NHS Trafford Clinical Commissioning Group

Agenda Item No. 8

Part 1 | X | Part 2 | |

NHS TRAFFORD CLINICAL COMMISSIONING GROUP
GOVERNING BODY
16th December 2014

Title of Report	Next Steps towards Primary Care Co-Commissioning incorporating constitutional change
Purpose of the Report	This report is to update the Governing Body on the NHS England updated guidance "*Next steps towards co-commissioning"* published in November 2014, highlighting key points, risks and issues and support a recommended model for co-commissioning in Trafford.

Actions Requested	**Decision**	✓	**Discussion**		**Information**	
Strategic Objectives Supported by the Report	1. Consistently achieving local and national quality standards.					✓
	2. Delivering an increasing proportion of services from primary care and community services from primary care and community services in an integrated way.					✓
	3. Reduce the gap in health outcomes between the most and least deprived communities in Trafford.					✓
	4. To be a financial sustainable economy.					✓

Recommendations	The Governing Body is asked to support a proposal for joint commissioning arrangements, subject to the CCG's membership approval and the changes to its constitution regarding joint commissioning arrangements.

Discussion history prior to the Governing Body	Primary Care Co-Commissioning has been discussed by the Senior Management Team and the Council of Members.
Financial Implications	No additional allocation for primary care co-commissioning is expected. The co-commissioning agenda needs to be resourced from internal resources, redefined role of area team primary care resources and working differently with existing groups and stakeholders.
Risk Implications	The main issues with the new process and guidance are the timescale imposed on Trafford CCG in undertaking the

	following: • Required financial diligence and governance • Engagement with all stakeholders including CCG member practices, Local Medical Committee, Health and Wellbeing Board, HealthWatch • Constitution amendment process The CCG potentially could also not have the appropriate level of capacity, skills and competencies to undertake all elements of the co-commissioning model chosen, resulting in the inability to realise the expected benefits.
Impact Assessment	N/A
Communications Issues	N/A
Public Engagement Summary	The Public Reference Advisory Panel will be presented with Primary Care Co-Commissioning at its January meeting. HealthWatch are to be engaged in the process of Primary Care Co-Commissioning with a representative to be invited to attend the newly created Primary Care Commissioning Committee. Consideration can also be given to PRAP representation on the Committee.

Prepared by	Jason Swift, Head of Primary Care Interface Mike Taylor, Head of Governance, Planning & Risk
Responsible Director	Gina Lawrence, Chief Operating Officer/Director of Commissioning & Operations

NEXT STEPS TOWARDS PRIMARY CARE CO-COMMISSIONING INCOPORATING CONSTITUTIONAL CHANGE

1.0 INTRODUCTION AND BACKGROUND

1.1 On the 1st May 2014 Simon Stevens, NHS England Chief Executive, issued an announcement detailing new co-commissioning arrangements for the NHS in England.

1.2 Following the 1st May announcement, Dame Barbara Hakin, NHS England Managing Director for Commissioning Development, wrote out to CCG's on the 9th May 2014 asking for expressions of interest to undertake co-commissioning at local level working with area teams.

1.3 Work began across Greater Manchester (GM) to define the levels of co-commissioning to obtain a consistent approach across GM. This work concluded with a stepped model for co-commissioning from level 1 (lowest) to level 4 (highest).

1.4 Trafford CCG engaged with member practices, local medical committee (LMC), NHS England area team and other stakeholders to formulate the Trafford response to the co-commissioning agenda.

1.5 Nationally, and owing to the huge variation in models of co-commissioning across England proposed by CCG's, new guidance "Proposed next steps towards primary care co-commissioning: an overview was produced in September 2014.

1.6 This was followed on the 10th November 2014 with further NHS England guidance "Next steps towards primary care co-commissioning.

1.7 The guidance document issued on the 10th November 2014 "Next steps towards primary care co-commissioning" changed the parameters of the co-commissioning agenda. It defines three models of co-commissioning and requires Trafford CCG to resubmit a proposal for co-commissioning of primary care.

2.0 GUIDANCE SUMMARY

2.1 The 10th November guidance "Next steps to towards primary care co-commissioning" outlines a revised model and process for co-commissioning, giving Trafford CCG the opportunity to choose afresh its model, and requires the submission of a new proposal within a template return.

2.2 Linking to the NHS Five Year Forward View, the guidance defines **three** new models of co-commissioning.

1. Greater involvement in primary care decision making	2. Joint commissioning arrangements	3. Delegated commissioning arrangements

2.3 The scope of primary care co-commissioning in 2015/16 is general practice only. For delegated arrangements this includes GP performance management, budget management and complaints management, but excludes performer lists for GPs, appraisal and revalidation.

