

BOARD PAPER - NHS ENGLAND

Title: Revisions to the Board Committee structure and Corporate Governance Framework

From: Karen Wheeler, National Director: Transformation and Corporate Operations

Purpose of paper:

The Board is asked to agree proposed revisions to its Committee structure, supported by enabling amendments to the Corporate Governance Framework.

Actions required by the Board:

The Board is asked to agree:

- the new Committee structure;
- proposals for amendments to the Standing Orders, Scheme of Delegation and Standing Financial Instructions;
- that the transition to the new arrangements should take place forthwith.

Purpose and context

1. At the last Board meeting we agreed some changes to Board Committee structure in principle, but required the proposals to be worked up into specific changes to terms of reference and also accompanying changes to the Corporate Governance Framework (Standing Orders, Scheme of Delegation and Standing Financial Instructions).
2. These have now been completed and are coming to the Board for agreement so they can be implemented, subject to Board approval, immediately.

Background

3. This report brings the recommendations from a review of governance and Board committees, which was established to learn from the first year of NHS England's operation, and has been informed by National Director and Non-Executive Director (NED) input, and Internal Audit. It is also informed by the Board Effectiveness Review undertaken by Margaret Exley.
4. The review concluded
 - There should be fewer committees. One Board Committee can be stopped and its function managed by the executive.
 - The remit and purpose of the committees needed to be much more clearly based on delegated functions of the Board.
 - All committees needed tighter terms of reference, to avoid overlap with executive functions or duplication with other committees.
5. The proposed new structure incorporates the following suggestions discussed by the Board at its September meeting (part ii):
 - Retention of an Audit and Risk Assurance Committee;
 - Extending the Remuneration Committee, to become the Strategic Human Resources and Remuneration Committee, with a wider strategic function to include oversight of Organisational Development and Board development, talent management and succession planning;
 - Stopping the Assurance and Development Committee, Directly Commissioned Services Committee, Commissioning Support Committee and Quality and Clinical Risk Committee, these to be replaced by:
 - Establishment of a new Commissioning Committee.
 - Establishment of a new Specialised Services Committee;

- Replacement of the Finance and Investment Committee with an Investment Committee with reframed terms of reference focused on review of significant business cases for Board approval;
 - Efficiency Controls work to be undertaken at executive level with assurance provided by a formally-nominated person to the Audit and Risk Assurance Committee.
6. The proposed Committee structure is described in more detail in the Committee Handbook at Appendix A which describes the terms of reference and proposed membership for each Committee. Each Committee has an identified lead National Director, responsible for working with the Committee Chair to ensure their work programme and terms of reference are planned and delivered effectively. **The Board is asked to agree the terms of reference and membership of the new Committee structure.**
7. As part of the implementation of the proposed streamlined Committee structure, it is suggested that:
- Each Committee should prepare and review regularly (at least every six months) its rolling plan covering the coming 6-12 months, these plans will be shared with the whole Board;
 - Papers for each Committee could be made electronically available to all Board members at the same time that they are distributed to Committee members, enabling Board members to have a wider view of the business flowing across the organisation and to seek more information on specific items where required;
 - Dedicated time should be reserved to enable feedback from Committee Chairs, including identification of cross-cutting themes and issues and consideration of required actions arising.

Revisions to the Corporate Governance Framework

8. To support the introduction of new Committee arrangements, a small number of enabling revisions are proposed to the Corporate Governance Framework, as described below.

Standing Orders

9. The proposed changes to the Board Committee structure comply with the existing Standing Orders (SOs), and no amendments are needed in this regard. However, minor amendments to SOs will be required to follow consultation on the Organisational Alignment and Capability review (to reflect proposed new structures within the Commissioning Operations directorate). **The Board is asked to agree that these changes to SOs should be**

brought to the December Audit and Risk Assurance Committee for approval.

Standing Financial Instructions (SFIs)

10. Revisions are required to support the introduction of the new Committee structure, in particular ensuring approval limits are fit for purpose, allowing appropriate delegation of financial decision making to the Investment Committee and, where appropriate, to executive level. The resulting proposed changes to the financial scheme of delegation within the SFIs are identified in Appendix B. The key limits (which also include amendments to reflect the different risk associated with investments within the NHS and those with third party suppliers) ***which the Board is asked to agree are:***

Capital¹:	<ul style="list-style-type: none">• Capital investment proposals valued up to £15m subject to approval by the NHS England Chief Financial Officer or Chief Executive;• Capital investment proposals valued between £15m and £35m to be approved at the Investment Committee;• Capital investment proposals over £35m to be approved by the NHS England Board (this ensures alignment with DH assurance processes), informed by assurance and recommendation from the Investment Committee.
Non Clinical Non Pay² <ul style="list-style-type: none">• <i>NHS suppliers</i>	<ul style="list-style-type: none">• Orders up to £5m per annum will be approved by the NHS England Chief Finance Officer or Chief Executive;• Orders which are valued between £5m and £15m per annum will be approved at Investment Committee;• Orders or contracts valued above £15m per annum will be approved at the NHS England Board.
Non Clinical Non Pay <ul style="list-style-type: none">• <i>Third party suppliers</i>	<ul style="list-style-type: none">• Orders up to £3m per annum will be approved by the NHS England Chief Finance Officer or Chief Executive;• Orders which are valued between £3m and £10m per annum will be approved at Investment Committee;• Orders or contracts valued above £10m per annum would go to the NHS England Board.

