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**STPs in legal limbo:**

# Enter the lawyers

As it comes to the difficult question of trying to implement the proposals in STPs, often in the teeth of bitter local opposition, NHS managers are now beginning to wonder about the legality of STPs and the potential Accountable Care Organisations they are hoping to establish.

**Legal firm Hempsons** has produced some briefing material which underlines these concerns.

In their *Fit for the future* briefing on June 17 they set out an “NHS legislation wish list”, and note in particular the problems created by Andrew Lansley’s health and Social Care Act:

“The current health and social care legislative framework is a brick wall that STPs and ACSs run into when they try to share decision making and join up services. It is designed for an inherently non-integrated, competitive quasi-market.”

[...]

“The section 75 partnership regulations (NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 No. 617) provide **limited ability for a CCG to share its commissioning functions with a local authority.**”

“**NHS foundation trusts simply cannot share decision making. NHS trusts are hamstrung by limited powers to invest in corporate bodies.**”

In response to this, Hempsons argue the need for new legislation:

“What might be some legislative changes that would enable the NHS and local authorities to integrate services and develop and implement STPs and ACSs? We suggest some below.

“Some may be more controversial than others, but they all recognise the reality that the NHS (steered by NHS England and NHS Improvement) is in many ways already reversing out of a competitive quasi-market back to a centrally directed system where the purchaser-provider split is abolished and foundation trust autonomy offers few if any benefits.”

The Hempsons *Seven Steps to accountable care* pamphlet, produced jointly with NHS Providers, again stresses that STPs have no legal status or powers:

“Key considerations that should be taken into account by STP partners leading on the evolution to accountable care are:

- **STPs currently have no powers** to make decisions: their recommendations need to leave partners with real choices on whether to accept the recommendation
- **they are not legal entities; this makes it difficult to hold them accountable, so STP leaderships need to take care to refer back to partner organisations and respect the unique role of boards and well as the liabilities and duties of directors**
- **STPs are not board-led organisations** and will not have a NED [non executive director] majority or built in NED challenge. [...]
- there is a system-wide imperative to make swift progress and a seeming unanimity as to the way forward; in these circumstances leaderships need to guard against group-think
- the transition from STP to ACS to ACO is **clearly difficult to achieve in the current legislative framework**. Clarity and simplicity in decision-making are therefore preferable to complexity.”