2.4 Dental, eye health and community pharmacy are possible developments for co-commissioning for 2016/17.

3.0 GREATER INVOLVEMENT IN PRIMARY CARE DECISION-MAKING

3.1 This model would require no new governance arrangements, and simply requires a CCG to have greater involvement in decision making, and could be agreed between CCG and area team at any time.

4.0 JOINT COMMISSIONING ARRANGEMENTS

4.1 Joint commissioning arrangements will require new governance arrangements with a new joint committee. This model enables one or more CCGs to assume responsibility for jointly commissioning primary medical services with the area team. Within this model CCGs have the option to pool funding for investment.

4.2 Joint commissioning arrangements in 2015/16 are limited to GP services. The functions operating under joint committees for 2015/16 are

- GMS, PMS & APMS contracts (inc. design, monitoring, issuing breech/remedial notices and removing a contact).
- Enhanced services (Local and Directed enhanced services)
- Design of local incentive scheme as an alternative to QOF
- Establishment of new practices, and approving mergers
- Making decisions on discretionary payments

4.3 Following legislative reform Trafford CCG could form a joint committee with the area team, with meetings held in public.

4.4 Model terms of reference for joint commissioning arrangements including scheme of delegation are supplied in the guidance.

4.5 Membership of the new joint committee will be for both CCG and area team to agree, but a local HealthWatch representative and a local authority representative from the Health and Wellbeing Board will have the right to join as a non-voting member.

4.6 CCG and area team may wish to consider implementing a pooled fund arrangement under joint commissioning arrangements.

5.0 DELEGATED COMMISSIONING ARRANGEMENTS

5.1 Delegated commissioning arrangements require new governance arrangements, with a new primary care commissioning committee. This model offers an opportunity for Trafford CCG to assume full responsibility. Legally NHS England retains the residual liability, therefore requires robust assurance that statutory functions are being discharged effectively.

5.2 The new guidance highlights a standardised model of delegation (unlike the previous Trafford CCG co-commissioning expression of interest which operated a more pick and mix method of determining functions) and included in delegated arrangements are:

- GMS, PMS & APMS contracts (inc. design, monitoring, issuing breech/remedial notices and removing a contact).
- Enhanced services (Local and Directed enhanced services)
- Design of local incentive scheme as an alternative to QOF
- Establishment of new practices, and approving mergers
- Making decisions on discretionary payments

5.3 Under delegated commissioning arrangements the guidance provides a model governance framework. A recommendation is that Trafford would establish a primary care commissioning committee to oversee the delegated functions.

5.4 It is for the CCG to agree the full membership of this group, however there is a requirement that it is chaired by a lay member and have a lay and executive majority. Furthermore a local HealthWatch representative and a local authority representative from the Health and wellbeing Board will have the right to join as non-voting attendees.

5.5 This would also be a meeting conducted in public.

6.0 SUPPORT AND RESOURCING FOR CO-COMMISSIONING

6.1 Discussions with area team (AT) colleagues indicate that the AT primary care team will remain in place and not be devolved on a pro rata basis into CCG's rather the co-commissioning operations sub-group will define how this resource supports co-commissioning across GM, albeit that the November guidance suggests CCG's have a fair share of the staffing resource. There will be no nationally prescribed operating model of this.

6.2 Across GM the co-commissioning agenda is being developed under the umbrella of the primary care co-commissioning steering group (COOs), which has four sub-groups, finance (CFOs), Governance (headed by Rob Bellingham), Quality and Standards (headed by Raj Patel), and Operation (under GM Primary care leads).

7.0 FINANCIAL ARRANGEMENTS FOR CO-COMMISSIONING

7.1 Financial arrangements for co-commissioning across GM will be progressed via the co-commissioning finance sub-group (CFOs).

7.2 CCGs are to be provided with a co-commissioning primary care allocation based on historical plus target formula. CFOs will need to sign off on this for full delegation. It is expected this will be an allocation not an expenditure budget. This will include funding for future known pressures, with CCG able to "top up" allocation from CCG funds.

7.3 Due to timescale of the release of financial information and planning details the timescale is extremely tight in order to undertake necessary governance checks and meet submission deadlines.

7.4 There is to be no change to running cost allowance(RCA) in respect to co-commissioning in 2015/16, however, discussion with AT may be needed to discuss resources outside of RCA, given RCA was determined without consideration for co-commissioning therefore resourcing costs should sit outside of RCA.

7.5 National guidance requires the submission of a financial budget template along with full delegated CCG proposal. This poses timescale difficulties in undertaking the required financial work and due diligence checks given the timescale of the release of information.

8.0 CONFLICTS OF INTEREST

8.1 Formal guidance already exists for CCGs in managing conflicts of interest (COI). However, under co-commissioning, these have been developed with a significantly enhanced framework with clear minimum expectations. This guidance will be enacted so that CCGs will need to justify where they operate outside of the guidance.