11. Other categories described in SFIs such as clinical services with NHS and non NHS providers, non-clinical consultancy, professional services, non-clinical IT, non-clinical insurance do not require an immediate amendment to align with the proposed Committee structure and will remain unchanged at this stage. These areas will be reviewed as part of the Procurement

¹ Further work is required to review the approval limits for National and Regional directors and other VSM post-holders below these limits. This will be completed alongside the wider review of SFIs through the Procurement Improvement Programme.

² Excluding consultancy, professional services, etc

Improvement Programme and, after conclusion of that work, a wider review of SFIs will be undertaken to ensure all provisions are fit for purpose and allow the efficient delivery of NHS England's objectives whilst maintaining robust governance and stewardship of public funds.

Schedule of Matters Reserved to the Board (Scheme of Delegation)

12. The proposed changes to the Board Committee structure comply with the existing Schedule of Matters Reserved to the Board (Scheme of Delegation (SD)). However, following review, the **Board is asked to agree the following immediate amendments and clarifications to the SD:**

- Updating of Committee names to reflect the proposed new structure within this paper;
- Updating of section 24 on *Functions, Duties and Powers Delegated by the Board to Committees* to reflect the new structure, with formal delegations requiring specific incorporation with the SD as follows:

Committee	Functions, duties and powers delegated by the Board
Audit and Risk Assurance Committee	<ul style="list-style-type: none"> • The authority to require an Officer to attend a meeting and provide information and/or explanation as required by the Committee; and • The authority to obtain outside legal or other independent professional advice and to secure the attendance of outsiders with relevant experience if it considers this necessary.
Commissioning Committee	<ul style="list-style-type: none"> • The authority to make decisions on the exercise of statutory powers in respect of Clinical Commissioning Groups, including making decisions on intervention.
Investment Committee	<ul style="list-style-type: none"> • The authority to approve business cases and expenditure on activities related to NHS England functions in the context of NHS England's agreed budget and within the delegated limits approved by the Board (as set out within the SFIs); • The authority to agree which business cases meet criteria for agreement at officer level (subject to the required assurance and compliance with SFIs); and • The authority to make or authorise how decisions over changes to directly commissioned services which impact on how they are delivered to patients are made.
Strategic Human Resources and Remuneration Committee	<ul style="list-style-type: none"> • The authority to approve the remuneration and terms of service for the Chief Executive and National Directors.

- Updating of job titles referenced within the SD to reflect the new structure of the organisation, following the creation of the Commissioning Strategy and Commissioning Operations national directorates;
- Addition of delegations related to further statutory obligations and recent legislation not covered by the existing Scheme, for example the Care Act 2014. ***The Board is asked to agree resulting additions to the SD identified in Appendix C.***

The SD will require further amendment to support implementation of the Organisational Alignment and Capability review (as for SOs above). ***The Board is asked to agree that these required changes to the SD should be prepared for approval at the December meeting of the Audit and Risk Assurance Committee***, enabling moves towards operation of the new structure from November 2014.

Making the most of Non-Executive skills and expertise

13. Our NEDs are essential to our governance and development, and play a key role in the Board and its committees. But in addition to that formal remit, they bring a wide range of valuable skill and expertise.
14. There are significant benefits from using NEDs in an array of more informal roles in addition to their formal roles. These might include involvement in strategic thinking as well as supporting, challenging and sponsoring individual areas of work aligned to their skills and expertise. This kind of ongoing informal input will help NEDs to provide the Board with greater assurance through their personal engagement with the business. To facilitate enhanced involvement, ***the executive will work with the Chairman and NEDs to align NEDs to key work-streams based upon their knowledge and experience.***

Executive assurance routes

15. In order to enable the Board and its proposed Committees to fulfil their duties and responsibilities, they will be supported by robust executive arrangements to manage effectively the work of the organisation. As part of the introduction of the new arrangements, the National Director: Transformation and Corporate Operations will be working up, with executive colleagues a map of the executive groups, committees and assurance processes which exist to manage the business and assure the Board. This work will ensure there is a coordinated and comprehensive approach to assurance and risk management processes, and will support the preparation of a robust Annual Governance Statement. ***It is proposed that the map of assurance and risk management processes identified by the Governance working group should be considered by the Audit and Risk Assurance Committee.***

Timescales

16. Subject to Board agreement, moves to the new structure will be made from November 2014.
17. Where existing Committees have confirmed dates during November or December 2014, the best use of these dates will be considered on an individual basis, to help with transition to the new arrangements. These discussions will be held between the Board secretariat and the respective Committee Chairmen and sponsor National Directors.

Recommendation

18. The Board is asked to agree:
 - the new Committee structure;
 - proposals for amendments to the Standing Orders, Scheme of Delegation and Standing Financial Instructions;
 - that the transition to the new arrangements should take place forthwith.

Karen Wheeler
National Director: Transformation and Corporate Operations



NHS England Committee Handbook

Purpose

1. This handbook sets out the Board's revised committee structure following a review undertaken in 2014, with terms of reference, decision-making powers, membership and, where available, planned dates of future meetings. It does not include committees which are purely executive, nor temporary assignments such as task and finish groups. The handbook will be updated annually by the Governance team; it will be published on NHS England's internet site.

