

## **GUIDANCE: Assignment for Transition**

**Gateway Reference: 15864**

**Date: 31 March 2011**

### **1 Aims of Assignment for Transition**

- 1.1 'Assignment for transition', in the context of this document, is the process of aligning relevant PCT employees during the transition to support emerging GP consortia and associated commissioning support functions. It is not a relevant process to support employees moving from one statutory body to another.
- 1.2 Assignment for transition is the responsibility of the employer: the PCTs. They should work with their emerging GP consortia to create a shared agreement on managing assignment for transition. Trade Unions and professional bodies should also be fully consulted and engaged in this process.
- 1.3 Assignment for transition has the following aims:
  - To give emerging GP consortia appropriate expert support during the transition period, not only to assist them so that they may develop into bodies that apply successfully to be established as statutory commissioning consortia but also to deliver objectives agreed with PCTs
  - To provide PCT employees with an opportunity to contribute to the shaping of the emerging commissioning system by encouraging a robust, fair, consultation process, which allows employees to understand and influence the process (as described in Sections 5 and 6)
  - To ensure that the necessary expertise appropriately supports the transition process, thereby maximising the money which can be spent on patient care – which is in line with the continued commitment to social partnership principles

- To encourage the development of new mindsets and approaches to commissioning for both emerging GP consortia and PCT employees, who will learn from each other during the transition
- To help to create the most cost-effective and efficient commissioning system possible, and ensure business continuity during the transition
- To promote a fair and transparent process for employees which has been agreed in advance with Trade Unions, so that employees are 'engaged in the decisions that affect them' (NHS Constitution, page 10)
- To build strong partnership arrangements between emerging GP consortia, PCTs (the responsible employer), Trade Unions and professional bodies during the transition.

## 2 Introduction

- 2.1 The [HR Annex](#) to Sir David Nicholson's letter to all NHS Chief Executives (15 December 2010 – Gateway reference 15272) introduced the concept of assignment of PCT employees to support emerging GP consortia and associated commissioning support functions.
- 2.2 The concept specifically relates to the transition period, which is intended to last until 1 April 2013. At this point (subject to the passing of the Health and Social Care Bill) PCTs will be abolished and GP consortia will have been established as new statutory corporate organisations, classified as NHS bodies. Their running costs will be between £25 and £35 per head of population, which will cover both employment within the GP consortium and commissioning support costs.<sup>1</sup>
- 2.3 The purpose of this document is to provide PCTs, as the responsible employer, guidance on 'assignment for transition' to apply locally and in partnership with their emerging GP consortia, Trade Unions and professional bodies. The guidance focuses on supporting the development of emerging GP consortia and associated commissioning support functions, while promoting appropriate engagement with employees. The aims and approach may also be relevant to apply in other transition contexts where statutory organisations are supporting bodies which do not have statutory status.
- 2.4 Assignment for transition will not in itself bring about a change to the current employment status or terms and conditions of PCT employees. It is a practical method of supporting relevant PCT employees, but it cannot guarantee employment in future statutory GP consortia and associated commissioning support functions.
- 2.5 Assignment for transition may be used:
- a. To support fixed-term pieces of work to enable new organisations to become established as statutory organisations. These pieces of work

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<sup>1</sup> See *The Operating Framework for the NHS in England 2011/12*, paragraph 5.16, page 49.

will cease either shortly before or at the point that the new organisations are established (see also 6.8)

- b. To align employees with functions, which GP Consortia (once they are established) may be responsible and accountable for (though decisions on how those functions will be delivered are yet to be determined).