8.2 The guidance, expected out in December 2014 as statutory guidance, will include a strengthened approach to:

- The make-up of the decision-making committee
- National training for lay members
- External involvement of stakeholders
- Register of interest
- Register of decisions

8.3 Trafford CCG audit committee chair and Accountable Officer will be required to provide direct formal attestation the CCG has complied with the COI guidance.

9.0 TIMESCALES AND APPROVALS

9.1 The following national timescales are attached to co-commissioning:

Co-commissioning Model	Proforma	Submission Date
Joint & Delegated commissioning	CCG/NHS England work to develop proposals	November 2014 to January 2015
Joint commissioning	CCG & AT to complete national proforma for joint arrangements	30 January 2015
Delegated commissioning	CCG & AT to complete national proforma (annex B) for delegated arrangements and annex C for constitution	12 noon 9 January 2015
All other constitution amendment requests		6 January 2015
Delegated arrangements	Moderation panels determine	15&16 January 2015
Delegated arrangements	National moderation panel	Late January 2015
Delegated arrangements	Committee sign off	February 2015
Delegated commissioning	Subject to approval, NHS E Finance transfer delegated budget	March 2015
Delegated & Joint arrangements	Implementation in full locally	1st April 2015

9.2 The guidance does make clear that the model of co-commissioning is flexible in escalating the level of required co-commissioning, but gives little information on how a CCG would de-escalate the level if required.

10.0 ISSUES & RISKS

10.1 The main issues/risks with the new process and guidance are the timescale imposed on Trafford CCG in effectively undertaking the following:

- Required financial diligence and governance
- Engagement with all stakeholders including CCG member practices, Local Medical Committee, Health and Wellbeing Board, HealthWatch
- Constitution amendment process

10.2 In addition, there is a risk that the CCG does not have the appropriate level of capacity, skills and competencies to undertake all elements of the co-commissioning model chosen, resulting in the inability to realise the expected benefits.

10.3 Any proposal to co-commission at delegated level would require a proposal submission by the 9th January 2015 and joint commissioning by 30th January. Given the timescales of the release of CCG allocations and planning guidance make delegated commissioning the greater risk given the holiday period forms part of the timescale.

11.0 CONSTITUTION CHANGES

11.1 In relation to whichever model is agreed upon by the CCG's membership, constitution changes are required to enable the CCG in future to create, if it so wishes:

- Joint Commissioning Arrangements with other CCGs
- Joint Commissioning Arrangements with NHS England for the exercise of CCG functions
- Joint Commissioning Arrangements with NHS England for the exercise of NHS England functions

11.2 An upcoming example of this is the proposed replacement of the 'committees in common' approach to Healthier Together governance, with joint commissioning arrangements.

11.3 Legal advice across the Greater Manchester commissioning health economy has been sought on this, with the revised wording inserted in appendix 1.

11.4 Governing Body endorsement of these constitutional changes will, pending approval from the Council of Members at their forthcoming meeting on 11th December, allow for future Primary Care Co-Commissioning requirements to be considered.

11.5 The Governing Body's attention is therefore drawn to the future need to consider and agree proposed terms of reference for any future joint commissioning committees, to ensure to its satisfaction the application of the CCG's governance. As an example model proposed model terms of reference are provided for Primary Care Co-Commissioning joint commissioning and delegated arrangements (appendix 2).

12.0 NEXT STEPS

12.1 The next steps towards co-commissioning now require Trafford CCG to;

- Continue the work at GM level through the primary care co-commissioning steering group and the sub-groups for finance, governance, operations and standards and quality.
- Undertake engagement and communications activities with member practices, local medical committee and other key stakeholders and obtain mandate
- Progress primary care co-commissioning though the CCG governance structure and conclude the appropriate application to NHS England.
- Plan for implementation

13.0 RECOMMENDATIONS

13.1 The Governing Body is asked to support a proposal for joint commissioning arrangements, subject to the CCG's membership approval and the changes to its constitution regarding joint commissioning arrangements.

Appendix 1

Summary of Amendments to Trafford CCG Constitution - January 2015

Section	Description	Proposed wording
6.4	Committees of the Group	6.4.1 The Governing Body on behalf of the Group may appoint such committees of the Group as it considers may be appropriate and delegate to them the exercise of any functions of the Group which in its discretion it considers to be appropriate except insofar as this Constitution has reserved or delegated the exercise of the Group's functions to its members, employees or a committee or sub-committee of the Group or Governing Body. 6.4.2 A committee of the Group may consist of or include persons other than members or employees of the Group. 6.4.3 A committee of the CCG includes a joint committee of the CCG and one or more other clinical commissioning groups and/or one or more local authorities and/or NHS England. 6.4.4 Committees will only be able to establish their own sub-committees, to assist them in discharging their respective responsibilities, if this responsibility has been delegated to them by the Governing Body on behalf of the Group or the committee they are accountable to. 6.4.5 All decisions taken in good faith at a meeting of any committee or sub-committee shall be valid even if there is any vacancy in its membership or it is discovered subsequently that there was a defect in the calling of the meeting, or the appointment of a member attending the meeting.
6.5	Joint Commissioning Arrangements with CCGs	6.5 Joint commissioning Arrangements with other Clinical Commissioning Groups

