

Minehead Medical Centre – Incorporation Application

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1 Background

- 1.1 Incorporation is a process by which a new or existing business registers as a limited company. A company is a legal entity with a separate identity from those who run it.
- 1.2 Changing from a single-handed contract or a partnership into a qualifying body such as a limited liability company where all beneficial shareholders are members of the NHS is not deemed to be a contract variation. The transfer of rights and obligations under a contract to a qualifying body is termed a novation – a new contract.
- 1.3 Minehead Medical Centre (MMC) submitted an application to Somerset CCG to Incorporate and can be found in appendix 1. The application is the first of its kind in Somerset, but along with the comprehensive guidance in the Policy Guidance Manual (PGM) we have also taken guidance from our colleagues in the Northwest who have successfully completed a number of Incorporations.
- 1.4 A key driver in the decision by the practice to apply to Incorporate is to protect the ongoing stability and sustainability of the practice. Despite ongoing efforts to recruit staff, GP recruitment is particularly challenging in this geographic location. The change in model of ownership transfers risk from the GPs to the Incorporated company. MMC believe the business model will help attract and retain GPs at the practice. Risk is also acknowledged that Dr Edward Ford is expecting to become a single-handed GP and the last person standing in the partnership from September 2022 due to retirements.
- 1.5 The Policy Guidance Manual (PGM) advises that the Commissioner Assessment Framework (CAF) should be used to formally assess the application. The CAF has been designed comprehensive in scope to support commissioners to assess strategy and delivery, company suitability, patient impact and financial assessment. Commissioners should be able to audit and justify their approval decision. The CAF can be seen in appendix 2, this includes the RAG rating moderation and comments summary from the panel review meeting on 04 May 2022.
- 1.6 All areas are RAG rated in terms of how each section has been responded to, to aid clearer decision making. There are 6 sections within the application.
 - Eligibility

- Statutory
- Domain 1 – Strategy and Delivery
- Domain 2 – Provider entity
- Domain 3 – Patients, Care and Quality
- Domain 4 – Finance

1.7 As Commissioners we need to assure ourselves that the services under the contract will remain viable, sustainable and in the best interests of patients.

2 Application Summary

2.1 It was agreed at the commencement of the Incorporation process that the project lead at MMC would have the opportunity to submit two draft versions of the application ahead of the third and final application. Each version has been reviewed by an evaluation panel at SCCG. The panel is formed with expertise from Clinical, Contracting, Commissioning, Finance, Quality, IP&C and Equality.

2.3 A key area of the CAF is the patients, care and quality (CAF domain 3). Two Assurance Framework (AF) visits have taken place over recent months. Whilst the Assurance Framework (AF) and the process of Incorporation should be considered and dealt with separately, the panel felt this would be a good opportunity to drive improvements in the contract by including some of the actions and outcomes from the AF as conditions of approval for the Incorporation process, as well as some elements relating to financial assurance. If the incorporation application is supported, the draft novation agreement will be finalised with the legal advisors representing both parties (MLP Law; Bevan Brittan) the new contractor Minehead Medical Limited, and the Chief Executive of the Integrated Care Board.

2.4 MMC have been explicit in their aspiration to firstly Incorporate, and secondly as part of the same process, to become an Employee-Owned Trust (EOT), often referred to as the 'John Lewis Model'. As part of the CCGs duty under delegation, we have sought authorisation from NHS England regarding this transfer of ownership model to ensure it is compliant with the NHS Act (2006) and is approved by authorised signatories.

2.5 A novation agreement is the legal document needed to change a party's contract. It must be signed by old and new contractors. For Incorporation, it will remove the current contractors and replace them with the company from a specified date. A contract variation cannot be used instead of a novation. This change in ownership model does not remove their duty to deliver the GMS contract. The Novation Agreement is a mechanism to

transfer the GMS contract from the existing partnership to a limited company. An NHS Standard Contract will be issued to the new contractor, with exactly the same terms and conditions. This means that there are no changes to the services patients receive.

- 2.6 As Commissioners, we are only able to advise MMC around the implications of a change to contract, not the legal implications of the change to a company. MMC has engaged appropriate legal advisors (MLP Law) and financial advisors (Postlethwaites) to support them through the process. Somerset CCG has also sought appropriate legal guidance through Bevan Brittan.
- 2.7 It is important to note that any performance breaches, and/or monies owed against the existing contract should be settled in advance of the novation, the existing contract is terminated at the point of novation. As it is a new contract, no existing liabilities can be transferred.
- 2.8 The Toolkit provided in the PGM sets out a number of mitigating steps that can be taken to address issues and ensure an acceptable level of risk.
- 2.9 MMC completed substantial engagement and helpfully provided comprehensive evidence as part of their application process. The engagement includes a long-standing item for continued discussion with staff from January 2022, providing regular updates to the team and good opportunities for staff to raise questions. The response was said to be positive from the practice with no reported concerns raised within the practice by employees. The practice has an active PPG and frequently consulted with them on ideas for the future. Engagement also included regular discussion with their Primary Care Network, County Councillors, Somerset Foundation Trust and Healthwatch. This engagement is detailed in appendix 3.