The Board

2. NHS England's Board has the overall function and duty of establishing and maintaining the strategic direction of the organisation. It agrees the vision, strategy and policy, and agrees a forward plan with clear objectives to deliver the organisation's purpose. It is accountable for governing the organisation and holds the Executive to account for the delivery of strategy. It must be risk aware and receive assurance about progress against aims and targets.
3. The Board provides leadership in developing a healthy culture for the organisation and ensuring this is modelled in Board behaviour and decision making. It ensures decisions are made in the best interest of patients and the public. It receives, and satisfies itself on the integrity of accurate, timely and clear financial, performance and quality intelligence.
4. The Board remains responsible for all of its functions under the NHS Act, including those it delegates, and should receive information about the exercise of delegated functions to assure it and enable it to maintain a monitoring role.

Matters reserved to the Board (Scheme of Delegation)

5. NHS England has a published schedule of matters reserved to the Board ([link](#)) which cannot be delegated for decision either to Board Committees or the Executive team (who can, however, make recommendations for Board decision on these matters). The range of statutory duties reserved to the Board includes the following (not an exhaustive list):
 - ensure compliance with all relevant regulations;
 - ensure compliance with the Mandate from the Secretary of State;
 - comply with Regulations which may be issued by the Secretary of State to commission specified services;
 - publish a business plan;
 - publish an annual report;
 - make arrangements to secure public involvement and consultation by the Board in relation to the exercise of its function to make commissioning arrangements;
 - exercise the power to delegate functions to a Special Health Authority, CCG or such other body as may be prescribed;
 - ensure due regard is given to the public sector equality duty in all decision making and make arrangements to implement a system to deliver analysis for the purposes of the duty;
 - exercise duties to co-operate, including with Northern Ireland Ministers, Scottish Ministers, etc.

The role of NHS England’s Board Committees

6. The formal powers of NHS England are vested in the Board but the NHS Code of Accountability allows the Board to delegate some of its business to Board Committees and to the executive. Each Committee is an adjunct of the Board, and its core purpose is to conduct business, typically a strategic oversight role plus transacting decisions, on behalf of the Board.
7. The Board functions include setting standards, agreeing policy, setting strategic direction, ensuring NHS funds are allocated to deliver required outcomes through commission, and obtaining assurance on delivery. The new Committee structure is designed to support the Board in fulfilling these core functions. The design specifically aims to minimise duplication or overlap, and does not cover work that should be undertaken at executive level.