- 2.6 Assignment for transition should encourage a legacy of partnership working that is carried forward into the new commissioning system. Emerging GP consortia will need to determine what their needs are, as part of the wider transition discussions with PCTs. It will then be the responsibility of PCTs as employers to arrange that assignment process. Trade Unions and professional bodies should also be fully consulted and engaged in that process.
- 2.7 Assignment for transition should have locally agreed phases leading up to the end of the transition, which is intended to occur at 1 April 2013 (see Section 5). These phases are based upon emerging GP consortia taking increasing responsibility during the transition for delivery of QIPP in preparation for the establishment process led by the NHS Commissioning Board. They will be flexible to reflect the local development of arrangements.
- 2.8 The assignment for transition process should support good employment law principles, local and regional HR / Employment Frameworks, compliance with the Equality legislation Act and should not compromise individual employee statutory or contractual employment rights. PCTs are required to publish an Equality Impact Analysis in advance of the assignment process and one at its end – drawing together relevant data and making a final analysis of the impact on employees. Equality Impact should also be monitored by PCTs during the process.
- 2.9 Audit trails of the process must be kept by PCTs to provide examples of transparency and fairness, including the need to ensure appropriate records to monitor and demonstrate compliance with current Equality legislation.

- 2.10 Where assignment for transition has already taken place, it should be reviewed by the PCT against these principles and corrective action should be taken if it is required to ensure compliance.
- 2.11 The responsibility for overseeing the transition process rests with SHAs until they are abolished, which is intended to take place on 1 April 2012 (subject to the passing of the Health and Social Care Bill). SHAs should discuss the overall process to support assignment for transition arrangements with their regional Social Partnership Forum.
- 2.12 This document has been developed with input and perspectives from colleagues, including emerging GP consortia, local NHS employers, Trade Union representatives, primary care organisations, NHS Employers, the NHS Confederation and DH policy officials.

### **3 Policy Context**

- 3.1 Assignment for transition is part of the wider programme of commissioning development. At present (March 2011), two thirds of the country's population is covered by GP consortia Pathfinders. Pathfinders are emerging GP consortia who have been able to evidence GP leadership and co-ordination, responsibility for QIPP and partnership working with Local Authorities.
- 3.2 It is important to recognise that Pathfinder status does not give them the status of 'commissioning consortia', nor would it be possible for a body to have that status pending passage of the Health and Social Care Bill through Parliament, the relevant provisions coming into force and a successful application for establishment being made to the NHS Commissioning Board.
- 3.3 A 'commissioning consortium' cannot be a private company or private corporate entity of any kind (be it a Community Interest Company or Limited Liability Partnership or any other model). The constitution of a consortium will be determined in accordance with the provisions of the Health and Social Care Bill, not the rules relating to companies or Limited Liability Partnerships.
- 3.4 Some emerging GP consortia have been established as private corporate entities (e.g. Community Interest Companies or Limited Liability Partnerships), often because they have grown out of Practice Based Commissioning groups that used these organisational forms. Although the emerging GP consortia may want to use private corporate entities for some purposes, they cannot be used to carry out any of the statutory functions of PCTs, independently of PCTs. This means that they cannot, for instance, hold or spend PCT commissioning budgets or employ staff to undertake commissioning decisions for PCTs. The only mechanism by which an emerging GP consortium can undertake any of the statutory functions of a PCT on its behalf is if it is formally established by the PCT as a committee or sub-committee of the PCT, and the PCT delegates those functions to that committee or sub-committee.

- 3.5 PCTs are actively developing and supporting their Pathfinders and other emerging GP consortia along the lines set out in *The Operating Framework for the NHS in England 2011/12*.<sup>2</sup> For example, through the delegation of budgets (via committee or sub-committee of the Board arrangements) with a dedicated management resource for emerging GP consortia ready to take on responsibilities; through responsibility for delivery of local QIPP programmes; by helping emerging GP consortia to understand and participate in the Joint Strategic Needs Assessment processes, in collaboration with local authority partners; by paving the way for a smooth transfer of existing joint commissioning, pooled budgets and section 75 arrangements; by offering training and development; by ensuring a partnership approach to the whole commissioning cycle, considering the scope for greater use of joint commissioning where appropriate; and, already in some cases, through the assignment of employees.
- 3.6 Commissioning development is strengthened further by the commitment set out in *The Operating Framework for the NHS in England 2011/12* for PCTs to provide the following support to emerging GP consortia,<sup>3</sup> including:
- A development fund of £2 per head, resourced primarily from management cost savings realised from the MARS scheme. This should be in addition to, and used alongside, existing Practice Based Commissioning funding and can be used flexibly to fund, for example, clinical backfill, training and organisation development.
- 3.7 *The Operating Framework for the NHS in England 2011/12* identifies initial key roles (which are not exclusive) to support emerging GP consortia:
- A qualified or accredited senior finance manager (this may be shared across emerging GP consortia)
  - An organisational development expert / facilitator

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<sup>2</sup> See paragraph 2.17, pages 15-16.