The PGM states that ‘the effect of the proposal on the statutory duties of NHS England, particularly the involvement duty under section 13Q of the NHS Act 2006...is not usually triggered by a change solely to the identity of the contractor (7.10.25.2).’ Our Quality and Equality Lead is a key member of the evaluation panel as part of the review process of the application and confirmed the statement from the PGM in respect of the 13Q and Equality Impact Assessment would not be necessary as there are no changes in the services or access to services that need to be assessed. Patients will not be impacted by this change in identity of the contractor.

3 Minehead Medical Limited

- 3.1 It is intended that the new company will be called “Minehead Medical Centre Limited”, and, in accordance with the rules, the practice has applied to the Department of Health for confirmation/permission to use “Medical Centre” as part of the name. They are currently awaiting their response. In the meantime, so as not to delay the process, the company has been incorporated in the name of “Minehead Medical Limited” with the intention to amend the name as and when the permission from the Department of Health is received.
- 3.2 Three Directors have been proposed for the new company: Dr Edward Ford, Janet Hewlett and Sarah-Jayne Milton. Dr Edward Ford is also named as a Trustee which has highlighted a potential conflict of interest. Legal guidance from Bevan Brittan was sought around this, whilst we would expect the governance arrangements to address how this will be managed, our legal advisors, Bevan Brittan confirmed this a matter for Dr Ford as to how he manages and balances his respective duties. To meet the GMS contract regulations for a limited company, at least one share in the company must be both legally and beneficially owned by a general medical practitioner.
- 3.3 The three Directors will form part of the Management Team along with the following:
Finance Lead – Katheryn Antonelli
HR Lead and Deputy PM – Alex Groves
The Business and Finance Teams will require robust financial and performance data, scorecard, emergency admission rates and other key performance measures.
The SEA/QI Team will oversee all clinical aspects of performance using Eclipse, the prescribing scorecard, QOF data and other data as provided by the newly appointed PCN Population Health Management Lead. The panel expressed a keenness to encourage the practice to appoint a designated Quality Lead, this currently doesn’t sit as a standalone role. MMC are of the opinion their governance structure around QI is well placed as it stands.
- 3.4 The practice currently has vacancies for a Primary Care Practitioner, a Patient Services Advisor, and a Practice Nurse in addition to the vacancies for GPs. At present they are recruiting to 18 sessions of GP time, this will increase to 32 sessions with the two partners who are due to retire.

4 Current Position

- 4.1 The third and final version of the application was received on Tuesday 03 May and was moderated by the evaluation panel. The full application can be seen in appendix 1, along with the CAF in appendix 2.
- 4.2 The panel carefully considered and evaluated each of the six criteria as set out above, along with consideration around any increased risk exposure. For example, risk of provider failure if following the assessment, it is decided that the application should not be approved. MMC have been clear they would find it difficult to continue with the delivery of the contract without this change in the ownership and risk model.
- 4.3 MMC was asked to provide further assurance around financial stability to ensure the new company, Minehead Medical Limited, will have sufficient funds to meet its liabilities. Financial statements have been provided by MMC to SCCG as supporting appendices to the application, the panel agreed this satisfied the longer-term financial stability. A confirmation from the bank setting out their agreement to provide loan to the new company MML should it be required. This satisfied concerns around the short-term financial position.
- 4.4 Using the guidance from the PGM along with the expertise of the panel, it was felt that the application should be approved, but with agreed mitigations in place.

5 Next Steps

- 5.1 The PGM sets out that there is no automatic right to a contractor to approve an application to Incorporate, although there should be a positive stance.
- 5.2 MMC is keen to complete the process of Incorporation prior to SCCGs transfer into the ICB and has committed to sharing their learning and experience of Incorporation as they progress in the weeks and months ahead.
- 5.3 The panel has reviewed the sustainability of the practice as part of this application. Risk is acknowledged around Dr Edward Ford becoming a single-handed GP and the challenges that may bring to a practice already under significant pressure. This consideration, in addition to the comprehensive assessment from the CAF (appendix 2) has helped the panel to reach a recommendation of support for the application to Incorporate.

- 5.4 Somerset Primary Care Commissioning Committee is asked to consider and approve;
The Minehead Medical Centre application to firstly Incorporate, and then become an Employee Owned Trust

Christine Young. Primary Care Contracts Officer. 20 May 2022