

Next steps towards primary care co-commissioning

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]