<sup>3</sup> See paragraph 2.15, page 15.

- An individual with expertise of appropriate governance arrangements / corporate affairs
- A commissioning expert to support the emerging GP consortium in their assessment of those commissioning activities they will carry out themselves, those where they may choose to act collectively, and / or where they may choose to buy in commissioning support from other organisations both during the transition and beyond.

3.8 The *Operating Framework for the NHS in England 2011/12* also instructs PCTs to work with emerging GP consortia to develop their Operating Plans.<sup>4</sup> It states that QIPP value for money improvement projections should be disaggregated to the level of the emerging GP consortia and they should be encouraged and supported to take on areas of QIPP delivery for which they are best placed. PCTs should provide support for the emerging GP consortia development process, and empower emerging GP consortia to take on new responsibilities when they are ready to do so.

3.9 In addition, the HR Annex to Sir David Nicholson's letter to all NHS Chief Executives (15 December 2010 – Gateway reference 15272) asks SHAs and PCTs to work with emerging GP consortia to assign employees wherever possible by the end of June 2011 at the latest. As a minimum, this initial assignment should relate to the roles outlined in 3.7 above. However, as the HR Annex states 'some consortia will want to consider this collectively so some employees may be assigned to one consortium leading a commissioning function on behalf of others.'

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<sup>4</sup> See paragraph 2.16, page 15.



## **4 Commissioning Support**

- 4.1 'Commissioning support' is the support which GP consortia will buy in or share with other organisations to assist them in carrying out their commissioning functions. It is envisaged that during the transition this support will chiefly be provided by PCTs.
- 4.2 A large amount of the available commissioning support capability in England resides currently in PCTs. There are also a number of other NHS commissioning support organisations; for example, the Commissioning Support Units which were set up to build commercial commissioning skills in the NHS. Further, a number of commercial, local authority, civil society and other organisations already provide additional support to PCTs.
- 4.3 PCTs will support employees working in commissioning support functions to develop commissioning support. They will work with employees to identify the employment implications for them, including compliance with Transfer of Undertakings (Protection of Employment) regulations (TUPE) and the Equality Act 2010
- 4.4 In addition to providing commissioning support, PCTs will help emerging GP consortia to assess which commissioning activities they carry out for themselves, those where they choose to act collectively, and / or where they may choose to buy in commissioning support from other organisations both during the transition and beyond. This assessment will be done within the context of the total running costs of between £25 to £35 per head of population, which will cover both employment in the GP consortium and commissioning support costs.

## 5 Phasing the process

5.1 This guidance recommends that assignment for transition has locally agreed phasing to ensure a practical and nationally supported approach.

5.2 These phases should be based upon emerging GP consortia taking increasing responsibility during the transition for local QIPP plans in preparation for the establishment process, which, subject to the passing of the Health and Social Care Bill, will be led by the NHS Commissioning Board from 1 April 2012.

- **Phase 1:** as a minimum, an initial assignment of employees by the end of June 2011, based on an agreed process and the assignment opportunities outlined in the *Operating Framework for the NHS in England 2011/12* to support emerging GP consortia
- **Phase 2:** further assignment of employees in advance of the establishment process
- **Phase 3:** prior to the point of the new organisations taking on their statutory functions, PCTs and GP Consortia will be in position to prepare for TUPE/Cabinet Office Statement of Practice on Staff Transfers in the Public Sector (COSOP). This preparation will include the legal requirement to consult on TUPE transfers, which should be reasonably timed and allow for meaningful consultation.