		6.5.1 The Group may work together with other Clinical Commissioning Groups in the exercise of its commissioning functions. 6.5.2 The Group may make arrangements with one or more Clinical Commissioning Groups in respect of: a) delegating any of the Group's commissioning functions to another Clinical Commissioning Group; b) exercising any of the commissioning functions of another Clinical Commissioning Group; or c) exercising jointly the commissioning functions of the Group and another Clinical Commissioning Group. 6.5.3 For the purposes of the arrangements described at paragraph 6.5.2, the Group may: a) make payments to another Clinical Commissioning Group; b) receive payments from another Clinical Commissioning Group; c) make the services of its employees or any other resources available to another Clinical Commissioning Group; or d) receive the services of the employees or the resources made available by another Clinical Commissioning Group. 6.5.4 Where the Group makes arrangements with one or more Clinical Commissioning Groups which involve all of the Clinical Commissioning Groups exercising any of their commissioning functions jointly, a joint committee may be established to exercise those functions. 6.5.5 For the purposes of the arrangements described at paragraph 6.5.2 above, the Group may establish and maintain a pooled fund made up of contributions by all of the Clinical Commissioning Groups working together pursuant to paragraph 6.5.2 c) above. Any such pooled fund may be used to make payments towards expenditure incurred in the discharge of any of the commissioning functions in respect of which the arrangements are made. 6.5.6 Where the Group makes arrangements with one or more other Clinical Commissioning Groups as described at paragraph 6.5.2 above, the Group shall develop and agree with that Clinical Commissioning

		Group/ those Clinical Commissioning Groups an agreement setting out the arrangements for joint working, including details of: • How the parties will work together to carry out their commissioning functions; • The duties and responsibilities of the parties; • How risk will be managed and apportioned between the parties; • Financial arrangements, including, if applicable, payments towards a pooled fund and management of that fund; • Contributions from the parties, including details around assets, employees and equipment to be used under the joint working arrangements. 6.5.7 Arrangements made pursuant to paragraph 6.5.2 above do not affect the liability of the Group for the exercise of any of its functions. 6.5.8 The Group shall have regard to any guidance published by the NHS Commissioning Board pursuant to Section 14Z8 of the 2006 Act in exercising its commissioning functions. 6.5.9 Only arrangements that are safe and in the interests of patients registered with member practices will be approved by the Governing Body.
6.6	Joint Commissioning Arrangements with the NHS Commissioning Board for the exercise of CCG functions	6.6 Joint commissioning arrangements with the NHS Commissioning Board for the exercise of Clinical Commissioning Group functions 6.6.1 The Group may work together with the NHS Commissioning Board in the exercise of its commissioning functions. 6.6.2 The Group and the NHS Commissioning Board may make arrangements to exercise any of the Group's commissioning functions jointly. 6.6.3 The arrangements referred to in paragraph 6.6.2 above may include other Clinical Commissioning Groups. 6.6.4 Where joint commissioning arrangements are entered into pursuant to paragraph 6.6.2 above, the parties may establish a joint committee to exercise the commissioning functions in question. 6.6.5 Arrangements made pursuant to paragraph 6.6.2 above may be on

		such terms and conditions (including terms as to payment) as may be agreed between the NHS Commissioning Board and the Group. 6.6.6 Where the Group makes arrangements with the NHS Commissioning Board (and one or more other Clinical Commissioning Groups if relevant) as described at paragraph 6.6.2 above, the Group shall develop and agree with the NHS Commissioning Board a framework setting out the arrangements for joint working, including details of: • How the parties will work together to carry out their commissioning functions; • The duties and responsibilities of the parties; • How risk will be managed and apportioned between the parties; • Financial arrangements, including, if applicable, payments towards a pooled fund and management of that fund; • Contributions from the parties, including details around assets, employees and equipment to be used under the joint working arrangements. 6.6.7 Arrangements made pursuant to paragraph 6.6.2 above do not affect the liability of the Group for the exercise of any of its functions. 6.6.8 The Group shall have regard to any guidance published by the NHS Commissioning Board pursuant to Section 14Z8 of the 2006 Act in exercising its commissioning functions. 6.6.9 Only arrangements that are safe and in the interests of patients registered with member practices will be approved by the Governing Body.
6.7	Joint Commissioning Arrangements with the NHS Commissioning Board for the exercise of NHS Commissioning Board functions	6.7 Joint commissioning arrangements with the NHS Commissioning Board for the exercise of the NHS Commissioning Board's functions 6.7.1 The Group may work with the NHS Commissioning Board and, where applicable, other Clinical Commissioning Groups, to exercise specified NHS Commissioning Board functions. 6.7.2 The Group may enter into arrangements with the NHS Commissioning Board and, where applicable, other Clinical Commissioning Groups to:

