

Next steps towards primary care co-commissioning: Annex D

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

November 2014



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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

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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 be 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

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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]