



# Health and Housing Conference 2013: The Duty to Collaborate

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Mererid McDaid, Associate & Eve  
Piffaretti, Partner



# Today

- Why?
- When?
- How?



## “Delivering reform is about collaboration”

- “...*For this Government, delivering reform is about collaboration, simplification and accountability. Collaboration is necessary across all our public services – between our councils, local health boards, the police and the fire service – to deliver for the public....*”
  - The (then) Minister for Local Government and Communities (Carl Sargeant), 24 January 2012, Oral Statement in the Siamb



## WG and Collaboration

- Statutory framework
- WG's powers to prepare guidance on collaboration
- WG's powers to direct collaboration



## Statutory framework : Healthcare

- The power to collaborate
  - Ample powers under current legislation
- The duty to collaborate
  - National Health Service (Wales) Act 2006
    - S 33 Arrangements between NHS bodies and local authorities
    - S 40 Health and Well-being strategies in Wales
  - Mental Health (Wales) Measure 2010
    - S9 Conduct of primary mental health assessments



# Delivering Local Health Care

- “provides a framework for action for Health Boards, Local Government and Third Sector partners to work together, to provide high quality, safe and sustainable services to meet the needs of people across Wales.”
- “should be used alongside its sister plan on integrated health and social services, which will be published for consultation in July.”





## Social Services and Well-Being (Wales) Bill

- “The Social Services and Wellbeing (Wales) Bill will give people a stronger voice and real control over the social care services they use. It will drive the development of new models of service to maintain and improve the health and wellbeing of people. There will also be a stronger focus on preventative and early intervention services. This will be achieved through greater partnership working and integration of services.”

Delivering Local Health Care : 25 June 2013



## Social Services and Well-Being (Wales) Bill

### Key features

- Duty to promote well-being (S4)
- Preventative services (S6)
- **Promoting social enterprises, co-operatives, user led services and the third sector (S7)**
- Provision of information and advice (S8)
- Needs assessment (S10 to S18)
- Meeting needs (S19 to 42)
- **Safeguarding (S104 to 118)**





## Social Services and Well-Being (Wales) Bill

- Well-being Outcomes (S137 to 142)
- **Co-operation and Partnership ( S143 to S151)**
  - S143 – Arrangements to promote co-operation – adults, with needs for care and support and carers
  - S144 – Arrangements to promote co-operation – children
  - S147 – Partnership arrangements



## Statutory framework : Local Authorities

- The power to collaborate
  - Ample powers under current legislation
- The duty to collaborate
  - Local Government (Wales) Measure 2009
    - S. 9 Powers to collaborate
    - S.12 Duties in relation to powers of collaboration
- Local Government (Wales) Measure 2011
  - S162 Power to make amalgamation order



# Housing

- Lead primarily by WG policy
  - Consortia working
- WG's White Paper Homes for Wales
  - Collaboration can assist in:
    - Addressing local authorities' strategic and operational housing services challenges
    - Supporting vulnerable people (Supported People)
    - Tackling homelessness
- Housing Bill
  - Autumn 2013



# Collaborative arrangements

- One to One
  - 2 bodies
  - Range of models unrestricted
- Multiple Collaboration
  - Models narrow
- Regional Collaboration
  - Structure no different from multiple collaboration
- Wider Public Sector Collaboration
  - S9 2009 Measure – “any person”



# Models of collaboration

- Secondment
  - Make available/receive staff from another authority
- Contractual
  - Services provided to other(s) for reward
- Delegation
  - One authority taking over the functions of another
- Corporate
  - Setting up a corporate vehicle to provide services to other(s)
- Informal
  - None of the above



# Group Discussion

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# Options appraisal

- What are the foundations of a successful project?
  - What are the key questions to consider at options appraisal stage?
  - What barriers could you encounter?
  - How could these be overcome?



## Barriers to collaboration

- Weakening democratic account
- Loss of control
- Loss of sovereignty
- Legal difficulties





## Exemption from PCR 2006 (1)

- *Teckal* (C-107/98)
- Contracts between CA and a corporate body wholly owned by CA are exempt from PCR 2006 if:
  - CA exercises same degree of control over the company as it would over an in-house department (control test)
  - Essential part of company's business is provided to the CA (function test)



## Since *Teckal*

- *Stadt Halle* (C-26/03)
  - Any private sector interest would negate the exemption
- *Parking Brixen* (C-458/03)
  - For the *Teckal* exemption to apply, the local authority must exercise a power of decisive influence over both strategic objects and significant decisions
- *Coditel Barbant* (C-324/07)
  - A number of local authorities might exercise control jointly over the company



## Exemption from PCR 2006 (2)

- *Commission v Germany* (C-480/06) or ‘Hamburg Waste’ case
  - Public authorities can perform public interest tasks by using their own resources.
  - Such co-operation between authorities does not undermine the principal objective of the public procurement rules where it is governed solely by:
    - considerations and requirements relating to the pursuit of objectives in the public interest; and
    - the principle of equal treatment is respected in so far as no private undertaking is placed in a position of advantage in relation to its competitors.



## Common issues to each model

- Governance
  - Representation
  - Management of arrangement
  - Monitoring
  - Report and audit
  - Accountability
- Procurement
  - Does the proposal trigger PCR 2006?
  - Can these be avoided?
- Human Resources
  - What staff will be affected?
  - How will this be managed?
- Finance
  - How will it be financed?



## Solution?

- Understand model
  - Robust, clear structure
- Good governance
  - Can resolve HR, Finance issues
- Prepare for failure as well as success

NB – don't forget the person in all this !!

- Equality Act 2010 and NHS ( Wales) Act 2010 duties



# Any questions ?

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## Contact :

**Mererid McDaid :** [mererid.mcdaid@morgan-cole.com](mailto:mererid.mcdaid@morgan-cole.com)  
**Eve Piffaretti:** [eve.piffaretti@morgan-cole.com](mailto:eve.piffaretti@morgan-cole.com)