		• Exercise such functions as specified by the NHS Commissioning Board under delegated arrangements; • Jointly exercise such functions as specified with the NHS Commissioning Board. 6.7.3 Where arrangements are made for the Group and, where applicable, other Clinical Commissioning Groups to exercise functions jointly with the NHS Commissioning Board a joint committee may be established to exercise the functions in question. 6.7.4 Arrangements made between the NHS Commissioning Board and the Group may be on such terms and conditions (including terms as to payment) as may be agreed between the parties. 6.7.5 For the purposes of the arrangements described at paragraph 6.7.2 above, the NHS Commissioning Board and the Group may establish and maintain a pooled fund made up of contributions by the parties working together. Any such pooled fund may be used to make payments towards expenditure incurred in the discharge of any of the commissioning functions in respect of which the arrangements are made. 6.7.6 Where the Group enters into arrangements with the NHS Commissioning Board as described at paragraph 6.7.2 above, the parties will develop and agree a framework setting out the arrangements for joint working, including details of: • How the parties will work together to carry out their commissioning functions; • The duties and responsibilities of the parties; • How risk will be managed and apportioned between the parties; • Financial arrangements, including payments towards a pooled fund and management of that fund; • Contributions from the parties, including details around assets, employees and equipment to be used under the joint working arrangements. 6.7.7 Arrangements made pursuant to paragraph 6.7.2 above do not affect the liability of the NHS Commissioning Board for the exercise of any

		of its functions. 6.7.8 The Group shall have regard to any guidance published by the NHS Commissioning Board pursuant to Section 14Z8 of the 2006 Act in exercising its commissioning functions. 6.7.9 Only arrangements that are safe and in the interests of patients registered with member practices will be approved by the Governing Body.
6.8	Joint Commissioning arrangements with Local Authorities	6.8 Joint commissioning arrangements with local authorities 6.8.1 The Group may enter into joint commissioning arrangements with one or more local authorities pursuant to Section 75 of the 2006 Act
6.9	The Governing Body	6.9 Functions - the governing body has the following functions conferred on it by sections 14L(2) and (3) of the 2006 Act, inserted by section 25 the 2012 Act, together with any other functions connected with its main functions as may be specified in regulations or in this constitution. The governing body may also have functions of the Clinical Commissioning Group delegated to it by the group. Where the group has conferred additional functions on the governing body connected with its main functions, or has delegated any of the group's functions to its governing body. The Governing Body has responsibility for: x) exercising any other functions of the Group which are not otherwise reserved or delegated.

Appendix 2(i)

NHS England

Next steps towards primary care co-commissioning: Annex D

Model terms of reference for joint commissioning arrangements including scheme of delegation

November 2014

Model terms of reference for joint commissioning arrangements including scheme of delegation

Introduction

1. Simon Stevens, the Chief Executive of NHS England, announced on 1 May 2014 that NHS England was inviting Clinical Commissioning Groups (CCGs) to expand their role in primary care commissioning and to submit expressions of interest setting out the CCG's preference for how it would like to exercise expanded primary medical care commissioning functions. One option available was that NHS England and CCGs would jointly commission primary medical services.

2. The NHS England and **[insert name]** CCG **[or CCGs – amend as appropriate]** joint commissioning committee is a joint committee with the primary purpose of jointly commissioning primary medical services for the people of **[insert geographical area]**.

Statutory Framework

3. The National Health Service Act 2006 (as amended) ("**NHS Act**") provides, at section 13Z, that NHS England's functions may be exercised jointly with a CCG, and that functions exercised jointly in accordance with that section may be exercised by a joint committee of NHS England and the CCG. Section 13Z of the NHS Act further provides that arrangements made under that section may be on such terms and conditions as may be agreed between NHS England and the CCG.

4. **[Include reference to statutory provisions used to jointly exercise CCG functions, if any have been delegated by the CCG to the joint committee. This is permitted by section 14Z9 of the NHS Act 2006 (as amended). If such arrangements are made, the CCG will need to formally delegate the functions in question to the joint committee. A draft delegation has been prepared and is set out as Schedule 1 to this document.]**

5. **[This paragraph only needs to be included if paragraph 4 above applies, i.e. the CCG has delegated CCG functions to the joint committee]** Section 14Z9 of the NHS Act was amended by Legislative

Reform Order (2014/2436) ("LRO") to enable the joint exercise by NHS England and a CCG of any of the CCGs commissioning functions and any other functions of the CCG which are related to the exercise of those functions. Where such arrangements are made, the LRO enabled them to be exercised by a joint committee established between the parties.

