

BOARD PAPER - NHS ENGLAND

Title:

Devolution – Proposed Principles and Decision Criteria.

Lead Director:

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Purpose of Paper:

- To consider our approach to future calls for devolution of NHS functions.

The Board is invited to:

- Note the update on the Cities and Local Government Devolution Bill.
- Approve the proposed outline principles and decision criteria to determine future calls for devolution of NHS England functions.

**Devolution – Proposed Principles and Decision Criteria
NHS England Board – 24 September 2015**

1. CONTEXT

1.1. The *Five Year Forward View* committed us to empowering patients and local communities. Through a number of complementary approaches, NHS England is joining up the commissioning system and budgets at the local level:

Co-commissioning	<ul style="list-style-type: none"> • Nearly 150 CCGs will be exercising the freedom to co-commission primary care either through delegation or collaborative commissioning arrangements • CCGs co-commissioning specialised services with NHS England supported by the hubs
Integrated personal commissioning	<ul style="list-style-type: none"> • Combined personal budgets for people with complex needs
Combined health and social care budgets	<ul style="list-style-type: none"> • A number of areas are combining their spending power across health and social care, often through Health & Wellbeing Boards • The Mandate specifies minimum mandatory pooled budgets through the Better Care Fund
Devolution	<ul style="list-style-type: none"> • This could involve the transfer, concurrent exercise, or joint exercise of functional responsibilities from a public authority (which could include a Government department or NHS England) to a combined or local authority, potentially utilising the provisions of the Devolution Bill.

2. THE BILL

2.1. The Cities & Local Government Devolution Bill is intended to enable devolution. The Bill is an enabling Bill to transfer functions to, or allow functions to be exercised concurrently with, or (following a Government amendment) allow functions to be exercised jointly with a Combined Authority or local authority upon the Secretary of State making a relevant order. The Bill does not in itself transfer or devolve any powers or functions – any future decisions about the transfer of functions would need to be set out in an Order, with affirmative agreement in both Houses of Parliament.

2.2. The Devolution Bill completed its third reading in the House of Lords in July 2015. Several Government amendments were tabled in the Lords and accepted. These included proposed amendments to further support the effective and appropriate devolution of health functions. An amendment was also successfully tabled by Lord Warner with the intention of providing greater clarity about the continuation of NHS accountabilities and regulatory responsibilities under devolved arrangements. The Bill is due to go to the House of Commons in the autumn.

- 2.3. NHS England will continue to work with Department of Health and Department of Communities and Local Government to support the passage of the Bill and to consider whether any further changes to legislation are required to support devolution objectives.
- 2.4. NHS England is already involved in supporting devolution through its work with Greater Manchester. Other parts of the country are also showing interest in devolution and were invited to submit proposals for their own bespoke devolution deals by early September 2015.
- 2.5. Subject to legislation, NHS England will need to develop and agree appropriate principle-based criteria to make decisions about devolution proposals.

3. PRINCIPLES AND DECISION CRITERIA

- 3.1. Our decisions on proceeding with individual cases for devolution will be made with the formal authority of the Board. **We propose that the Commissioning Committee of the Board will consider proposals and make these decisions.**
- 3.2. The principles, decision criteria, and process will be further refined as the Devolution Bill develops. However given proposals for devolution are already emerging, an indicative working set of criteria has been developed for the Board to consider. Alongside this, NHS England will need to take a view on how its responsibilities are to be safely discharged under any proposal bearing in mind NHS England's statutory duties.

Principles

- 3.3. A number of principles should be considered when determining any decisions about future calls for functions, many of which are reflected within the Greater Manchester MOU. These include:
 - i. An overarching principle that all areas will remain part of the NHS, upholding national standards and continuing to meet statutory requirements and duties, including the NHS Constitution and Mandate.
 - ii. Ensuring that commissioners, providers, patients, carers and wider partners, including the voluntary and community sector, are able to work together to shape the future of the local area, supported by regular communication and engagement from development to implementation.
 - iii. The principle of subsidiarity, ensuring that decisions are made at the most appropriate level.
 - iv. Having clear and appropriate accountability arrangements for services and public expenditure to be devolved.
 - v. Putting in place a clear plan to support long term clinical and financial sustainability.
 - vi. A governance model which is simple to operate and minimises bureaucracy and overheads in the system.

Decision Criteria

- 3.4. Based on the assumption that the Department of Health and NHS England are involved in decisions about requests for devolution, it is proposed that the decision criteria to determine calls for NHS England health functions should focus on the following areas:
 - i. *Clarity of vision* about the benefits devolution will bring to the health and social care of local people, and the plan for delivery of these and wider benefits including a clear

- articulation of what specific additional functions and responsibilities are being requested;
- ii. A *'health geography'* that supports devolved decision-making, being largely a self-sufficient community with a matching corporate infrastructure rather than relying on other areas of the country for delivery of devolved functions;
 - iii. *Quality and continuity of care*, particularly linked to the safe transfer of responsibilities and emergency planning, preparedness and resilience arrangements;
 - iv. *Impact on other populations, including appropriate safeguards for users of local services from outside the relevant geography*;
 - v. *Financial risk management*, including mitigation actions by, and residual risk to, NHS England;
 - vi. *Support of local health organisations*, and local government (including political leadership) so that there is a solid basis of co-operation on which to build shared decision-making and robust, devolved arrangements;
 - vii. *Demonstrable leadership capability and track record of collaboration between NHS bodies and local government, implementing transformation and securing consistent delivery, making full use of pre-existing powers*;
 - viii. *Demonstrable track record of collaboration and engagement with patients and local communities, including evidence of sufficient consultation on, and broad support for, the devolution proposals*;
 - ix. *Clear mitigation plan and exit route in the case of failure*.

3.5. NHS England's preferred option would be to take about 18 months from expression of interest in devolution by a particular geography to implementation of devolution arrangements, along the lines of the trajectory set out by Greater Manchester. This would include submission of a clear outline business case (that would be subject to the outline principles and decision criteria above), and any change in statutory accountabilities would need to be prefigured in a formal arrangement such as the joint signing of a MOU and shadow running of the devolved functions in the new body. In particularly large or complex geographies, piloting in a selected sector of the area concerned may be required.

3.6. A programme plan will be taken to Commissioning Committee setting out more detail on the operation of the devolution process and the resources required to support it.

4. RECOMMENDATION

4.1. The Board is asked to note that there are many different ways of achieving greater join-up between health and local government, of which formal "devolution" arrangements such as are being developed in Manchester constitute one type.

4.2. The Board is asked to approve the proposed outline principles and decision criteria to determine future calls for devolution of NHS England.

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Date: September 2015