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Dear Jane, Rob

Partnership Agreement for the Collaborative

Further to the letter following the last Governing Body meeting we have now had some helpful comments back from our solicitors and these are included below in terms of where they believe the documentation could be strengthened and we have included their comments in full where relevant.

There are a couple of key principles and context which we think need to be debated and established collectively:-

- With the proposed move to one NEL CCG AO and the possibility of the CCG GBs meeting in common, whether that will lead to changes in the scope and governance model of the STP/collaborative to minimise any duplication and ensure alignment and if so the timing for this.
- The solicitors advice is clear that the collaborative (and indeed any governance set up across the CCG GBs) is operating under delegation from statutory organisations. They state "The Partnership Agreement does not create any new legal entity, and each organisation remains sovereign, with its own statutory duties to comply with. It is therefore critical that the proposed governance arrangements at STP level interface and "talk to" the governance of the CCG, in order that information is appropriately shared, allowing GB members to discharge their statutory duties accordingly. Similarly, the governance at STP-level needs to reflect the fact that organisations cannot be bound by a majority vote." Therefore for both CCGs meeting in common as well as the Collaborative/STP the associated scheme of delegation and operating model becomes critical.

The key areas where Beachcrofts have suggested that the current version of the agreement could be finessed within the above context are as follows:

Status of the Agreement

Section 15 should be amended to remove the reference to the governing law of the Agreement and the granting to the English courts of exclusive jurisdiction over disputes arising out of it (3.5).

- The legal view notes that in section 11 the Agreement states as follows: "*The Partnership Agreement does not and is not intended to give rise to legally binding commitments between the Parties*". The Agreement is, therefore, not legally binding.

However, section 15 of the Agreement refers to the governing law of the Agreement and grants the English courts exclusive jurisdiction over disputes arising out of it. This is inconsistent with the document's status as non-legally binding and gives rise to a real risk that a dispute under the agreement could be referred to court.

Objectives and scope

The objectives and scope of the Partnership are defined only in broad terms at present. It is suggested that greater detail should be included in sections 3, 4 and 8 so that the CCG and other participating organisations are clear as to the matters over which the Partnership has a remit and the objectives which it aims to achieve. Any continued lack of clarity could make it difficult to implement plans, co-ordinate decision making (among the participants) and determine those matters that are for the STP to address and others that the participants can pursue without the involvement of the STP. Further detail and definition should at least be brought to material issues such as the budget for the Partnership and the system control total and financial strategy (3.22 and 3.23).

Governance

It is good governance practice for the purpose and duties of governing fora in collaborative arrangements to be defined clearly and to be derived from the objectives and scope of the partnership. The solicitors view is that the purpose of the Partnership Board needed to be defined in more detail in the Terms of Reference (ToR) and linked clearly to the purpose and scope of the Partnership. This also flows into the sub committees' ToRs where greater clarity is also suggested. This all goes to the point of ensuring the partners are clear as to what is within the scope of the STP governance fora, and what is outside that scope (3.22 and 3.23).

In respect of governance the suggestion is that the diagram in Appendix A.1 needs to be clearer as to the relationship between the fora shown there, particularly roles, accountability, and flows of decisions and information.

The solicitors have also said:

- We note that under "*Voting arrangements*" in the Partnership Board TORs the board is stated as being "*a unitary board, where motions will be passed by a majority vote, where a majority is defined as at least three quarters of the votes cast*". We do not consider that the Partnership Board is a unitary board. A unitary board would comprise Executive and Non-executive Directors who decide matters by consensus or by vote and thereby bind all members of the board and the organisation that it governs (3.8).
- Since the Partnership Board is formed through a collaboration it cannot have the status of a unitary board and cannot bind any of its members (the participating organisations) against their will. Whilst members of the Partnership Board may signal their agreement or disagreement to each proposal at any meeting, this does not represent a vote in which the majority binds the minority (who object) to accept the proposal; no vote of the Partnership Board can have that effect. In respect of Partnership Board members participating in decisions, we assume that neither the Chair nor the Executive Lead are present at meetings to represent any of the participating organisations and if that is the case they will have no authority from any of those organisations so cannot participate in any 'decisions' made by the board.

We recommend that the "Voting arrangements" section of the TORs is amended to reflect the position we describe here and to define the arrangements through which the Partnership Board will take decisions (3.8).

- In respect of the membership of the Partnership Board we note that this includes "Nominated Representative/s of East London Commissioners". We assume that this means that the CCGs in east London collectively will be represented on the board by one person. This is at odds with the membership for providers and others, each of whom is represented by one person, and is inconsistent with the decision-making arrangements that apply to the Partnership Board (under which each CCG must be represented at meetings if it is to participate in decisions). We also haven't agreed who the NEL Commissioning representative is, although arguably the move to the NEL AO model will achieve this. It does however change the balance between partners and would need clear schemes of delegation to ensure accountability back to the CCG GBs.
- Also in respect of the membership we recommend that the roles and responsibilities (and other terms of appointment) for the Independent Chair and the Executive Lead are defined and agreed by all the participating organisations.

Section 8

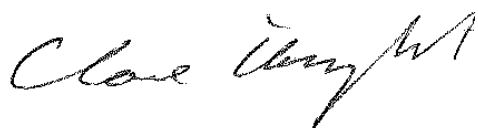
In section 8 the Agreement states the Remuneration Committee of NHS Tower Hamlets CCG will on behalf of other CCGs in east London approve posts at the Very Senior Manager grade (this needs to refer specifically to the PMO to support the STP). The solicitors believe that the CCG will need to formally approve such an arrangement and therefore have a clearer description of the management arrangements and accountability (including the funding) of the PMO.

City and Hackney references

- Section 2 the Agreement states: "*The EL STP acts as a system level plan for change supported by and aligned to a number of local plans to address certain challenges, such as: City and Hackney (CH): Hackney devolution pilot, bringing providers together to deliver integrated, effective and financially sustainable services ...*".
- At present, the reference is to Devolution. This should probably be clearer and should reference our Integrated Commissioning arrangements with London Borough of Hackney and City of London Corporation (expressly referencing pooling and aligning budgets) - rather than Devolution - which would recognise the Integrated Commissioning arrangements as material to the wider strategy and plans.
- Similarly, in 4.2 the Agreement states that the "*Hackney Devolution Pilot*" is out of the Partnership's scope. We believe this means that there is no remit over the Integrated Commissioning arrangements themselves (including the pooling arrangements in respect of funds), again, it is recommended that the reference to Devolution is changed to the Integrated Commissioning arrangements between the CCG and Local Authorities. (it may be that the role of the collaborative in relation to the ACSs needs to be spelt out as these should become the delivery vehicles for the collective plans)

We hope that this is helpful and it would be useful to be clear from you about the next steps once you've had chance to consider this.

Best wishes,



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