Role of the Joint Committee

6. The role of the Joint Committee shall be to carry out the functions relating to the commissioning of primary medical services under section 83 of the NHS Act except those relating to individual GP performance management, which have been reserved to NHS England **[and such CCG functions under sections 3 and 3A of the NHS Act as have been delegated to the joint committee]**.

7. This includes the following activities:

- GMS, PMS and APMS contracts (including the design of PMS and APMS contracts, monitoring of contracts, taking contractual action such as issuing branch/remedial notices, and removing a contract);
- Newly designed enhanced services ("Local Enhanced Services" and "Directed Enhanced Services");
- Design of local incentive schemes as an alternative to the Quality Outcomes Framework (QOF);
- Decision making on whether to establish new GP practices in an area;
- Approving practice mergers; and
- Making decisions on 'discretionary' payment (e.g., returner/retainer schemes).

8. **[In performing its role the Joint Committee will exercise its management of the functions in accordance with the agreement entered into between NHS England and [insert name] CCG, which will sit alongside the delegation and terms of reference.] – [This is the proposed agreement to deal with such as information sharing, resource sharing, contractual mechanisms for service delivery (and ownership) and interplay between contractual and performance list management.]**

Geographical coverage

9. The Joint Committee will comprise NHS England **[insert Area Team name]**, and the **[insert name]** CCG. It will undertake the function of jointly commissioning primary medical services for **[insert geographical area]**.

Membership

10. The Joint Committee shall consist of:

    a) **[To set out make-up of joint committee]**
    b) The membership will meet the requirements of **[insert name]** CCG's constitution.

11. The Chair of the Joint Committee shall be the **[insert role]** of the **[insert organisation]**.

12. The Vice Chair of the Joint Committee shall be the **[insert role]** of the **[insert organisation]**.

13. **[To set out non-voting attendees. This should include a standing invitation to a HealthWatch representative and a Health and Wellbeing Board representative.]**

Meetings and Voting

14. The Joint Committee shall adopt the Standing Orders of **[insert name]** CCG insofar as they relate to the:

    a) Notice of meetings;

    b) Handling of meetings;

    c) Agendas;

    d) Circulation of papers; and

    e) [Conflicts of interest -to reflect Standing Orders provisions on this issue after review by CCG to take into account additional guidance to be issued by NHS England has taken place]

15. Each member of the Joint Committee shall have one vote. The Joint Committee shall reach decisions by (a simple majority of members present, but with the Chair having a second and deciding vote, if necessary). **(Position to be confirmed as part of the final arrangements for voting procedures and make-up of the committee).**

16. **[Insert provisions for quorum. This will need to be consistent with the CCG's Standing Orders and as agreed between the parties. Quoracy will also need to reflect conflicts of interest guidance.]**

17. **[Insert provisions for frequency of meetings. The suggested frequency is weekly for the first month and then as agreed after that.]**

18. Meetings of the Joint Committee:

    a. Shall, subject to the application of 7(b), be held in public.

    b. The Joint Committee may resolve to exclude the public from a meeting that is open to the public (whether during the whole or part of the proceedings) whenever publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of that business or of the proceedings or for any other reason permitted by the Public Bodies (Admission to Meetings) Act 1960 as amended or succeeded from time to time.

19. Members of the Joint Committee have a collective responsibility for the operation of the Joint Committee. They will participate in discussion, review evidence and provide objective expert input to the best of their knowledge and ability, and endeavour to reach a collective view.

20. The Joint Committee may call additional experts to attend meetings on an ad hoc basis to inform discussions.

21. Members of the Joint Committee shall respect confidentiality requirements as set out in the Standing Orders referred to above unless separate confidentiality requirements are set out for the joint committee in which event these shall be observed.

22. **[Insert secretariat provisions]**

23. The secretariat to the Joint Committee will:
    a) Circulate the minutes and action notes of the committee with 3 working days of the meeting to all members.
    b) Present the minutes and action notes to **[name of area team]** of NHS England and the governing body of **[insert name] CCG(s)**.

24. **[These Terms of Reference will be reviewed from time to time, reflecting experience of the Joint Committee in fulfilling its functions and the wider experience of NHS England and CCGs in primary medical services co-commissioning.]**

Decisions

25. The Joint Committee will make decisions within the bounds of its remit.

26. The decisions of the Joint Committee shall be binding on NHS England and **[insert name]** CCG.

27. Decisions will be published by both NHS England and **[insert name]** CCG**(s)**.

28. The secretariat will produce an executive summary report which will presented to **[insert name of area team]** of NHS England and the governing body of **[insert name]** CCG**(s)** each month **[could be longer period]** for information.

