Primary Care Networks (PCNs) are now a year old. The first year was a time of building foundations, but the 98% sign up to the 2020/21 DES proves that PCNs have become an important part of the primary care landscape in England. We can now expect to see a rapid build up in PCN resources, as PCNs take up increasing responsibility for local healthcare issues.

**What’s the problem with existing models?**
While PCNs were operating at a small scale it made sense to keep them simple. Understandably, many PCNs decided to employ the additional staff in one of the member practices, and just recharge the cost to the PCN bank account. So long as you have robust, legally enforceable, PCN agreements in place, this approach works well.

However as PCNs grow the amount of money and risk involved also increases. Many PCNs will have about 10 additional resources in 12 months time, and within the next 4 years the average PCN will be spending ca. £1m a year. We are already seeing PCNs being offered additional new contracts to address local healthcare issues.

**This growth creates problems:**
- PCN staff are often employed in different member practices with different terms and conditions.
- VAT questions arise as practices find they are exceeding the VAT registration threshold, and
- Contracts for new streams of funding have to be entered into by the existing practice entities, which are usually unlimited liability partnerships, because there is no ‘PCN Entity’.
- Since the PCN is just a contractual relationship, it is relies on trust between the member practices. Trust can rapidly disappear when large sums of money are involved, so careful attention to legal documents is required.

**Why incorporate?**
If done properly, incorporation can solve many of these issues. A company can be jointly owned by PCN members so that they all have an ownership stake. As it has ‘legal personality’ the company can enter into contracts for additional non-DES funding streams. All PCN staff and costs are moved from the member practices into the company, and the company runs as a non profit making business providing services back to the core network.
practices. Risks are largely contained within the limited company, and the problem of irrecoverable VAT is avoided by setting up a ‘VAT Cost Sharing Group’ to include the core network practices and the company.

So what are the challenges?
DR Solicitors identified incorporation as a likely future for PCNs over a year ago, but advised that in the early stages the costs might well outweigh the benefits. Establishing and running a company is a more complex and expensive option, and is also more difficult to unwind if PCNs had not developed as expected. Companies also encounter issues with the NHS pension, the CQC, and potentially with the agency worker regulations. They are taxed differently to partnerships, and require careful structuring if they are to benefit from the VAT Cost Sharing rules. In short, they are not something to be embarked on lightly, or without proper advice.

Should our PCN Incorporate?
There is no simple answer to this question as incorporation will be right for some PCNs, but not for others. In year one there were very few PCNs who wanted to go down this route, because most were focused on starting-up and the risks were anyway quite low.

As PCNs are maturing, the incorporation model looks increasingly attractive to those PCNs that are employing staff themselves or who want to secure additional PCN-level income streams. Incorporation is less attractive for those PCNs working closely with a GP Federation or similar organisation. Many PCNs will undoubtedly decide to stay with their current cost-sharing model for the foreseeable future since there is no legal requirement or burning reason to change it.

What are others doing?
A very small number of PCNs incorporated during 2019/20, but we have seen a marked increase in interest in PCN incorporation recently. This is what we anticipated a year ago, and we would now expect that several hundred more PCNs will decide to incorporate over the next 12 to 18 months.

The key to success will be getting expert legal and accountancy advice. Incorporating a PCN is complex and there are many traps for the unwary so you will want to be confident you can rely on any advice you receive.

For assistance with incorporation or indeed any other PCN related matters, please contact Nils Christiansen or Daphne Robertson on 01483 511555 info@drsolicitors.com