

ESG IN HEALTH AND SOCIAL CARE

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CONTENTS

Foreword	03
Community Mental Health	04
Retirement Living	06
Regulators	08
Technology	11
Contracts	13
Procurement Strategy	16
Greener NHS	19
NHS Real Estate	21
DACB Contributors	23
External Contributors	23

FOREWORD

Environmental, Social and Governance (ESG) considerations flow through almost every decision and activity undertaken across the health and social care landscape and, in many ways, everything about health and social care provision is ESG. There is fundamental social value in all health and social care delivery and it is a sector steeped in governance and regulation.

Health and social care systems are in a period of transformation, as discussed in detail in our recent [Health Adviser](#) publication. In the UK we have seen inequalities widen and an increased demand for services, particularly in relation to mental health support and social care provision, and this demand looks set to continue rising amidst ongoing social and economic uncertainty.

These recent challenges have brought sharp focus to the need to strive for continuing development and improvement, the importance of retaining existing solid foundations, grasping the opportunities and innovation borne through the pandemic and now, looking ahead to find ways to develop and nurture a health and social care system that is fit for the future. This needs to be a system that is sustainable in terms of, not only its environmental impact, but also more broadly its ability to meet the needs of an ever changing society in a safe and well governed way.

Against this backdrop, we have created this ESG Collection, which highlights opportunities across the health and social care sector, to use ESG drivers to push towards creating the sustainable health and social system that we now need.

The opportunities are broad and demonstrate how wider political, commercial and social interest in ESG creates and supports an impetus for change, collaboration and new ways to measure success. As a sector, health and social care can, and does, lead in understanding and valuing ESG considerations, whether that be public sector providers setting the green agenda for their own supply chains to follow, charities supporting in the availability of early intervention support and community based mental health provision, or social care providers working collaboratively to create bespoke services matched to specific local need, the list of examples and opportunities goes on and on.

At DACB we are proud to support our clients in their drive for continuous improvement and better outcomes for the people they serve. We understand the impact that ESG considerations can have and the power it yields in building towards the health and social care system that we all need - now and for the future.



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COMMUNITY MENTAL HEALTH

Homes not hospitals: A drive for social change

More than a decade on from the Winterbourne View scandal, the health and social care sector is still grappling with the implementation of the agenda to provide 'homes not hospitals' for individuals with a learning disability and/or autism. The latest legal development on this issue is the publication of the draft Mental Health Bill, which puts forward a number of changes to the current provisions of the Mental Health Act 1983 around detention to inpatient units for this peer group. This includes suggestions around removing the ability to detain individuals on the basis of a learning disability or autism for more than 28 days under the civil provisions of the mental health legislation.

Whilst the intention around reducing inappropriately lengthy hospital admissions is understood, the proposed change in the law poses a practical difficulty, which only a sustainable health and social care system can resolve. On 19 January 2023, the Joint Committee appointed to consider the Bill published its report. In it, there is a robust recommendation that any change in the law, as welcome as it may be, must only be implemented when community care provision has significantly improved.



"With appropriate resourcing, legal frameworks and genuine co-working between agencies, families and the person, people can live in the community to achieve their potential."

This is one of the conclusions drawn by Jeremy Tudway, Clinical Director at Dimensions, as part of its recent [Broken System, Broken Lives](#) report.

It is a pertinent comment in the context of the Committee report, the point being that legal frameworks and practical resource issues have to be dealt with in tandem if any real change is to be on the horizon. In this article we focus on the ways in which community based social care, particularly for individuals with mental health needs can bridge the gap in what is needed to improve the quality and efficiency of services for individuals in need of long term support.

MEETING NEEDS

The need for community based long term mental health support is very clearly increasing. Dimensions cites an [LSE estimate](#) that the cost of providing community based support to young people with learning disabilities is set to rise from £9 billion to £18 billion over the next twenty years. In many respects this is a really positive message as it means people with learning disabilities are living longer, more people are accessing the support they need and are more able to live independently in the community, avoiding unnecessary long term hospital admission. The question does however remain as to how this increased need will be most effectively met over the long term, and in the face of current complexities impacting the social care sector.



"There has been no golden age" in the delivery of social care provision, says Will Higham, Director of Community Mental Health at Rethink, but "successive rounds of long, slow cuts over time have built up to represent a major impact for people in need of support".

Will refers back to learning from the pandemic and a massive shortening of the decision making cycle and spirit of innovation which allowed change to happen quickly and effectively. This is something he is keen to see happen more going forward.



Chris Woodhead, Group Executive Director of Housing, Marcoms and Business Development at Dimensions, observes that *“whilst we cannot escape the fact that significant investment is needed, ultimately sheer will, desire and the right behaviours must be sustained by people in power if everyone with a learning disability is to have the possibility of a great life. There needs to be honesty about the choice ahead: as a nation, are we prepared to commit to high quality, long term support – or not? If we think we aspire to a bright vision of great lives, we know that will require sustained drive, investment and leadership that inspires the right behaviours. If we are not prepared to commit to high quality, long term support, we are, in reality, settling for keeping people alive for the least possible money.”*

Funding is an inescapable issue and plain language choices as set out by Chris are, he says, needed to catch attention and instigate a necessary change in approach.

THE ISSUE OF FUNDING

In securing future funding for community based care, a focus on economic arguments and the support that social care provides to the NHS is incredibly important, as well as concentrating on the creation of a holistic health and social care system with providers working together, and not against one another, to provide person centred outcomes that also make best use of the resources available.

So how can this be done? Both Dimensions and Rethink have undertaken significant work in looking at possible solutions that build a secure future for community based support and their suggestions include:

- Improvements relating to staff recruitment and retention are essential, as outlined in Dimensions’ [workforce manifesto](#). Properly defined career structures and reward models which provide parity, rather than competition with the NHS will help to create and maintain a sustainable staffing model which in turn, improves the quality and safety of care.