Key Responsibilities

[Insert details of key responsibilities – this will include areas such as planning, including carrying out needs assessments, primary medical care services for the geographical area in question; undertaking reviews as appropriate; co-ordinating a common approach to primary care commissioning as appropriate; managing relevant budgets].

Review of Terms of Reference

29. These terms of reference will be formally reviewed by **[insert name of the area team]** of NHS England and **[insert name]** CCG**(s)** in April of each year, following the year in which the joint committee is created, and may be amended by mutual agreement between **[insert name of the area team]** of NHS England and **[insert name]** CCG**(s)** at any time to reflect changes in circumstances which may arise.

[Signature provisions]

[Schedule 1 – Delegation by CCG to joint committee – CCG functions [include if relevant]

Schedule 2 - List of Members – populate once membership agreed]

Appendix 2(ii)

NHS England

Next steps towards primary care co-commissioning: Annex F

Delegated commissioning model- draft terms of reference

November 2014

Draft terms of reference – [insert name] CCG Primary Care Commissioning Committee

Introduction

1. Simon Stevens, the Chief Executive of NHS England, announced on 1 May 2014 that NHS England was inviting CCGs to expand their role in primary care commissioning and to submit expressions of interest setting out the CCG's preference for how it would like to exercise expanded primary **medical** care commissioning functions. One option available was that NHS England would delegate the exercise of certain specified primary care commissioning functions to a CCG.

2. In accordance with its statutory powers under section 13Z of the National Health Service Act 2006 (as amended), NHS England has delegated the exercise of the functions specified in Schedule 2 to these Terms of Reference to **[insert name]** CCG. The delegation is set out in Schedule 1.

3. The CCG has established the **[insert name]** CCG Primary Care Commissioning Committee ("Committee"). The Committee will function as a corporate decision-making body for the management of the delegated functions and the exercise of the delegated powers.

4. It is a committee comprising representatives of the following organisations:
   - **[insert name]** CCG
   - **[NHS England];**
   - **[insert others as relevant].**

Statutory Framework

5. NHS England has delegated to the CCG authority to exercise the primary care commissioning functions set out in Schedule 2 in accordance with section 13Z of the NHS Act.
6. Arrangements made under section 13Z may be on such terms and conditions (including terms as to payment) as may be agreed between the Board and the CCG. **[insert details as relevant]**

7. Arrangements made under section 13Z do not affect the liability of NHS England for the exercise of any of its functions. However, the CCG acknowledges that in exercising its functions (including those delegated to it), it must comply with the statutory duties set out in Chapter A2 of the NHS Act and including:

    a) Management of conflicts of interest (section 14O);

    b) Duty to promote the NHS Constitution (section 14P);

    c) Duty to exercise its functions effectively, efficiently and economically (section 14Q);

    d) Duty as to improvement in quality of services (section 14R);

    e) Duty in relation to quality of primary medical services (section 14S);

    f) Duties as to reducing inequalities (section 14T);

    g) Duty to promote the involvement of each patient (section 14U);

    h) Duty as to patient choice (section 14V);

    i) Duty as to promoting integration (section 14Z1);

    j) Public involvement and consultation (section 14Z2).

8. The CCG will also need to specifically, in respect of the delegated functions from NHS England, exercise those set out below:

    - Duty to have regard to impact on services in certain areas (section 13O);
    - Duty as respects variation in provision of health services (section 13P).

9. The Committee is established as a committee of the **[Governing Body]** of each named CCG ***[Individual agreements should include appropriate provisions consistent with overriding governance arrangements]*** in accordance with Schedule 1A of the “NHS Act”.

10. The members acknowledge that the Committee is subject to any directions made by NHS England or by the Secretary of State.

Role of the Committee

11. The Committee has been established in accordance with the above statutory provisions to enable the members to **[for example]** make collective decisions on the review, planning and procurement of primary care services in **[insert name of area]**, under delegated authority from NHS England.

12. In performing its role the Committee will exercise its management of the functions in accordance with the agreement entered into between NHS England and **[insert name]** CCG, which will sit alongside the delegation and terms of reference.

13. The functions of the Committee are undertaken in the context of a desire to promote increased co-commissioning to increase quality, efficiency, productivity and value for money and to remove administrative barriers.

14. The role of the Committee shall be to carry out the functions relating to the commissioning of primary medical services under section 83 of the NHS Act.

15. This includes the following:

- GMS, PMS and APMS contracts (including the design of PMS and APMS contracts, monitoring of contracts, taking contractual action such as issuing branch/remedial notices, and removing a contract);

- Newly designed enhanced services (“Local Enhanced Services” and “Directed Enhanced Services”);

- Design of local incentive schemes as an alternative to the Quality Outcomes Framework (QOF);

- Decision making on whether to establish new GP practices in an area;

- Approving practice mergers; and

- Making decisions on ‘discretionary’ payment (e.g., returner/retainer schemes).

