

# Facing the future challenges for NHS commissioning support

This article focuses on CSUs and their journey to autonomy.

## The wider challenge

The challenges facing the NHS around delivering better quality and outcomes for patients in a much more challenging financial environment are stark. Whilst Clinical Commissioning Groups (CCGs) obviously have a clear role in responding to these challenges (with associated statutory powers and functions as NHS bodies) the supporting role of the NHS England hosted Commissioning Support Units (CSUs), as the providers of commissioning support services (CSS) should not be overlooked. CSS will have a key role to play in raising the capability of CCGs.

## The road to autonomy

The current intention is that CSUs will be hosted by NHS England until 2016 at which point they should become autonomous organisations. The reason for this temporary hosting is that it ties CSUs into NHS England's rules and structures (such as public procurement, financial management and staffing) which constrain their ability to operate freely as well as presenting a potential conflict for NHS England operating as both a commissioner and provider of CSS. NHS England has therefore determined that there are four main options for CSUs to split off into:

1. Social enterprise, as a community interest company limited by guarantee, with a public, binding and overriding social purpose;
2. Staff mutual, as an industrial and provident society, with a requirement to comply with the seven principles of the cooperative movement (i.e. one member one vote and concern for the community);
3. Customer controlled social enterprise, as a community interest company limited by guarantee, effectively owned by the relevant CCG(s);
4. Joint venture, as a company limited by shares, which would require third parties to venture with the CSU to improve quality and value from their CSS. This option would be closely scrutinised by NHS England and given the more commercial nature of the form of the venture would be likely to involve additional safeguards (as well as discussions with staff/unions and other stakeholders).

NHS England will be issuing further guidance on the autonomy process (including consultation) which will include an application to NHS England when the CSU believes it is ready to take on its organisational freedom.

A key risk for CSUs in this pathway is that NHS commissioners (CCGs and NHS England) are free to choose their provider of CSS. There is therefore no guarantee of a CSU retaining its income in the build up to 2016 unless it is still being contracted for by its commissioners.

Capsticks can support the CSU at a board and a project level to guide them through the process towards stepping away from the hosting arrangements including board development workshops, defining governance arrangements and clear options appraisals for the future form of the organisation. We work closely with the CSU executive team and other external advisers (such as tax and accountancy) to provide them with a joined up professional team.

## Helping CSUs develop as a provider

For CSUs to succeed, they need to develop an operating model which will enable them to deliver excellent commissioning service: to play to their strengths and collaborate where necessary to achieve the best outcomes.

In addition to the autonomy debate, the key challenges and therefore opportunities for CSUs in the coming year are:

## Be successful in obtaining a place on the Lead Provider Framework (LPF)

Whilst the autonomisation process will be important to the CSS market, the critical factor during the intervening period is likely to be NHS England's procurement of the LPF. NHS England is running the process with the stated aim of ensuring that CCGs can quickly access high quality services and exercise a degree of choice. It has also stated that CSUs that fail to win accreditation onto the LPF cannot be autonomised. The LPF will therefore define the shape of the CSS market over the next few years and therefore is of profound importance to all of the CSUs.

---

Capsticks provides expert procurement advice for CSUs, both strategic and also practical in managing issues with commissioners (and bidders), dealing with challenges and joining up the contractual aspects for a cohesive service. This includes advice on the Lead Provider Framework process and its call off operation moving forward.

## Partnerships hold the key

The LPF structure has positively encouraged partnerships, either between CSUs or between CSUs and the independent / third sector. Delivering the wider range of CSS now requires that CSUs develop dynamic partnerships with other providers of services.

The ability to select and operate effectively within partnerships will help the CSU to define, develop and deliver its business ahead of the decision around autonomy. Capsticks has experience of providing legal support for the set-up of innovative collaborative models both with public and private sector partners. Successful collaboration for CSUs at this stage has to incorporate aspects of procurement, governance, competition and contracting as well as an understanding of the art of the possible.