- Creation of services which promote early access to support, recognising the economic and social benefits of preventative support which means people are less likely to reach a mental health crisis requiring more intrusive (and less readily available), expensive care and treatment. This type of early access support can be effectively delivered at a local level, targeting specific need and can be delivered through co-production projects involving providers from the public, independent and charitable sectors.
- Seeking out partnership opportunities that allow innovative, targeted services to be developed at local level can, if done well, *“add an extra limb to the statutory sector offer and put resource directly into communities”*, says Will Higham. This type of partnership, or alliance arrangement, takes careful thought and risk management but offers an innovative solution to creating added value and an improved range of accessible support services.
- Changes to funding to better support discharge from hospital and the creation of specialist community placements. As stated in the Broken System, Broken Lives report, this includes the removal of any financial disincentives to discharge from hospital and targeted funding in areas of most need (both in terms of geography and medical/care need). This needs to be a long term approach, and not limited to specific timeframes or projects.
- Closer scrutiny by regulators to consider the suitability of care settings for specific individuals and more active intervention in situations where individuals are not provided with the most appropriate placement for them, properly recognising the role of commissioners, and not just providers, in making this happen.
- Commitment of funding for the creation of long term specialist housing developments that reflect the forecast for long term demand for both elderly care (as discussed in our [article](#)) and working age adults.

THE FUTURE CAN BE BRIGHT

It is obvious that there is a huge amount of valuable work being done across the social care sector to improve the quality of life for people in need of support. In answer to Chris’ question, the position must be that we continue to strive for a system which is focussed on a bright vision for the future, and there is much to be confident about. Undoubtedly the route to progress is complex and there is no single solution that will create a “golden age”, but with measured, honest conversation there is much to work on, and much to strive towards. Perhaps the time has come to move beyond the narrative of social care as a sector in crisis and instead, as a sector with huge potential to make positive change.



RETIREMENT LIVING

Adapting to the needs of a changing society

Technological advances and improvements in health and social care provision mean more and more people are living longer and healthier lives. This is welcome news for many people who now look forward to the opportunities and experiences available in later life in a way that is fundamentally different to those available to their parents or grandparents.

However, with an increasingly ageing population set to rise from 11.2 million today to 17.2 million by 2040 (roughly 25-30% of the population in many areas), the UK is under significant pressure to adapt to these changes.

A CHANGE IN FOCUS

The ageing population is identified by Professor Les Mayhew, author of *"The Mayhew Review: Future proofing retirement living: Easing the care and housing crises"*, a report produced in collaboration with the International Longevity Centre.



Professor Mayhew notes that *"the UK is failing to adapt to the far reaching changes to society caused by an ageing population and fundamental change is needed in the way we provide care to older people and in their housing options"*.

He urges a change in focus for the care of older people so that the priority becomes the delivery of preventative, people-centred care delivered in an efficient way.

The statistics are stark. Not only is the number of older people expected to rise rapidly, but many of them will live in standard residential housing and Professor Mayhew estimates up to 6.2million (and half of this number aged 80 or over) will live alone. This creates a significant potential pressure for the health and social care system both in terms of keeping people well and providing social care support for them to remain at home, and also in supporting older people to return home from hospital after receiving medical care. This lack of appropriate accommodation for older people can often be the cause of delayed hospital discharges, resulting in enormous NHS costs whilst also compromising full recovery. There is therefore a clear argument that continuing with the status quo will not only deepen the UK's housing and social care crises, but will further pull on scarce public resources from the NHS and local authorities.

Against this backdrop, it is evident that there is an important role in developing good quality, tailored housing and support solutions for older people which work as part of the wider health and social care system to keep people well, maintain independence and reduce the burden on health and social care services (and budgets).

A REAL SOLUTION

Traditionally, older people are often faced with very limited lifestyle options beyond retirement. They typically continue living in family homes that may be poorly suited for their increasing care needs, or move into care homes if and when there's a significant deterioration in their health. These options result in an enormous spend of public and private funds, particularly when nursing care, as well as personal care, is needed.



Professor Mayhew's view is that dedicated retirement housing offers a real solution: *"retirement housing has come a long way since the boom years of the 1980s and 1990s. It is of higher quality and generally private or voluntary sector owned and operated, rather than statutory public sector provision. It offers independent living, comfortable lifestyles and a range of amenities that are attractive to both buyers and renters."*



This is a view also shared by the Association of Retirement Communities (ARCO), which flags within its report, *"A guide to Integrated Retirement Communities for older people"* that: *"Integrated Retirement Communities (IRCs) combine high quality housing options for older people with tailored support services. They allow residents to rent or own a property and to maintain their privacy and independence, with the reassurance of 24-hour on-site staff, communal facilities, and optional care and support as needed."*

ADDRESSING CHALLENGES

In order for the dedicated retirement living sector to succeed there remain a number of challenges that need to be addressed, including a number of legal, operational and cultural issues:

- Housing policy is likely to remain a significant government concern in coming years. Currently, around 7,000 retirement homes are built annually out of a total new-build of 200,000. It is possible that a change in government policy to encourage greater focus on new build retirement communities will incentivise both specialist developers and more traditional residential developers to expand in this area.

- Planning policy and implementation - there is currently a lack of consistency in the approach to planning consent for retirement communities, the use class applied to this type of development and the financial levies available. There can be variation in approach in how this type of development, as distinct to residential development or care home development, is concerned in different local authority areas.
- The level of regulatory oversight for a scheme will vary depending on the extent of support provided but for retirement communities to be a genuine long term solution, they will need to have arrangements in place for the provision of CQC regulated personal care and nursing care (as well as access to wider medical care and treatment). This means that providers need to consider either seeking CQC registration themselves or entering arrangements with a separate care provider who will deliver domiciliary care in people's own homes within the development.
- System integration and co-ordination across housing, social care and health care services to allow retirement living schemes to provide a fully integrated and cost effective solution for individuals who live there as well as those responsible for the commissioning and delivery of support services. For this reason, retirement living operators need to understand the wider housing, health and social care systems and ensure they have a voice at system level discussions and consultation.
- Clarity on funding availability. The social care costs cap has now been delayed which will knock public confidence in how individuals can pay for their long term care in old age, at a time of widespread financial crisis. For many, this will discourage a move away from the familiarity and financial security of owning their own home.

PLAYING AN IMPORTANT ROLE

In a period of widely publicised pressure on the health and social care system it is important that we take a whole system view of possible solutions. It is clear that there is an important role for planning for and providing long term, sustainable housing solutions which keep older people independent for longer. This improves the quality of life for those individuals but also relieves demand for specialist social care and healthcare support. This may not be a solution that works for everybody but it can certainly play an important role in creating and maintaining an effective health and social care, and housing system that reflects the needs of our changing population.

REGULATORS

How can regulators facilitate a sustainable health and social care system?

