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Legal Considerations

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Key Legal Issues

Commercial

- Market Testing
- Corporate Structures
- Insurance
- Conflicts
- Procurement

Estates

Employment

- Tupe
- Pensions

Due Diligence

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Commercial (1)

Divesting Provider Teams/Market testing

- New contracts
- Value for money
- Tendering and the EU
- Other options incl; Joint ventures
- Standing orders/waivers
- Failure regime

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Commercial (2)

Corporate Structures

- Purpose/objectives i.e. vision
- Profit/values driven
- Ownership
- Hurdle Criteria
- Due Diligence (PCT employer and new Co)
- Options (see previous session)

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Commercial (3)

Insurance

- NHS (Clinical Negligence Scheme) Regulations 1996
- Regulations 4(3) and (6) “ a person engaged by a PCT to provide services under the 1977 Act which immediately before that engagement the PCT was providing itself”

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Commercial (4)

Conflicts of Interest

- Separating Commissioner/provider roles
- Key provider side Players; GP's, GP Companies, in house provider, social care, NHS Trusts, clinical networks, third parties
- Key Commissioning players; Gp's, PCT commissioners, PCT procurement teams, SHA's (education), clinical networks

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Commercial (5)

Procurement Process

- Specification/contract currencies
- Consultation duties
- Project planning, prior notices, response times.
- Information requirements
- Evaluation criteria
- Financial matters
- QA processes including monitoring/performance mgt

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Estates

Steps to Maximise Estate for Commissioner/Provider

- Step 1; Audit
- Step 2; Assessment of requirements; need, value, liability, capital charges
- Step 3; Clean Up; ownership, third party rights, covenants
- Step 4; Transfer; lease, free hold,
- Step 5 Disposal of Surplus

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Employment Issues

Tupe Regulations 2006

- The law
- TUPE and Pensions
- Government policy and pensions
- When does it apply/not apply?
- Impact of different provider models
- Solutions; GAD, Employing Authority, Direction employer

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Due Diligence

Managing other responsibilities

- PCT's as Commissioners v PCT's as Employers
- New Companies (Companies Acts)