almost certainly change, with unpredictable consequences.</p>

3. **NEXT STEPS**

- 3.1 Should you wish to discuss any aspects of this advice, please do not hesitate to contact Hamza Drabu (hdrabu@dacbeachcroft.com / 0207 894 6411).

DAC Beachcroft LLP
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