It is a truth universally acknowledged that health and social care systems across the world are facing many challenges and are currently under unsustainable levels of pressure, whether this is as a result of ageing populations, the increased complexity of service users, the pressures of financing the system, workforce issues or keeping up with available digital technology and advances in treatment.

There is also ongoing commentary around the 'postcode lottery' with respect to the quality and provision of health and care services across the UK and the increased prevalence of health inequality.

There are a number of factors which contribute to this disparity, including the performance of individual organisations (whether financially or from an operational perspective), resource utilisation, access to health/care systems and the demographics of the populations served by an organisation.

In such challenging times, the role of the regulator is more important than ever, both in terms of ensuring quality and safety standards are maintained, and also in ensuring health and social care providers are able to maximise opportunities and feel supported by the wider system.

We asked Sir Jim Mackey (Chief Executive of Northumbria Healthcare NHS Foundation Trust and NHS England National Director of Elective Recovery) and Sir David Behan CBE (Chair of Health Education England and previously, CEO of the CQC) for their thoughts on what the regulators can do – if anything, in order to support providers and help to facilitate a sustainable and consistent health and social care system. Here is what they had to say:

What are the main challenges facing health and care providers in trying to assure sustainability?

“ Sir Jim Mackey:
“There are numerous challenges, the most concerning currently being a mismatch of supply and demand (usually expressed as a workforce crisis) and this is creating extreme pressure on services and sub-optimal care. If we add to that, the longer term demographic trends (and increasingly ageing population), this is, in my view, the biggest current and future challenge.”



Sir David Behan CBE:

“Ensuring a sufficient supply of the workforce to meet current and future needs. There are two components of that – first, is to ensure we have the right quantity of people in the workforce (resources). Second, is also about the quality of people coming into the workforce. Can we provide the education and training at the beginning of careers and throughout their careers to ensure staff have the necessary skills and competencies for the services people require? The other side of the resources point is, can we keep people? It’s not just about what people are paid, but also about how they are valued, appreciated and supported to be the best they can be. The real challenge is not just, can we recruit a workforce and educate and train them, but can we actually keep people.”

Can regulators play a role or is that beyond their remit, and can you give an example as to how one of the main regulators could contribute towards this?



Sir Jim Mackey:

“At the end of the day, responsibility for delivering a sustainable health and care system sits with the organisations providing that care day to day. However, national bodies can play a role in standard setting, policy making, prioritisation, oversight and regulation. In this context, regulators can, should and do play a role.

If we take CQC inspections, they can highlight compliance against key standards and whether there are risks to safety as a result of poor compliance. This, in turn, can point to inappropriate use of resources, or standards that could threaten longer term delivery for patients and citizens. I would argue that CQC can highlight areas for improvement through their insights or inspection, show where good practice is (via published ratings) and help providers improve as a result – thus making services more sustainable as a result.”



Sir David Behan CBE:

“Regulators have a very important role to play however, in my view, there are five key influences on quality:

1. *How commissioners set their contracts and the quality standards that they specify.*
2. *How providers, the boards and the executive ensure that quality is part of the culture of the organisations they are responsible for.*
3. *Registered professionals who have provided a personal undertaking as part of their registration to uphold the highest professional standards of quality and safety.*
4. *What regulators do and how they do it.*
5. *The voice of people who use services.*

All of the above are drivers of quality. The metaphor I’ve used for this previously is of a graphic equalizer: if you want the music to play you need all five elements working together; if there is an over-reliance on one, the symphony will not play. With that being said, the regulator has a role to play alongside all of the above. What must be avoided is an overreliance on regulation at the expense of the other influences on quality.

In ‘outstanding’ rated services/providers, the leadership of the organisations are not thinking of how to get an ‘outstanding’ rating from CQC following inspection, they are thinking ‘how do we ensure that we deliver high quality services to the people we provide care to.’ A high quality, sustainable service is built doing thousands of little things well on a regular and consistent basis.

In my role as CEO of the CQC, I always saw my job as being on the side of people using services. The lens through which I viewed my role at CQC was ‘is this service of sufficient quality to promote the wellbeing of people using the service.’

The health and social care system is complex and service users often hit resistance when trying to access care. Who is on their side? There is a massive information asymmetry and, in my view, the regulator’s job is to look at the quality of services primarily from the view of the people using services.”

Could the regulators do more, given that sustainability is one of our main concerns as a society?



Sir Jim Mackey:

“There is always more that could be done but care needs to be taken to avoid regulatory over-reach and also undermining the fact that it is local boards who have primary responsibility for the sustainable delivery of health and care.”



Sir David Behan CBE:

“During my time at CQC, we began to go beyond just regulating and inspecting individual organisations and beginning to look at systems. The CQC now has the ability to look at Integrated Care Systems under the Health and Care Act 2022 and this is key to ensure the sustainability of health and social care systems. For example, if you have an 85 year old living with dementia who needs care and treatment from primary care, acute service and social care, then the regulator needs to assess how these services work together. There is however, a need to continue looking at how each individual organisation delivers care as we have seen in practice that quality can deteriorate when organisations lose key people. People make a difference.”

Are you worried or optimistic that we can find a way of developing a sustainable health and care system, and that regulators can help?



Sir Jim Mackey:

“I am always optimistic...the health and care system in England is very resilient and adaptable, populated by great people. I think we have shown over the years, and especially over the Covid period, that it can adapt and change to deliver new models, respond to new pressures and regulators have played a part in that. We have terrible challenges currently (most of which are worldwide by the way) but I do believe that, together, we will find a way through this and find a way of providing a sustainable health and care system.”



Sir David Behan CBE:

"I am an optimist by nature and I am optimistic about the future. We are going to see innovation in a number of areas including science, personalised medicine, technology and digital monitoring (just a few examples) which will improve the quality and sustainability of services for service users as well as improving the quality and working experience for staff in health and social care settings. For example, we recently had news of a medication breakthrough in the treatment of patients with dementia - if successful, this could drastically reduce demand for residential and domiciliary care. It is tough at the minute however, I am optimistic that the developments in science, technology and medicines are going to help. In addition, more young people are going to medical and nursing school than we've ever had before which says something about a younger generation who want to make a contribution to society. It gives me great encouragement that younger generations want to make a contribution through law, teaching and working in health and care services. It doesn't matter at what level, what matters is that people have a set of values and a purpose and want to contribute. Younger people will innovate in ways I can't imagine and that gives me hope."