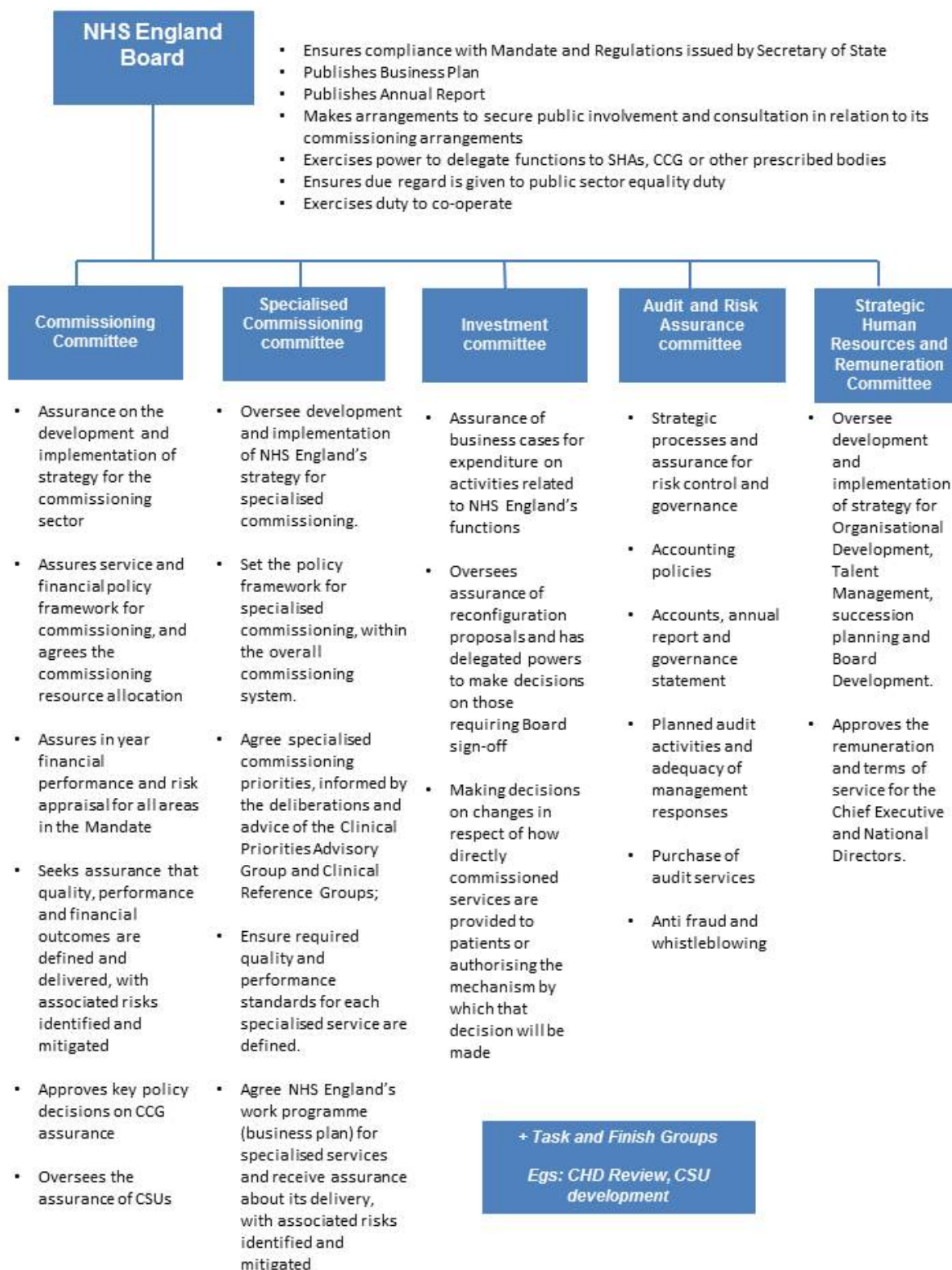
Committee summary

8. The following table briefly describes the roles of each of the committees reporting to the Board:

Audit and Risk Assurance Committee	Provides an independent and objective view of internal control including overview of internal and external audit services, governance and risk management and financial reporting.
Commissioning Committee	Advises the Board on development and implementation of strategy for the commissioning sector, agrees commissioning priorities and resource allocation, and receives assurance that performance, quality and financial outcomes are delivered. Oversees assurance and development of the commissioning system.
Specialised Commissioned Committee	Advises the Board on development and implementation of strategy for specialised commissioning, agreeing specialised commissioning priorities and work programmes, and receiving assurance that these are delivered. This committee is established now with a critical role in the next 2 years as new arrangements for specialised commission are implemented and embedded. Thereafter, it will be reviewed.
Investment Committee	Receives assurance and agrees recommendations on business cases for activities related to NHS England’s functions, on behalf of the Board. Oversees the assurance of reconfigurations and has delegated powers to make decisions on those requiring Board sign-off.
Strategic HR and Remuneration Committee	Advises the Board on Board and organisational development. Approves remuneration and terms of service for the Chief Executive and National Directors.

9. To provide coherence and connection between the committees and the Board business, the Board Chair will organise regular informal discussions with the chairs of each of the committees, individually and as a group. This will ensure shared understanding across the range of business, enable agendas to be coordinated, cross referencing of major issues, and support clear lines of accountability back to the Board. One area of specific focus for this will be the Specialised Commissioning Committee, whose business will need to be closely coordinated with the Commissioning Committee, to ensure there is no duplication.

The Committee structure



Terms of reference

10. The following pages set out the terms of reference for each of NHS England's Board committees and sub-committees, covering purpose of the committee, duties, membership.

11. Some general principles which apply to all committees are:

- Chairs will agree and set agendas, and approve papers in consultation with the lead Director and secretary, who will provide support, manage logistics, and arrange for appropriate attendees to be invited for relevant parts of the meeting.
- A written report will go to the Board, together with an annual report of performance against objectives. The minutes of all committees should be made accessible to Board members through a URL.
- In all cases, meetings will be quorate if two of the Non-Executive Committee members are present.
- One aspect which applies to all committees relates to urgent actions. In the exceptional circumstances that exercise of statutory powers is required outside of the meeting cycle. This should be agreed with the involvement of the Chair and Chief Executive. Any such decision must be reported to the next meeting of the Committee for formal ratification.

Audit and Risk Assurance committee

Purpose

The Audit & Risk Assurance Committee provides an independent and objective view of internal control. The Committee is authorised to take decisions on behalf of NHS England on matters relevant to the purpose of the Committee (but not reserved to the Board) and to obtain outside legal or other independent professional advice and to secure attendance of outsiders with relevant experience and expertise if they consider this to be necessary. The Committee is authorised to co-opt additional members for a period not exceeding a year to provide specialist skills, knowledge and experience.

Duties

The Committee will advise the Board and Accounting Officer on:

- The strategic processes for risk, control and governance and the Governance Statement;
- The accounting policies, the accounts, and the annual report of NHS England, including the process for review of the accounts prior to submission for audit, levels of error identified, and management's letter of representation to the external auditors;
- The planned activity and results of both internal and external audit;
- Adequacy of management response to issues identified by audit activity, including external audit's management letter;
- Assurances relating to the management of risk and corporate governance requirements for NHS England;
- Proposals for tendering for Internal Audit services or for purchase of non-audit services from contractors who provide audit services; and,
- Anti-fraud policies, whistle-blowing processes (including in relation to inappropriate behavior), and arrangements for special investigations.

The Committee will also periodically review its own effectiveness and report the results of that review to the Board.

Note: NHS England, and thus the Committee, fulfils a dual role with regard to the activities of NHS England itself and its oversight of the wider NHS commissioning system. While the governance of individual CCGs is a matter for their respective Boards and Audit Committees, the NHS England Audit & Risk Assurance Committee will seek assurance that NHS England's oversight and management of the commissioning system is effective in securing delivery of the overall NHS strategy and in eliminating or mitigating strategic, financial and operational risks

Governance, Risk Management and Internal Control

- The Committee will review the establishment and maintenance of an effective system of governance, risk management and internal control, covering all of NHS England's activities (including any hosted bodies) and supporting achievement of NHS England's objectives
- In particular, the Committee will review the adequacy and effectiveness of:
 - All risk and control related disclosure statements (in particular the annual governance statement), together with the accompanying Head of Internal Audit Opinion, external audit opinion or other appropriate independent assurances, prior to endorsement by the Board, where necessary;

- The underlying assurance processes that indicate the degree of achievement of corporate objectives, the effectiveness of the management of principal risks and the appropriateness of the above disclosure documents;
 - The policies for ensuring compliance with relevant regulatory, legal and code of conduct requirements and related reporting and self-certification; and,
 - The policies and procedures for all work related to fraud and corruption as set out in the Secretary of State Directions and as required by the NHS Counter Fraud and Security Management Service.
- The Committee will primarily utilise work of internal audit, external audit and other assurance functions but will not limit itself to these sources. It will also seek reports and assurances from Officers as appropriate, concentrating on the over-arching systems of governance, risk management and internal control, together with indicators of their effectiveness.
 - This will be evidenced through the Committee's use of NHS England's Board Assurance Framework to guide its work and that of the audit and assurance functions that report to it.