16. The CCG will also carry out the following activities:

    a) **[to be completed – examples listed below]**

b) **To plan, including needs assessment, primary [medical] care services in [insert area];**

c) **To undertake reviews of primary [medical] care services in [insert area];**

d) **To co-ordinate a common approach to the commissioning of primary care services generally;**

e) **To manage the budget for commissioning of primary [medical] care services in [insert area].**

Geographical Coverage

17. The Committee will comprise the **[insert name]** CCG **[and, if relevant, other named CCGs]**.

Membership

18. The Committee shall consist of:

[insert make-up of committee – list of members included as Schedule 3]

19. The Chair of the Committee shall be **[insert process for identification/appointment]**

20. The Vice Chair of the Committee shall be **[insert process for identification/appointment]**.

21. **[Consider whether others will be non-voting attendees. This should include a standing invite to a HealthWatch representative and a Health and Wellbeing Board representative.]**

Meetings and Voting

22. The Committee will operate in accordance with the CCG's Standing Orders. The Secretary **[amend as relevant to individual CCG arrangements]** to the

Committee will be responsible for giving notice of meetings. This will be accompanied by an agenda and supporting papers and sent to each member representative no later than **[x]** days before the date of the meeting. When the Chair of the Committee deems it necessary in light of the urgent circumstances to call a meeting at short notice, the notice period shall be such as s/he shall specify.

23. Each member of the Committee shall have one vote. The Committee shall reach decisions by a simple majority of members present, but with the Chair having a second and deciding vote, if necessary. However, the aim of the Committee will be to achieve consensus decision-making wherever possible. **[Reconsider voting procedures following a decision on the make-up of the committee].**

Quorum

[Insert provisions for quorum. This will need to be consistent with the CCG's Standing Orders and as agreed between the parties. Quoracy will also need to reflect conflicts of interest guidance]

Frequency of meetings

24. **[Insert provisions for frequency of meetings. The suggested frequency is weekly for the first month and then as agreed after that].**

25. Meetings of the Committee shall:
    a) be held in public, subject to the application of 23(b);

    b) the Committee may resolve to exclude the public from a meeting that is open to the public (whether during the whole or part of the proceedings) whenever publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of that business or of the proceedings or for any other reason permitted by the Public Bodies (Admission to Meetings) Act 1960 as amended or succeeded from time to time.

26. Members of the Committee have a collective responsibility for the operation of the Committee. They will participate in discussion, review evidence and provide

objective expert input to the best of their knowledge and ability, and endeavour to reach a collective view.

27. The Committee may delegate tasks to such individuals, sub-committees or individual members as it shall see fit, provided that any such delegations are consistent with the parties' relevant governance arrangements, are recorded in a scheme of delegation, are governed by terms of reference as appropriate and reflect appropriate arrangements for the management of conflicts of interest..

28. The Committee may call additional experts to attend meetings on an ad hoc basis to inform discussions.

29. Members of the Committee shall respect confidentiality requirements as set out in the CCG's **[Constitution or Standing Orders, amend as relevant]**.

30. The Committee will present its minutes to **[insert name of relevant area team]** of NHS England and the governing body of **[insert name]** CCG each month **[could be longer]** for information, including the minutes of any sub-committees to which responsibilities are delegated under paragraph 27 above.

31. The CCG will also comply with any reporting requirements set out in its constitution.

32. **[It is envisaged that these Terms of Reference will be reviewed from time to time, reflecting experience of the Committee in fulfilling its functions. NHS England may also issue revised model terms of reference from time to time.]**

Accountability of the Committee

[Budget and resource accountability arrangements and the decision-making scope of the Committee to be included within this section as agreed]

[The CCG will need to review its Standing Financial Instructions and Standing Orders to ensure that are sufficient in the context of delegated commissioning.]

[For the avoidance of doubt, in the event of any conflict between the terms of this Scheme of Delegation and Terms of Reference and the Standing Orders of Standing Financial Instructions of any of the members, the latter will prevail.]

[Allowance for consultation with members of CCGs / public]

Procurement of Agreed Services

[The detailed arrangements regarding procurement will be set out in the delegation agreement. Please refer to the *Next Steps in primary care co-commissioning document* for further guidance on this.]

Decisions

33. The Committee will make decisions within the bounds of its remit.

34. The decisions of the Committee shall be binding on NHS England and **[insert name]** CCG.

35. The Committee will produce an executive summary report which will be presented to **[insert name of area team]** of NHS England and the governing body of **[insert name]** of the CCG each month [could be longer period] for information.

[Signature provisions]

[Schedule 1 – Delegation-to be added when final arrangements confirmed]

[Schedule 2 – Delegated functions-to be added when final arrangements confirmed]

[Schedule 3 - List of Members-to be added when confirmed]