IN CONCLUSION

The commentary, provided by both Sir Jim and Sir David, is reflective of what is being seen in practice in respect of recent CQC inspection/regulatory enforcement activity. There has been a clear shift in focus to look at leadership of organisations (across both the private and public sector) under the 'well led' domain and how effective the leadership, management and governance of the organisation is in ensuring the delivery of high quality, person centred care, which is innovative and sustainable over the long term.

The commentary included in final CQC inspection reports includes issues such as those highlighted above, for example: are leaders visible and accountable; have leaders identified problem areas and put processes in place to address these issues; are the relevant governance processes and procedures in place to monitor performance and ensure the care provided is of a high quality and sustainable; does the provider promote equality and diversity; and is the provider committed to continuous improvement and innovation?

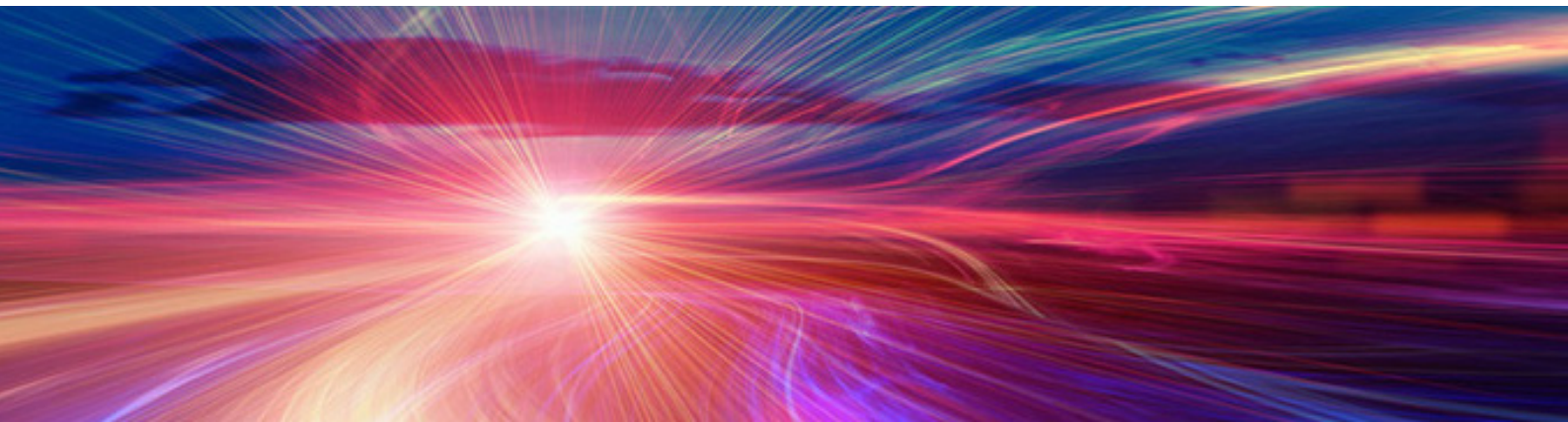
To answer the questions posed in this article, are we, as lawyers, optimistic that there is a way to create a sustainable health and social care system and that the regulators can help with this? Yes, we absolutely are. What do we think regulators could focus on in order to support the long term success of the UK health and social care system?

- Being clear on minimum standards and regulating against them consistently across the board and proportionate use of regulatory enforcement and prosecution powers.
- Helping to identify good practice and sharing knowledge across the system.
- Identifying productivity problems and areas in which improvement can be made, without having a detrimental impact on rating or reputation.
- Regulating at a whole system level - is quality high in one area at the expense of another? Can resources be re-distributed accordingly?
- Re-enforcing the role of leaders and boards in managing resource use and focus on outcomes and quality.
- Oversight of Integrated Care Systems to help improve outcomes across the system and reduce health inequalities.

To summarise, whilst the regulators undoubtedly have a role to play in creating a sustainable health and social care system, this is entirely dependent on 'the system' working together as a whole.



To quote Sir David, "if you want the music to play you need all five elements working together; if there is an over-reliance on one, the symphony will not play."



TECHNOLOGY

Harnessing technology to reduce environmental impact

Technology is used in a variety of ways within the health and care sector, with wide-ranging cost and efficiency benefits for both patients and carers. It can also contribute to a more sustainable health and social care system by reducing its environmental impact - for example through telehealth and remote monitoring, which is of crucial importance given the World Health Organization has described the climate crisis as a health crisis.

DIGITAL SOLUTIONS

Telehealth refers to the use of digital solutions to provide health and care to patients virtually rather than face-to-face. Virtual treatment can take a variety of forms, such as virtual primary care appointments, the remote monitoring of medical conditions by delivering care to patients within their own homes and the use of virtual wards.

Virtual treatment pathways offer a number of environmental benefits, including the reduction or repurposing of estate footprint as well as reducing local air pollution.

Online primary care consultations and hospital appointments can reduce or remove the need for patients and staff to travel to appointments while also enabling greater access to these services to those who may, for example, live in remote locations, have different accessibility needs or have other logistical issues with attending in person appointments.

Virtual wards allow patients who would otherwise be in hospitals to receive care, monitoring and treatment at home and may involve partnership working between primary and secondary care, social care, mental health and community services across integrated care systems. Different models will have different levels of in person intervention, but there is an expectation that virtual wards are tech-enabled, for example, remote monitoring through the use of apps, technology platforms, wearable devices and medical devices such as pulse oximeters.

Case study: QE Facilities - Meeting ESG goals with tech solutions

QE Facilities (QEF) is an NHS-owned organisation based in the north-east of England. It procures and manages major national frameworks on behalf of public sector customers across England. QEF is currently working on two framework agreements to procure IT solutions that enable remote patient monitoring, freeing up clinician time and improving patient experience. One of the proposed solutions, an at-home blood glucose testing kit to monitor gestational diabetes, allows women to take blood tests at home and upload results to an app which then feeds directly into the care provider's own patient record system - requiring no face-to-face contact between patient and clinician.



