



Policy note on joint committees for primary care co-commissioning

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Version number: 1

First published: 05/03/2015

Updated: N/A

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Classification: OFFICIAL

Publications Gateway Reference: 03159

From 1 April 2013, with the agreement of the Secretary of State for Health, we adopted the name NHS England. This name gives people a greater sense of our role, scope and ambitions. Although in statute we remain the National Health Service Commissioning Board, we operate under the name of NHS England and will be referred to as such throughout the remainder of this document/contract.

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1 Purpose of the policy note

This policy note provides further clarification on the governance arrangements for joint commissioning of primary medical services. A model terms of reference for joint committees, including a scheme of delegation, were published as part of the [Next Steps Towards Primary Care Co-commissioning](#) document. This note has been developed in response to a series of queries raised in relation to joint committees, with the aim to support CCGs and local NHS England teams to finalise their governance arrangements and terms of reference.

Regional teams should refer to this policy note and to the model terms of reference for joint committees when working with CCGs to finalise arrangements. If further assistance is required, please contact: england.co-commissioning@nhs.net.

2 Joint commissioning governance arrangements

2.1 Joint committee functions

Joint committees can encompass a range of functions including:

- Any or all of the primary care functions listed in the [Next Steps](#) document (page 18).
- Any out-of-hospital CCG functions, if agreed.

The functions should be agreed between CCGs and local NHS England teams and included within the joint committee's terms of reference.

2.2 Membership and voting

In joint commissioning arrangements, individual CCGs and NHS England are accountable for meeting their own statutory duties, for instance in relation to quality, financial resources, equality, health inequalities and public participation.

For joint committee arrangements to be successful they require a commitment from all parties around the table to work collaboratively and to reach decisions through discussion and agreement. Where exceptionally agreement cannot be reached, the following arrangements would apply, to enable CCGs and NHS England to meet their respective statutory duties:

- a. NHS England and CCGs should have an equal vote in respect of NHS England's functions. This could be made possible through a weighted vote arrangement. For example:
 - In a joint committee with five CCGs and NHS England, each CCG could have one vote and NHS England five votes.
 - In a joint committee with one CCG and NHS England, NHS England and the CCG should have an equal number of votes.
- b. Where there is a joint committee between NHS England and more than one CCG, there may be an occasion where a decision needs to be taken in relation to NHS England's functions and one CCG present. In this instance, the decision should be made between the individual CCG and NHS England, with the other CCG members abstaining from making the decision in question.
- c. On the rare occasion that there is a need for a casting vote in decision-making:

- CCG members of the joint committee should have a casting vote on any decision pertaining to one of their statutory functions. This is because the CCG has ultimate accountability for the delivery of its functions.

Likewise, NHS England members will have the casting vote for any decision pertaining to one of NHS England's statutory functions. This is because NHS England has ultimate accountability for the delivery of its own functions. Some joint committees have agreed veto arrangements and in the interest of providing absolute clarity, a casting vote would be stronger than any veto arrangements. Joint committees should always strive to reach consensus and we would hope casting votes are rarely required.

- d. Subject to the reserved functions above, all joint committee members are able to vote on all functions included within the joint committee's terms of reference. This means that CCG members of the joint committee are able to vote on the primary care (general medical) functions that NHS England have that are included in the scope of the joint committee, except where they relate to an individual CCG.
- e. CCGs delegating their own functions into a joint committee with NHS England and more than one CCG should consider how decisions will be taken in the context of a collective decision-making body.

2.3 Chair and Vice Chair

All joint committees must have regard to the **conflicts of interest guidance** published in December 2014. Of particular note is the need to have a lay chair and lay vice chair, where lay is intended to mean non-clinical (i.e., not just non-GP) and non-executive (e.g. a CCG Chief Finance Officer could not serve as the chair or vice-chair).

It is important to ensure appropriate arrangements are made locally to manage potential conflicts of interest under these joint arrangements. As part of these arrangements, the role of the lay members on the joint committee is critically important. To ensure appropriate oversight and assurance of the joint committee the CCG Audit Committee Chair should not hold the chair of the joint committee. They can, however, take the other lay member role on the committee.

2.4 Committees in common

We want to support CCGs to work collaboratively to commission primary medical services. However, for legal reasons it is not possible for CCGs and NHS England to form “committees-in-common” to deliver joint commissioning, as functions cannot be delegated into “committees-in-common”.

However, CCGs could implement a joint “committees-in-common” approach. NHS England and each CCG would need to form a joint committee first. These joint committees could then meet as “committees-in-common”, enabling them to make decisions in a joined up way, simultaneously, although the final decision would need to be taken at an individual joint committee level. This would enable a group of CCGs to effectively work together across a larger geographical footprint.

2.5 Section 75

Any current section 75 arrangements between CCGs and local authorities relate to how some existing functions are exercised by those bodies. Therefore, they are outside the co-commissioning arrangements. Any changes to section 75 NHS Act arrangements will be specified in regulations by the Secretary of State.

2.6 Approvals process for joint commissioning

We want to support CCGs to take forward joint commissioning arrangements. For confirmation, any CCG which is not currently meeting business rules will not be automatically excluded from joint commissioning arrangements.

The approvals process will take into account the overall risk associated with joint commissioning, but as the risk will be lower for joint arrangements than delegated arrangements, submissions will be given proportionate consideration.