Internal Audit

- The Committee will ensure there is an effective internal audit function that meets mandatory Government Internal Audit Standards and provides appropriate independent assurance on the full range of strategic, financial and operational risks to the Audit Committee, Chief Executive and Board.
- This will be achieved by:
 - Consideration of the provision of the internal audit service, the cost of the audit and any questions of resignation and dismissal;
 - Review and approval of the internal audit strategy, operational plan and more detailed programme of work ensuring that this is consistent with the audit needs of NHS England as identified in the Board Assurance Framework;
 - Considering the major findings of internal audit work (and management's response), and ensuring co-ordination between the internal and external auditors to optimise audit resources;
 - Ensuring that the internal audit function is adequately resourced and has appropriate standing within NHS England; and
 - An annual review of the effectiveness of internal audit.

External Audit

- The Committee will review the work and findings of the external auditors and consider the implications of and management's response to their work.
- This will be achieved by:
 - Consideration of the appointment and performance of the external auditors, as far as the rules governing their appointment permit;
 - Discussion and agreement with the external auditors, before the audit commences, of the nature and scope of the audit as set out in the annual plan, and ensuring co-ordination, as appropriate, with other external auditors operating within the NHS;
 - Discussion with the external auditors of their evaluation of audit risks, their assessment of NHS England and the associated impact on the audit fee; and
 - Review of all external audit reports, including the report to those charged with governance, agreement of the annual audit letter before submission to the Board, and any work undertaken outside the annual audit plan, together with the appropriateness of management responses.

Other Assurance Functions

- The Committee will review findings of other significant assurance functions, both internal and external to NHS England, and consider the implications for the governance of NHS England. These will include, but will not be limited to, any reviews by the Department of Health.
- In addition, the Committee will review the work of other Committees within NHS England, whose work can provide relevant assurance to the Committee's own scope of work.
- The Committee will review reports and assurances from Officers on the overall Corporate Performance of NHS England, and the implementation of NHS England's agreed policies and standards.

Counter Fraud and Whistleblowing

- The Committee will satisfy itself that NHS England has adequate arrangements in place for countering fraud and will review the outcomes of counter fraud work.
- The committee will review arrangements by which staff may, in confidence, raise concerns about the possible improprieties in matters of financial reporting or other matters.

Management

- The Committee will request and review reports and positive assurances from Officers on the overall arrangements for governance, risk management and internal control.
- The Committee may also request specific reports from individual functions within NHS England as they may be appropriate to the overall arrangements.
- The Committee will receive assurance from a nominated individual on compliance with Efficiency Controls requirements.

Financial Reporting

- The Committee will monitor the integrity of the financial statements of NHS England and any formal announcements relating to NHS England's financial performance.
- The Committee should ensure that the systems for financial reporting to the Board, including those of budgetary control, are subject to review both as to the completeness, accuracy and fitness for purpose of the information provided to the Board and with regard to the effectiveness of the Board's consideration of this information.
- The Committee will review the annual report and accounts before submission to the Board, focussing particularly on:
 - The wording in the annual governance statement and other disclosures relevant to the terms of reference of the Committee;
 - Changes in, and compliance with, accounting policies, practices and estimation techniques;
 - Unadjusted mis-statements in the financial statements;
 - Significant judgments in preparation of the financial statements;
 - Significant adjustments resulting from the audit;
 - Letter of representation; and
 - Qualitative aspects of financial reporting.

Members

- Chair – a Non-Executive Director with an appropriate financial qualification (in the absence of the Chair another Non-executive director who is a member of the Committee).
- At least two other Non-Executive Directors.

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Commissioning committee¹

Purpose

Advises the Board on development and implementation of strategy for the commissioning sector, agrees commissioning priorities and resource allocation, and receives assurance that performance, quality and financial outcomes are delivered. Oversees assurance and development of the commissioning system.

Duties

Overall duties

- Oversee development and implementation of strategy for the commissioning sector, including progress towards place based and co-commissioning;
- Set the service and financial policy framework for commissioning, to ensure robust planning is in place so services are patient focused and clinically led, and managed within budget;
- Review and agree changes to individual elements of the financial policy framework for the commissioning sector (for example, allocations or Payments by Results policy);
- Agree in-year commissioning resource prioritisation;
- Assure in-year financial performance and risk appraisal including the commissioning sector, central running, programme costs and reserves;
- Seek assurance there are robust systems and processes in place for monitoring and assuring the performance and quality of directly commissioned services, engaging with patients and the public as required, and driving for continuous quality improvement;
- Receive assurance that required quality, performance and financial outcomes are delivered with associated risks identified and mitigated;
- Oversight of national agreements with other parties.