Dave Burns, QEF Framework Manager, says, *"The development of med-tech solutions has accelerated due to necessity during the pandemic. We have seen a much greater demand for the provision of clinical services remotely, allowing patients to fit medical appointments around their busy lives. Med-tech solutions also significantly contribute to the NHS's ESG goals by reducing travel time (and therefore carbon emissions), giving clinicians more flexibility as to when, where and how they provide services (hopefully contributing to workforce retention), creating more precise data entries in patient records (thus improving governance) and reducing overall NHS expenditure. The use of med-tech solutions will certainly go some way in creating a more sustainable health sector over the next decade."*

DIGITAL EXCLUSION

While the digital transformation of health and care offers wide-ranging benefits, it is important to consider digital inclusion when offering tech-enabled health and care solutions. Digital exclusion is where individuals are unable to benefit from the technology as a result of barriers they face to access, use or engagement with technology and digital inclusion refers to how these barriers are overcome. Digital inclusion should be considered at the outset of implementing new technology in telehealth and remote monitoring, for example:

- look at local data and carry out research into how digital exclusion may impact users of the technology;
- involve users at an early stage of incorporating new technology that impacts patients, including those with low digital skills and/or who face other barriers to accessing health and care; and
- put measures in place to overcome the barriers to digital inclusion such as collaborating with local organisations to raise awareness and offer digital skills training.

THE POTENTIAL OF TECHNOLOGY

There is significant potential to use technology to create a more sustainable health and care system. When considering the environmental impact of these solutions, this should be weighed up against a range of environmental factors (such as carbon emissions, use of raw materials in the manufacturing process, energy consumptions, etc.) in addition to wider social and ethical factors such as compliance with human rights and modern slavery legislation.

CONTRACTS

Embedding sustainability in robust and well-structured contracts

Sustainability can be embedded within and achieved at all stages of the contract life cycle, from utilising more innovative contractual forms and incorporating provisions that incentivise continuous improvement, to giving contract managers adequate tools to address underperformance.

For the purpose of this article, we consider sustainability in the context of achieving best value for money; creating a robust and, sometimes diverse, supply chain; and driving and incentivising sustainable behaviours which meet the customer's sustainability requirements and ESG targets.

INNOVATIVE CONTRACTUAL FORMS

A transactional contract, where there is a single customer and a single supplier, can be the most appropriate and straightforward way of purchasing goods and/or services. However, public sector bodies are increasingly looking at alternative forms of contracting to improve service delivery across multiple pathways, join-up health and social care provision and provide better sustainability and consistency in patient services at ICS-wide level. Some examples include:

- **Lead provider model**

Here, the contract is between the customer and a single provider who sub-contracts the provision of services down the supply chain. The lead provider may provide services itself or may simply manage the provision of services by sub-contractors. This allows for a single point of contact for the customer, simplifying contract management, while benefiting from a broader range of services which may not otherwise be possible under a single contract.

- **Shared services agreement**

Here, public sector bodies may work together to cooperate and share in the delivery of services in what is known as a Hamburg arrangement, permitted by Regulation 12 of the Public Contracts Regulations 2015 (PCR). Alternatively, public sector bodies may seek to establish a jointly controlled Teckal vehicle (also in accordance with Regulation 12 of the PCR) and secure services via that arrangement using appropriate contractual mechanisms. Structuring service delivery in accordance with Regulation 12 will take the relevant contractual arrangement(s) outside of the PCR, so that the relevant goods and/or services can be obtained without needing to competitively tender them.

- **Alliance contract**

This is a contractual arrangement between commissioners and providers who agree to collaborate around a common aspiration for joint working across a system. Alliance contracts include shared objectives and principles, risk/reward sharing mechanisms and governance structures to facilitate decision making about service delivery.

Each of the above approaches firstly envisages and seeks to promote a network of organisations which can ensure a robust supply chain, and secondly incentivises sustainable behaviours, balancing risk and reward across the contract term and driving ESG outcomes. These contractual models are less about payment in exchange for a service and more about building deeper and more rewarding relationships between parties, giving them latitude to take appropriate risks with innovation and embedding outcomes that can meet environmental and social targets, with shared responsibility across the supply chain.

Case study: Home Group - Durham Mental Wellbeing Alliance Project

Home Group is one of the UK's largest providers of housing, health and care. In April 2022 they, along with six charity provider organisations of mental health services, entered into an alliance agreement with Durham County Council (as the commissioner) to set out the basis on which the provider organisations would collaborate to deliver preventative and early intervention support services for people with lower level mental health needs. The purpose of the alliance is to deliver integrated, high quality, cost effective and sustainable care to service users in County Durham within a limited financial envelope. The alliance contract, and the provider collaboration agreement that sits behind it, sets out the basis on which the provider parties will deliver the services within a robust governance framework and with a financial mechanism that rewards effort through incentives and risk/gain principles.



Over six months on, a Home Group spokesperson says, "The alliance demonstrates true collaboration, with providers across the county coming together to offer a wide range of services which can really help support our service users to change their lives. Since April 2022 we have collectively evidenced positive outcomes:

- 65% of customers referred are receiving support in a week or less;
- we currently support 930 customers across the length and breadth of County Durham;
- 96% have had a positive experience with the service they have received;
- 93% would recommend to family and friends;
- the alliance has already grown by nearly £300,000 with additional funding coming in;
- the average improvement in wellbeing of customers using the select service(s) is 35%; and
- the average improvement in quality of life of customers using the select service(s) is 41%.

We are all still adjusting to working in the alliance model and it does bring some challenges, but the alliance is growing and becoming more successful every day."

DRAFTING THE CONTRACT

Regardless of its structure and approach, a robust contract can help public bodies to ensure sustainability, secure best value for money, and deliver continuous improvement during the contract term in several ways:

- **Benchmarking and continuous improvement**

Benchmarking can be a useful tool to ensure competitive pricing in longer-term outsourcing contracts. Customers are increasingly requiring suppliers to reduce prices in line with competitors and benchmarking creates a formal mechanism for this. Continuous improvement can be incentivised by sharing cost savings with suppliers, or including a risk-gain share mechanism where loss and reward is shared between the supplier and the customer. By incentivising cost-efficiencies, customers can ensure best value for money long after the procurement process which contributes to a sustainable service in the long term.

- **Output-based specifications**

Specifications should be clearly drafted and comprehensive with specific obligations on the supplier. A traditional 'input' specification describes the services in a prescribed way, whereas an 'output' specification allows the supplier to offer solutions that achieve or even exceed the customer's requirements. Output-based specifications can result in lower priced and innovative delivery models as suppliers tailor solutions to the services they can best deliver. Allowing suppliers to suggest new approaches can also help customers meet their sustainability goals by encouraging new and more effective processes that customers may not otherwise have considered.