Capsticks' Advisory Services are registered on the Specialist and Niche Provider list with NHS England for the provision of governance and human resources support to CCGs. We would welcome a discussion with CSUs about opportunities for partnership working under the LPF.

## Effective contracting and contract management

CSUs will be moving from a model of current short-term service level agreements with CCGs to longer term contracts which should provide a more secure base to develop the CSU business model with confidence. Following the LPF, CCGs will also be better able to compare and review the quality and cost of CSS provision compared to alternative providers which should enable them to become more informed customers of CSS.

CSUs will be looking to increase their CSS market share, with the intent that if they can secure a more secure and well managed stream of contracts for CSS they should progress more quickly in the autonomy process towards the 2016 deadline.

Capsticks provides expert legal support on contract development (including CSS service arrangements) together with training and knowledge transfer from our team, who are experienced in all the forms of NHS contracting advising both regionally and nationally. We can assist in the review and drafting of SLAs or other arrangements with your CCG clients.

These skills cover performance management, risk assessment and legal assistance in considering the options for future service delivery models. We can help you to meet your legal obligations and utilise contractual levers to deliver a quality service.

## Develop the workforce to meet the future challenges

The autonomisation of CSUs will present challenges for the workforce. It is likely that staff will transfer under TUPE to the new organisational model. Although the autonomised organisation will not be an NHS body, staff will remain eligible for membership of the NHS Pension Scheme under the terms of the "New Fair Deal". However, in advance of autonomisation CSUs will need to review their workforce and ensure they are "business ready" to succeed in a competitive CSS market. This may include reviewing current job profiles and staff mix; introducing greater flexibility into terms and conditions; and considering whether Agenda for Change will incentivise the innovative and customer-focussed behaviours that CSU staff will need to display after autonomisation.

The Capsticks team can help manage any existing staff issues as well as planning and adapting CSUs to meet the future organisational forms and challenges. In addition to guiding CSUs through the autonomisation process, we can run workshops with management teams to identify the changes needed to ensure the CSU remains competitive.

## Develop an understanding of the assets and intellectual property required by the CSU

In moving towards the aim of independence in 2016 the CSU will need to consider the future shape of the assets (both physical and intellectual property) it is likely to require for its operating model for CSS in the future.

This is likely to require an audit as well as management advice on how to identify and secure your intellectual property with advice on exploitation and challenge as well as the options for transferring these assets from NHS England to the future form of the CSU organisation. Capsticks can assist through advice, documentation and training sessions in these areas.

---

## Understand the tax position

CSUs will need to understand what tax charges will apply in the event of becoming autonomous both in respect of VAT in the provision of aspects of the services they provide to CCGs and NHS England as well as the potential transfer value of any assets (including intellectual property). This understanding will then need to be factored into the business planning process and the choice of model for autonomisation.

NHS England has stated that they will provide guidance for CSUs to clarify the tax position on services after autonomy.


If you would like to get in touch and find out more, please contact:



PETER EDWARDS  
Senior Partner  
020 8780 4761  
peter.edwards@capsticks.com

### Capsticks

www.capsticks.com

 @capstickslp

#### London

1 St George's Road,  
London SW19 4DR  
T +44 (0)20 8780 2211  
F +44 (0)20 8780 1141  
DX 300118 - Wimbledon Central

#### Birmingham

35 Newhall Street,  
Birmingham B3 3PU  
T +44 (0)121 230 1500  
F +44 (0)121 230 1515  
DX 13003 - Birmingham

#### Leeds

Toronto Square, Toronto Street,  
Leeds LS1 2HJ  
T +44 (0)113 322 5560  
F +44 (0)113 242 2722  
DX 713112 - Leeds Park Square

#### Winchester

Staple House, Staple Gardens,  
Winchester, SO23 8SR  
T +44 (0)1962 678 300  
F +44 (0)1962 678 311  
DX 2532 - Winchester