Duties in respect of Clinical Commissioning Groups (CCGs)

- Approve key policy decisions on CCG assurance with due regard to appropriate engagement with key stakeholders;
- Assure that NHS England officers deliver a CCG assurance process, which ensures the expected outcomes in line with statutory obligations, including meeting their statutory duties with regards to quality, supported by robust systems and processes to assure themselves of the quality of the services they have commissioned and that they meet the requirements of patients and the public;
- Consider and make decisions to approve or reject recommendations for the exercise of statutory powers, including making decisions on intervention.

Duties in respect of Commissioning Support Units (CSUs)

- Oversee assurance of CSUs, ensuring that they are fit for purpose to deliver high quality services, and able to develop independence in line with the board's strategy.

¹ In respect of NHS England's duties related to directly commissioned services, this committee covers all directly commissioned services including Specialised Services.

Members

- Three Non-Executive Directors, one of whom will be the chair of the committee and one with significant financial background/expertise
- Chief Executive
- National Medical Director OR Chief Nursing Officer
- National Director: Commissioning Strategy
- National Director; Commissioning Operations
- Chief Financial Officer or designated deputy
- National Director: Patients and Information

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Specialised Commissioning committee

Purpose

Advises the Board on development and implementation of strategy for specialised commissioning, agreeing specialised commissioning priorities and work programmes, and receiving assurance that these are delivered.

This committee has an important role as new arrangements are put in place for specialised commissioning, to ensure there is focus and oversight of this important area. It will be reviewed after one year.

Duties

Overall duties

- Oversee development and implementation of NHS England's strategy for specialised commissioning, especially as the new arrangements are implemented;
- Set the policy framework for specialised commissioning, within the overall commissioning system, ensuring robust planning is in place so services are patient focused, clinically led, and managed within budget;
- Agree specialised commissioning priorities, informed by the deliberations and advice of the Clinical Priorities Advisory Group and Clinical Reference Groups;
- Ensure required quality and performance standards for each specialised service are defined, with robust systems and processes in place for monitoring and assuring the performance and quality of specialised services, engaging with patients and the public as required, and driving for continuous quality improvement;
- Agree NHS England's work programme (business plan) for specialised services and receive assurance about its delivery, with associated risks identified and mitigated.

Members

- Two Non-executive Directors, one of whom will be the Chair of the Committee
- Chief Executive
- National Medical Director
- National Director: Commissioning Strategy
- National Director: Commissioning Operations
- Chief Financial Officer or designated deputy
- National Director: Patients and Information

Investment committee

Purpose

Receives assurance and agrees recommendations on business cases for activities related to NHS England's functions, on behalf of the Board. Oversees the assurance of reconfigurations and has delegated powers to make decisions on those requiring Board sign-off. The Committee has the power to agree which business cases (including for reconfigurations) meet criteria for agreement at officer level (subject to the required assurance and compliance with SFIs), and will be supported in this task by advice from the Service Reconfiguration Oversight Group (SROG).

Approves expenditure on activities relating to NHS England functions, as set out in the NHS Act 2006 (as amended) and the Health and Social Care Act 2012, within limits set in Standing Financial Instructions in the categories described within the duties below:

To approve NHS England financial policies and advise the Board on financial matters reserved to it (e.g. pricing and allocations).

Duties

- Reviewing and assessing the business cases for:
 - Capital expenditure (including grants) by or on behalf of NHS England;
 - Legally enforceable commissioning commitments which underpin the revenue implications of a third party investing capital, or entering into a lease commitment;
 - Service reconfiguration proposals;
 - NHS England income generation;
 - NHS England leases or IM&T commitments in the nature of managed service agreements, revenue or capital;
 - NHS England expenditure to be financed by borrowing, however sourced.
- Receiving assurance that business cases are robustly assessed for their service, quality and financial implications, including compliance with applicable national guidance, legislation and best practice;
- Making decisions on changes in respect of how directly commissioned services are provided to patients or authorising the mechanism by which that decision will be made;
- Receiving assurance on all business cases (as above) that require DH or Cabinet Office approval, prior to their submission to the Department of Health;
- Approving business cases (as above) on behalf of the Board in the context of NHS England's agreed budget and within the delegated limits approved by the Board, or recommending business cases above delegated limits to the Board for approval;
- Reviewing the future pipeline of reconfiguration business cases anticipated by NHS England, receiving regular information from the SROG on these business cases, agreeing proposed assurance plans from the SROG, and overseeing their delivery;
- Agreeing which cases can be approved at officer level, subject to compliance with Standing Financial Instructions and the Scheme of Delegation, the agreed assurance plan, and clearance from the Chief Financial Officer.

Members

- Chair – Non-Executive Director
- At least one other Non-Executive Director
- Chief Financial Officer or designated deputy
- National Director: Commissioning Strategy
- Director of NHS Operations and Delivery
- Regional Director (nominee)

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Strategic Human Resources and Remuneration Committee

Purpose

To provide the Board with assurance and oversight of all aspects of strategic people management and organisational development, including the approval of the appointment, remuneration and terms of service for the Chief Executive and National Directors.

Duties

- Oversee development and implementation of NHS England's People and Organisational Development Strategy, including specific responsibilities for: Board development, talent management and development of the senior leadership team; succession planning; employee engagement, organisational health and culture change issues.
- Approves the appointment, remuneration, terms of service and severance arrangements for the Chief Executive and National Directors, in accordance with delegated responsibilities and governance requirements set by the Department of Health.