- **Remedies**

There are a number of remedies available to the customer in the event of poor performance. These range from financial remedies such as pre-agreed liquidated damages in the event of delay or service credits for failure to meet KPIs; practical measures such as remedial action plans; to the customer acquiring step-in rights, suspension or even termination rights. While it may seem a good idea to adopt a 'belt and braces' approach to remedies, this can create an overly complex performance mechanism which may then not be enforced or does not offer a practical or proportionate remedy (for example, termination is unlikely to be in the best interest of either party following minor delays or breach of KPIs). It can also encourage bidders to increase tender prices to price-in the risk of financial remedies or early termination. Encouraging sustainable service delivery therefore requires careful consideration and deployment of risk and reward mechanisms.

- **Proportionality**

As above, bidders are likely to price-in risk to their tender submissions so the contract needs to be balanced, proportionate, and reflect the actual requirements of the customer and subject matter of the arrangement. Provisions such as compensation on termination, liability caps, indemnity clauses and insurance requirements should be carefully considered and not excessive. This all contributes to creating a sustainable customer-supplier relationship which can encourage the supplier to work in partnership with the customer to meet goals, rather than seeing each other on opposing sides.

- **Contract management**

Careful monitoring of KPIs and reporting requirements ensures that problems in performance are picked up before they cause any disruptions to service provision, helping to ensure that service quality and delivery is sustained across the life of the contract.

A GOLDEN THREAD

Sustainability is a golden thread throughout the whole contract life cycle. Customers should consider ways to drive and encourage sustainability through incentivising supplier behaviours to meet ESG targets, ensuring that suppliers continue to provide best value for money long after the procurement process has ended and developing contractual forms across multiple parties to deliver resilient supply chains.



PROCUREMENT STRATEGY

Achieving sustainability through a well-planned procurement strategy

A well-planned procurement is vital for ensuring that organisations are obtaining best value for money and sourcing competitive and innovative solutions, while meeting their environmental targets, promoting social value through their supply chains and improving sustainability.

For the purpose of this article, we consider sustainability in the context of: achieving best value for money and therefore the sustainable use of public funds; procuring suitable and resilient suppliers; and encouraging suppliers to deliver in an environmentally-friendly way. The article also considers public procurement by reference to the Public Contracts Regulations 2015 (PCR), but the principles can apply to public bodies governed by other procurement legislation and non-public bodies' buying strategies too.

PLANNING THE PROCUREMENT

It may sound obvious, but before starting a procurement the authority should decide what it is seeking to buy and look carefully at what the market can offer. This will dictate, amongst other elements:

- the most suitable procurement procedure;
- whether a framework agreement for the opportunity already exists and is appropriate;
- the evaluation criteria that it will apply; and
- the form and structure of the contract to be awarded.

Pre-market engagement is expressly permitted under the PCR and can help to shape and articulate the requirements of a project, reducing the overall procurement timeline and cost by enabling the market and the authority to better understand and define needs and outcomes in advance of the procurement launch. However, pre-market engagement needs to be carried out in accordance with the overarching procurement principles of transparency, equal treatment, non-discrimination and proportionality.

Utilising practical steps such as information sharing, documenting decisions and allowing for appropriate tender submission deadlines can reduce the risk of claims that competition has been distorted due to pre-market engagement. Pre-market engagement can help an authority meet its sustainability goals as it can informally scope with suppliers 'the art of the possible' in terms of achieving ESG objectives, perhaps exploring innovative ways of delivery which contribute to net zero targets or use of sustainable products.

SECURING BEST VALUE FOR MONEY

- Bid evaluation is the process of assessing bids to identify the most economically advantageous tender (MEAT) for the relevant contract opportunity. MEAT does not usually equate to the lowest-price bid. Achieving value for money is the art of securing the highest quality for the least outlay over the contract term, and 'quality' is increasingly likely to include factors such as the delivery of social value and environmentally sustainable solutions. The weighting of price and quality should reflect the characteristics of the service. For example, an 80/20 quality/price weighting sends a clear signal to suppliers that quality is significantly more important than price. This is likely to be appropriate for a complex or high-risk services contract. A contract for the supply of straight-forward goods may have a higher price weighting.
- Assessing bidders' economic and financial standing, as well as the viability of their bid, is imperative for ensuring that tenders that look great on face value are also sustainable and will result in suitable delivery and resilience over the contract term. Such assessment should include applying selection criteria to give a better understanding of the financial position and the resilience of suppliers in order to safeguard the ongoing delivery of the contract. The selection criteria applied should be proportionate, flexible, contract specific and not overly risk-averse.

There is a balance to be struck in terms of achieving good value upfront versus ensuring that suppliers can deliver reliably throughout the term. Sustainability here means procuring a resilient supplier with the appropriate expertise and financial standing to deliver the requirement. Not securing a sufficiently resilient supplier may lead to service failure or, following insolvency, early termination and the need to re-procure, resulting in more expense and risking gaps in service provision, which can be a significant issue in sectors relating to the delivery of services such as frontline healthcare.

ENCOURAGING INNOVATION

The PCR can be innovation-friendly, especially if authorities use one of the procedures that allow discussions with bidders or even the innovation partnership route. In addition to actively seeking truly innovative solutions, creating a specification with clearly defined outcomes, rather than inputs, can encourage suppliers to propose their own methods of meeting those outcomes, which may offer improvements and/or efficiencies that the authority didn't consider. Sustainability goals, such as environmental targets, can sometimes be difficult to quantify in a straightforward specification prepared by the authority. There also may be opportunities to achieve sustainability goals indirectly, for example, as a function of a requirement that vehicles must be lower weight, which would result in them achieving greater fuel efficiency. Having the opportunity to understand what the market can offer in terms of new processes or products that can contribute to achieving those goals is a significant advantage of using processes that permit discussions with bidders (in addition to utilising pre-market engagement where appropriate). Authorities may be better able to build-in sustainability requirements by incentivising this through the specification and embedding sustainability outcomes into the award criteria.