5.3 The timing of the phases will particularly reflect the differential pace of development in local emerging GP consortia and the timing of the management cost reductions in the PCTs. The phases will need to be reviewed as transition progresses, particularly as there may be a need to assign employees if vacancies appear. It is important that employing organisations seek independent legal advice as to the potential nature and scope of TUPE/COSOP in Phase 3.

## **6 Process of assignment for transition**

- 6.1 We encourage a collaborative approach between emerging GP consortia, PCTs, Trade Unions and professional bodies on all staffing aspects of managing the transition. All parties should take account of the need to minimise costs and avoid unnecessary redundancies, i.e. those beyond the redundancies necessary to reduce administrative costs by a third.
- 6.2 This approach should be informed by information on the destination of functions. The current 'Functions and People' mapping process being run by SHAs and PCTs will identify existing business functions and associated employee numbers in the current organisations. It will also outline the migration routes and destination points for existing business functions, mapping where functions transfer or cease.
- 6.3 The *Functions of GP Commissioning Consortia: A Working Document* (Gateway reference 15472) provides a guide for emerging GP consortia that sets out their proposed statutory duties and powers and illustrative examples of what this could look like in the future. This guide may be helpful for emerging GP consortia, PCTs, Trade Unions and professional bodies to inform the assignment for transition process and in particular to support PCT employers' discussions with their employees.
- 6.4 PCT employers should ensure that all affected employees and their representatives are involved in and consulted about the development of local plans. Local Social Partnership Forums should be formally engaged in the employment and HR process.
- 6.5 PCT employers should remind employees that the process of assignment for transition will not in itself bring about a change to their current employment status or terms and conditions. However, there may be implications for their future employment (as outlined in 5.2 and 6.6), which may not be clear at this stage. It is also important that employees are assured that any changes taking place will be handled in accordance with local organisational change arrangements or the agreed regional HR or Employment Framework as

appropriate, and will involve early and effective consultation with individual employees and Trade Unions.

6.6 Assignment for transition should be used in a way that allows emerging GP consortia, PCTs, Trade Unions and professional bodies to take account of local circumstances. For example:

- **Assignment without any competitive process.** Employees currently providing particular functions are aligned to work with the emerging GP consortia.
- **Employees are selected for assignment via a competitive process.** Prior to assignment, more employees are carrying out functions than are required to carry out transitional functions.

6.7 Wherever there is an element of selection, it is vital that this should be undertaken against clear and transparent criteria agreed in advance with all parties and which have been checked in advance to ensure they are compliant with Equality and Employment law. This means that where a formal selection takes place, the criteria for pools of competition will need to be determined, particularly taking account of the roles employees currently carry out.

6.8 It is recognised that the work of an employee may be spread across functions expected to transfer to different organisations. When assigning employees, account should be taken of where the majority of their duties are performed. Any changes to an individual's job role or responsibilities should be consulted on and agreed with the individual. Some employees may be involved in functions or services which may not be destined to transfer. As such their functions and their associated employment may cease at or around the date of transfer, but employers will follow their Employees policies in relation to determining any potential "at risk" employees and identifying any opportunities for suitable alternative employment.

- 6.9 TUPE/COSOP is only appropriate if and when there is a formal transfer of functions between one employer and another and the requirements of TUPE/COSOP are engaged. An example may occur when the commissioning service ceases to be provided by one entity (i.e. the PCT structure) and starts being provided by another (i.e. the GP consortium). It will therefore not be possible to transfer employees prior to new organisations taking on their statutory functions.
- 6.10 The test for assignment under TUPE will be dependent on a case by case basis on whether the TUPE principles apply – broadly this is where there is a “relevant transfer of an undertaking, or part of an undertaking, that retains its identity” post transfer. Employees performing those functions immediately pre-transfer will be assigned and expected to transfer unless they exercise their statutory right to object. It is important that employing organisations seek independent legal advice as to the potential nature and scope of TUPE/COSOP.
- 6.11 The process of assignment for transition should be understood from this perspective. Until the new commissioning system is established, the situation will be fluid to a degree as emerging GP consortia develop in size, function and responsibility and as ‘commissioning support’ develops.