Members

- Chair – NHS England Chairman
- Two Non-Executive Directors
- Chief Executive
- National Director - Transformation and Corporate Operations

In the event that business arises directly affecting the executive members of the committee, the Chair will apply the normal rules of conflict of interest and exclusion from the meeting as appropriate.

Summary of Committee membership [NED membership to be confirmed]

	Audit and Risk Assurance Committee	Commissioning Committee	Specialised Commissioning Committee	Investment Committee	Strategic HR and Remuneration Committee
Sir Malcolm Grant Chairman					Chair
Simon Stevens Chief Executive		✓	✓		✓
Lord Victor Adebawale Non-executive director					
Sir John Burn Non-Executive Director					
Margaret Casely-Hayford Non-executive director					
Ciaran Devane Non-executive director					
Dame Moira Gibb Non-executive director	✓				
Noel Gordon Non-executive director	✓				
David Roberts Non-executive director	✓				
Ed Smith Non-executive director and Deputy Chairman	Chair				
Paul Baumann Chief Financial Officer	Lead	✓	✓	Lead	
Jane Cummings Chief Nursing Officer		✓			
Sir Bruce Keogh Chief Medical Officer		✓	✓		
Dame Barbara Hakin National Director, Commissioning Operations		Lead	Lead		
Tim Kelsey National Director, Patients and Information		✓	✓		
Karen Wheeler National Director, Transformation and Corporate Operations					Lead
Ian Dodge National Director, Commissioning Strategy		✓	✓	✓	

✓ = Committee Member

Lead = lead National Director with responsibility for supporting the Committee Chair to successfully deliver the role as defined within the terms of reference

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Appendix B – Proposed amendments to the financial approvals limits

Category	Current SFIs	Proposed SFIs	Comments
Clinical services	<ul style="list-style-type: none"> £500m or above -NHS England CE or CFO 	<ul style="list-style-type: none"> No proposed changes 	These limits will be reviewed as part of the Procurement Improvement Programme(PIP)
	<ul style="list-style-type: none"> Up to £500m - Area Director and Area DoF, or CSU equivalent 		
Clinical and non-clinical property managed by NHS PS and CHP	<ul style="list-style-type: none"> Agreed annual budgets through planning cycle. Relevant director with budget responsibility in area, region or national 		
Clinical services commitments against 2% NR funds	<ul style="list-style-type: none"> Agreed business case process 	<ul style="list-style-type: none"> No proposed changes 	These limits will be reviewed as part of the Procurement Improvement Programme(PIP)
Non Clinical Non Pay	NB – in current SFIs the delegations below are total contract value: <ul style="list-style-type: none"> Over £1m - Board Up to £1m - NHSE CFO or CE Up to £200k - National/Regional/Area/CSU Director Up to £100k - other VSMs Up to £50k - budget holders (9 and 8d) Up to £10k - other budget holders 	NB – in proposed SFIs the delegations below are per annum <p style="text-align: center;"><u>NHS Bodies</u></p> <ul style="list-style-type: none"> Over £15m - Board £5m - £15m Investment Committee Up to £5m NHSE CFO or CO Others as current SFIs <p style="text-align: center;"><u>Third Parties</u></p> <ul style="list-style-type: none"> Over £10m - Board £3m - £10m Investment Committee Up to £3m NHSE CFO or CO Others as current SFIs 	Full schedule of approvals to be reviewed as part of Procurement Improvement Programme

Appendix B – Proposed amendments to the financial approvals limits

Category	Current SFIs	Proposed SFIs	Comments
Non- clinical consultancy, professional services, temporary staff	<ul style="list-style-type: none"> • Subject to DH efficiency controls 	<ul style="list-style-type: none"> • No proposed changes 	
Non-clinical IT (revenue and capital)	<ul style="list-style-type: none"> • Any IT spend with whole life over £5m and any ICT spend over £1m that support admin requires Cabinet Office (ERG) approval • If between £100k and above should Go to DH E&IS 	<ul style="list-style-type: none"> • No proposed changes 	
Non-clinical insurance	<ul style="list-style-type: none"> • Not normally commissioned, with any exception cleared through NHSE CFO in accordance with HM Treasury rules 	<ul style="list-style-type: none"> • No proposed changes 	
Capital commitments	<ul style="list-style-type: none"> • £10m and above - Board • £3m to £10m - FIC • Up to £3m - NHSE CFO and CE • Up to £1m- CSU MD or NHSE CFO 	<ul style="list-style-type: none"> • £35m and above - Board • £15m to £35m - Investment Committee • Up to £15m - NHSE CFO and CE • Others as per current SFIs 	Investment committee to assure and recommend cases above £35m to Board for final approval.

Appendix C – Proposed additions to NHS England’s Schedule of Matters Reserved to the Board and Scheme of Delegation

The following additional delegations are proposed for incorporation into a revised Scheme of Delegation, and should take immediate effect following Board approval:

Care Act 2014

Section	Proposed delegation	Functions, duties and powers
6	Designated Employees	<p>General reciprocal duty to cooperate with local authorities in</p> <ul style="list-style-type: none"> (a) their respective functions relating to adults with needs for care and support, and (b) their respective functions relating to carers. <p>These duties are to be performed in particular for the purposes of:</p> <ul style="list-style-type: none"> (a) promoting the well-being of adults with needs for care and support and of carers in the [local] authority's area, (b) improving the quality of care and support for adults and support for carers provided in the authority's area (including the outcomes that are achieved from such provision), (c) smoothing the transition to the system provided for by this Part for persons in relation to whom functions under sections 58 to 65 are exercisable, (d) protecting adults with needs for care and support who are experiencing, or are at risk of, abuse or neglect, and (e) identifying lessons to be learned from cases where adults with needs for care and support have experienced serious abuse or neglect and applying those lessons to future cases.