Another way of improving innovation is by ensuring that processes do not unfairly discriminate or exclude SMEs. SMEs are a significant component of the UK's economy and can be a great source of innovation, unhampered by legacy systems. They can be more nimble, more willing to take risks and may look at different ways of approaching delivery that larger organisations can't; start-ups, in particular, are likely to have embraced 'green' ways of doing things already, perhaps as a way to obtain external investment. Financial thresholds at the selection stage should not create a barrier for SMEs and alternative ways of proving financial robustness (e.g. providing a guarantor) should be permitted. Where appropriate, authorities should also break down requirements into lots to increase opportunities for SMEs as well as making the tender process accessible and easier to participate in.

EVALUATING SOCIAL VALUE

Social value, when incorporated effectively into procurements, can help reduce inequalities, drive better environmental performance, and deliver better value. A minimum weighting of 10% for social value criteria must now be applied across all relevant procurements conducted by NHS and central government bodies.

Social value criteria must be proportionate and linked to the subject matter of the contract. For example, when procuring a contract for patient transport services, award criteria may focus on low/zero emissions vehicles; while award criteria for domestic support services may focus on modern slavery and fair wages in this typically lower paid sector.

Case study: SmartTogether - Evaluating social value

SmartTogether – a shared procurement service hosted by Guy's and St Thomas' NHS Foundation Trust (GSTT), ran a mini-competition for office supplies and chose "Fighting Climate Change" as the social value criteria to test during the procurement. Social value was given a weighting of 20% and bidders had to demonstrate how they would meet certain targets, including:

- zero emission delivery within the first six months and a reduced number of deliveries, to fall outside of morning peak hours;
- replacement of single-use plastic product lines with alternatives within the first six months; and
- annual carbon reporting and a carbon reduction improvement plan.



Marko Kyronlahti MCIPS, Sourcing Manager at GSTT, says, "Contracting authorities often think that sustainable solutions are more expensive but, despite the heavy weighting for social value, bidders submitted competitive prices as they still knew they were in competition with each other. One year into the contract and the supplier is putting mechanisms in place to meet the required contract requirements. We have also created internal policies to reduce costs and contribute to environmental targets by requiring colleagues to place a minimum order value with the supplier to reduce the number of deliveries and therefore the contract price and administration time processing invoices. We haven't compromised on the quality of products and have achieved cost savings and are working towards our ESG targets."

ROBUST PROCUREMENT

A robust procurement is not only about the final award decision – it is about the planning, structure and implementation of the whole process, and this starts before the process is even launched. It also includes ensuring that the process is properly documented and can stand up to scrutiny, both from internal stakeholders and the wider market.

A solution that delivers best value for money is often not the cheapest. Rather, it is likely to be the solution that meets the authority's requirements; the solution that is robust and sustainable; and the solution that delivers innovation and continuous improvement, leading to better outcomes and fairly priced, quality services and/or supplies over the contract term.

Sustainability can and should be achieved and optimised throughout the entire procurement process; from understanding the most economical and environmentally-efficient methods of delivery at pre-market engagement; assessing a supplier's resilience and ability to go to the distance at selection stage; to building and encouraging ESG outcomes through the award criteria and specification.

GREENER NHS

A vision to deliver the world's first net zero health service and respond to climate change

The NHS was founded to provide high-quality care for all, now, and for future generations. Understanding that climate change and human health are inextricably linked, Greener NHS, a programme within NHS England (NHSE), is committed to improving healthcare while reducing harmful carbon emissions, and investing in efforts that remove greenhouse gases from the atmosphere.

NET ZERO

The NHS has outlined two net zero targets:

1. The NHS Carbon Footprint: for the emissions directly controlled, net zero by 2040, with an ambition to reach an 80% reduction by 2028 to 2032.
2. The NHS Carbon Footprint Plus: for the emissions the NHS can influence, net zero by 2045.

Emissions have already been reduced by 26% compared to the 1990 baseline (NHS Carbon Footprint Plus including supply chain), exceeding its commitments under the Climate Change Act 2008.

HEALTH AND CARE ACT 2022 AND REGULATORY FRAMEWORK

On 1 July 2022, the NHS became the first health system to embed net zero into legislation, through the Health and Care Act 2022 (HCA). This places duties on NHSE and all NHS Trusts, Foundation Trusts, and Integrated Care Boards (ICBs) to contribute towards statutory emissions and environmental targets.

Trusts and ICBs will meet their new duties largely through the delivery of localised Green Plans. To support them, Greener NHS has produced the [Delivering a Net Zero National Health Service Report](#) (the Report) and the [Net Zero Supplier Roadmap](#).

The Report was re-issued pursuant to NHSE's new power under the HCA and now has the status of statutory guidance. Trusts and ICBs must therefore have regard to it when fulfilling their climate change duties.

NHSE recently consulted on a new condition for the NHS Provider Licence mandating that, as a matter of good corporate governance, Trusts must factor in NHSE guidance on tackling climate change and delivering net zero emissions, and must take all reasonable steps to minimise the adverse impact of climate change on health. These licence conditions mirror the duties in the HCA and give NHSE the ability to take enforcement action if providers are not complying.

CONTRACTING FOR ACTION ON CLIMATE CHANGE

The NHS Standard Contract, used when contracting for NHS-funded secondary care healthcare services, requires providers to contribute to a greener NHS and sustainability. Obligations on providers include:

- implementing plans on:
 - **climate change**, such as how the provider will take action to reduce greenhouse gases from their premises in line with targets in Delivering a Net Zero National Health Service;
 - **single use plastic products and waste**, such as reducing avoidable use of single use plastic;
 - **air pollution**, including taking action to phase out fossil fuels for primary heating and developing plans to install electric vehicle charging infrastructure for fleet vehicles at their premises; and
- giving due regard to secure wider social, economic and environmental benefits for the local population in its purchase and specification of products and services.

A number of the requirements apply specifically to NHS Trust and NHS Foundation Trust providers, such as:

- nominating a Net Zero lead;
- purchasing electricity from renewable sources (as far as reasonably feasible); and
- when procuring goods, services and/or works, complying with the requirements set out in the NHS Net Zero Supplier Roadmap. For all contracts with an annual value above £5 million (excluding VAT), Trusts must require suppliers to publish a carbon reduction plan, aligning with the government's procurement policy note (PPN) 06/21: [Taking account of CRPs in the procurement of major government contracts](#).

ELECTRIFICATION OF THE NHS'S AMBULANCE FLEET

In the last year or so, a number of Ambulance Trusts have proudly launched their first electric emergency response vehicles. Most recently, eight trusts began trialling 21 zero-emission vehicles of various types, with six of the new green vehicles dedicated to mental health response in the community. At COP26, NHSE also unveiled the world's first zero emission ambulance - capable of travelling up to 300 miles before re-charging.

SUSTAINABLE MODELS OF CARE

Models of care should also focus on reducing carbon emissions, such as:

- optimising the location of care;
- earlier and quicker detection for diagnosis and treatment; and
- digital technology.

Carbon savings will mainly come from reduced presentations in A&E, primary care and outpatients, reduced staff and patient mileage, reduced bed days, fewer pharmaceuticals prescribed, and less intensive procedures.

THE FUTURE OF SUSTAINABLE HEALTHCARE

In addition to explicit climate change duties, NHS organisations are subject to the new 'Triple Aim' statutory duty. When making decisions about their functions, NHS organisations must now consider the likely effect on the three aims of:

- better health and wellbeing for everyone;
- better quality of health services for all individuals; and
- sustainable use of NHS resources.

Taking action to address climate change is not only a duty in itself, but will likely be compatible with all three aims.

The NHS's continued provision of high quality healthcare for all requires resilience to respond to the health emergency that climate change brings. Greener NHS and the triple aim duty will be instrumental for creating a sustainable NHS for future generations.

NHS REAL ESTATE

Driving down carbon emissions

Perhaps unsurprisingly, given its vast size, the NHS estate has a significant impact on the environment. NHS England estimates that the NHS is responsible for around 4% of the country's carbon emissions.

The NHS therefore has an essential role to play in driving down carbon emissions to meet the net zero targets set under the Climate Change Act 2008. This has been recognised in the NHS's commitment to the ground-breaking [Greener NHS programme](#), which champions improvements in healthcare provision, reductions in carbon emissions and investments in green solutions to reduce the NHS's carbon footprint in line with its net zero targets.

However there are challenges that must be met by the NHS in order to meet these targets, be it in the planning and design phase of a new project, by maximising the use of its existing space to create energy efficiencies and sustainable environments or through the ongoing management of its estate.

PLANNING, DESIGN AND CONSTRUCTION OF NEW BUILDINGS

To meet its targets, the NHS will need to ensure that any new buildings constructed on its estate comply with its net zero ambitions. This will include the consideration of sustainability through the whole life cycle of the building, perhaps most importantly at the design and construction stage.

This could be achieved by moving away from reliance on traditional construction materials such as glass and steel which have a high carbon footprint and considering more sustainable methods of construction, using fewer materials and producing less waste. Contractual documentation can be adapted to ensure there are obligations on the contractor to behave in a greener, more sustainable way so as to reduce the environmental impact of any building works and ensure sustainability and efficiency are embedded in the building from inception.

When considering a development, thought should be given to a number of factors which could influence the sustainability of a project. For example, could the project be situated to maximise use of existing and proposed transport and pedestrian networks in order to reduce motor traffic and encourage the use of public transport or better still, walking and cycling?

This would achieve a dual aim, promoting physical activity and reducing carbon emissions. Can a new development accommodate green spaces, perhaps by planting trees or through the installation of a 'green roof' for example? This could improve air quality and offset emissions.

This can also be accomplished by utilising recognised assessment methods such as BREEAM (British Research Establishment Environmental Assessment Method) to inform the project team's decision making process and maximise environmental benefits.

The NHS also has a duty under legislation to ensure that its properties are as energy efficient as they can be before they are let, and to improve the energy efficiency of any properties which are currently let.

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (SI 2015/962) (MEES Regulations) which came into force in England and Wales on 1 April 2018, apply to private rented residential and non-domestic property and are aimed at encouraging landlords and property owners to improve the energy efficiency of their properties, as required under the Energy Act 2011.

At present, under the MEES Regulations, landlords cannot grant a tenancy to either new or existing tenants or continue to let properties that have an Energy Performance Certificate (EPC) with a rating of F or G unless they have a legitimate reason. As part of its ambitious energy efficiency agenda, the government is proposing that the target EPC rating for all buildings should be increased to C by 2027 and B by 2030. If these plans come to fruition, it will have far reaching consequences for the whole of the property sector, where a large proportion of buildings would be classed as "sub-standard," and it is likely that a huge investment will be required to bring properties up to the proposed standards.



EXISTING BUILDINGS

More immediate reductions to the NHS's carbon footprint can be achieved through changes implemented to existing buildings across the NHS estate. Energy use, waste, and employee business travel all have a significant impact on the NHS's carbon footprint.

Energy used in existing buildings accounts for approximately 51% of the NHS's carbon footprint. Short term changes can result in significant strides towards achieving net zero carbon targets, but could also result in significant cost savings. A 2022 UCL report estimates the NHS could save between 72% and 83% on energy costs which could result in a recurrent saving of almost half a billion pounds which could be reinvested elsewhere.

The National Audit Office estimates that 14% of the NHS Estate pre-dates the creation of the NHS in 1948. Investment in older buildings to reduce heat loss, upgrade ventilation and heating systems are solutions many NHS Trusts are already exploring.

Investment in on-site renewable energy sources will also become a feature of minimising the NHS's carbon footprint. Initial investment costs can be significant, but large life-time energy cost savings can be made as well as substantial reduction in carbon emissions. An added benefit is that any surplus energy produced can be sold to National Grid to produce additional income for Trusts.

Staff facilities at buildings can also play an important part in reducing the carbon footprint of NHS employees. Investment in secure cycle storage areas and staff showers for instance, can change employees' commuting habits, which currently have a significant impact on the NHS's carbon footprint.

Data will also continue to be crucial in reducing the NHS's carbon emissions. Reviewing ERIC returns, the Greener NHS Dashboards and measuring what percentage of energy used is renewable will allow informed decisions to be made.

CLOSING THE GAP

Whilst the NHS has made huge strides in improving its carbon footprint and reducing the environmental impact of its services, there is more that can be done to close the gap to reach net zero. How the NHS manages its estate going forward will play a crucial role in developing a more sustainable health and social care system.

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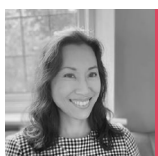
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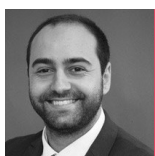
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