Appendix C – Proposed additions to NHS England’s Schedule of Matters Reserved to the Board and Scheme of Delegation

Section	Proposed delegation	Functions, duties and powers
7	Designated Employees	Duty to comply with requests for cooperation, unless doing so would be incompatible with NHS CB’s own duties or the exercise of its functions. Duty to give written reasons for any refusal. Power to request cooperation of local authorities (unless doing so would be incompatible with the local authority’s own duties or the exercise of its functions).
22	Designated Employees	Power to authorise local authority to arrange the provision of accommodation with the provision of nursing care by a registered nurse, where NHS CB otherwise would be responsible for arranging the accommodation with nursing care.
121 / 223GA NHS Act 2006	Designated Employees	Power to direct a clinical commissioning group that an amount (a “designated amount”) of the sums paid to the group under section 223G is to be used for purposes relating to service integration.

Local Audit and Accountability Act 2014

Section	Proposed delegation	Functions, duties and powers
13	Chair of Audit Committee	Duty to notify the Secretary of State if a CCG has failed to appoint an auditor by 25 March each year (and power, where this is the case, to direct an auditor is appointed/to appoint an auditor directly)

National Health Service (Cross-Border Healthcare) Regulations 2013

Section	Proposed delegation	Functions, duties and powers
9	National Director: Patients and Information	Duty to make available information to patients about rights to receiving cross-border healthcare, in particular as regards the terms and conditions for reimbursement of costs; procedures for accessing and determining those entitlements; and for appeal and redress if patients consider that their rights have not been respected.

Appendix C – Proposed additions to NHS England's Schedule of Matters Reserved to the Board and Scheme of Delegation

Official Statistics Order 2013/1163/Statistics and Registration Act 2007

Section	Proposed delegation	Functions, duties and powers
Schedule 1/ Sections 10 – 14 of the Statistics and Registration Act 2007	National Director: Patients and Information	Statistics produced by NHS England are to be designated as 'official statistics' [to the extent that statistics comply with the Code of Practice on statistics, the UK Statistical Authority must then designate them as national statistics, and if NHS CB wishes to maintain/obtain designation as national statistics, it must comply with the Code of Practice].

Functions of the National Health Service Commissioning Board and the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Primary Dental Services) (England) Regulations 2013

Regulation	Proposed delegation	Functions, duties and powers
2/Schedule	NHS Business Services Authority	The functions of NHS CB relating to primary dental services in England are to be exercised by the NHS BSA.

Medical Profession (Responsible Officers) Regulations 2010 (as amended, 2013)

Regulation	Proposed delegation	Functions, duties and powers
7	National Medical Director	Duty to nominate or appoint a sufficient number of responsible officers.
14	National Medical Director	Duty to provide nominated or appointed responsible officer for that body with sufficient funds and other resources necessary to enable the officer to discharge their responsibilities for NHS CB under the regulations.

Appendix C – Proposed additions to NHS England's Schedule of Matters Reserved to the Board and Scheme of Delegation

Controlled Drugs (Supervision of Management and Use) Regulations 2013

Regulation	Proposed delegation	Functions, duties and powers
8	National Medical Director	Duty to nominate or appoint, or in a group with one or more other designated bodies must jointly nominate or appoint, a fit, proper and suitably experienced person to be its Accountable Officer, and NHS CB must nominate or appoint a fit, proper and suitably experienced person to be its accountable officer in respect of each local intelligence network area
10	National Medical Director	Duty to notify CQC of the identity of the Accountable Officer.
14	NHS England Controlled Drugs Accountable Officer	Duty to determine what are to be the local intelligence network areas for England. The NHS England Controlled Drugs accountable officer is the lead CDAO for the local intelligence network.
15	NHS England Controlled Drugs Accountable Officer	Duty to cooperate with other members of the local intelligence network, in connection with— (a) the identification of cases in which action may need to be taken in respect of matter arising in relation to the management or use of controlled drugs by individuals who are relevant persons as regards any member of the network; (b) the consideration of issues relating to the taking of action in respect of such matters; and (c) the taking of action in respect of such matters.

National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 *further to s. 75 HSCA 2012*; NHS CB as a 'relevant body' is required to comply with other provisions within these regulations more generally.

Regulation	Proposed delegation	Functions, duties and powers
4, 9	Head of Assurance	Duty to maintain a register on a website of advertising by relevant bodies of opportunities for providers to provide health care services for the purposes of the NHS, and of contracts granted.

Appendix C – Proposed additions to NHS England’s Schedule of Matters Reserved to the Board and Scheme of Delegation

Regulation	Proposed delegation	Functions, duties and powers
10	National Director: Commissioning Strategy	Duty not to restrict individual patient choice as regards primary care

National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules)
Regulations 2012

Regulation	Proposed delegation	Functions, duties and powers
Part 3	National Director: Commissioning Operations	Duty to commission specified healthcare services, for specified persons, and in accordance with requirements set out in the Regulations.