

BOARD PAPER - NHS ENGLAND

<p>Title:</p> <p>Internal Delegation arrangements for Greater Manchester Devolution</p>
<p>Lead Director:</p> <p>Paul Baumann, Chief Financial Officer Karen Wheeler, National Director: Transformation and Corporate Operations</p>
<p>Purpose of Paper:</p> <p>The paper sets out proposed changes to NHS England's internal delegation arrangements, which will enable the Greater Manchester Health and Social Care devolution programme to go live on 1 April 2016.</p>
<p>The Board is invited to:</p> <ul style="list-style-type: none">• To approve the proposed summary list of NHS England functions to be internally delegated to the Greater Manchester (GM) Chief Officer, and• Approve the proposed changes to the NHS England Reservation of Powers and Delegation of Functions (Scheme of Delegation) and Standing Financial Instructions

NHS England Board

Internal delegation arrangements for Greater Manchester Devolution

PURPOSE

1. This paper proposes changes to NHS England's internal delegation arrangements, which will enable the Greater Manchester (GM) Health & Social Care devolution programme to 'go-live' on 1 April 2016.
2. The Board is invited to:
 - i. approve the proposed summary list of NHS England functions to be internally delegated to the GM Chief Officer (GM CO) in relation to GM; and
 - ii. approve the proposed changes to NHS England's Reservation of Powers and Delegation of Functions ("Scheme of Delegation") and Standing Financial Instructions.
3. The NHS England Chief Executive will need to confirm that the GM CO is the Nominated Employee for relevant functions in GM.

PROPOSED FORM OF DEVOLUTION FOR 2016/17

4. The proposal for 2016/17 is that devolution to GM will take the form of internal delegation by NHS England to the GM CO, who will be an NHS England employee, reporting in that capacity to Paul Baumann, NHS England Chief Financial Officer, and National Director with responsibility for devolution. This will enable the GM CO to exercise NHS England's assurance and direct commissioning functions with respect to GM as well as providing overall executive leadership to GM's devolution, integration and strategy implementation activities.
5. In parallel with this internal delegation, GM's health and social care leadership, working under the aegis of a GM Joint Commissioning Board, will be given a 'seat at the table' under model 1 of NHS England's devolution framework, enabling them to influence decision-making in the following areas of commissioning :
 - i. Some specialised commissioning (in relation to those services identified by GM H&SC and NHS England as 'Group 1' specialised services);
 - ii. Primary care (apart from GP services) and secondary dental care;
 - iii. Public health related services
6. The arrangements are set out in detail in the paper on Accountability, Budgeting and Reporting arrangements for 2016/17, approved by the GM Health & Social Care Devolution Programme Board at its meeting on 22 January 2016. In addition an Accountability Agreement was approved by the GM Health & Social Care Devolution Programme Board at its meeting on 11 March. These papers are available at https://www.greatermanchester-ca.gov.uk/meetings/meeting/243/gm_health_and_social_care_strategic_partnership_board
7. These proposals have been subject to full assurance by NHS England's Devolution Programme Oversight Group (DPOG), based on the principles and evaluation criteria originally agreed by the Board and subsequently developed in more detail and endorsed by the Commissioning Committee.

8. The Commissioning Committee has endorsed the DPOG's assessment and approved the proposals which this paper enacts in formal governance terms.
9. These arrangements will be put in place for 2016/17. In light of experience with this form of 'synthetic' devolution during 2016/17, further proposals will be brought forward for 2017/18 and subject to appropriate assurance and Board/Commissioning Committee scrutiny as appropriate.
10. Two CCGs in GM already have 'full delegation' arrangements in place for GP services in line with NHS England's national co-commissioning programme. The remaining ten will take 'full delegation' arrangements from 1 April 2016. (This delegation of GP services commissioning falls under *Model 3 – Delegated Commissioning*, in NHS England's devolution framework.)

PROPOSED AMENDMENTS TO INTERNAL DELEGATION ARRANGEMENTS

11. A comprehensive 'Functions Table' has been prepared and widely consulted on, which lists each NHS England function, sets out the current internal delegation arrangement for each function, and identifies the functions which will be delegated internally to the GM CO. The Functions Table has been designed to be used in future devolution arrangements as well as for GM.
12. The Board will note that the proposed internal delegations cover various ancillary functions, as well as specific commissioning and assurance functions. This is intended to ensure that the GM CO has local responsibility for and 'ownership' of those ancillary functions in his or her area.
13. In summary, the functions relate to:
 - i. Specialised services (currently exercised by National Director-Commissioning and Regional Director of Specialised Commissioning)
 - ii. Public health functions (currently exercised by National Directors)
 - iii. Primary dental services (currently exercised by DCO)
 - iv. Primary ophthalmic services (currently exercised by DCO)
 - v. Pharmaceutical services (currently exercised by DCO)
 - vi. Direct payments in relation to services for which GM CO has responsibility (currently exercised by RD and DCO)
 - vii. Certain functions relating to CCG guidance and support (currently exercised by RD and DCO)
 - viii. Certain functions relating to CCG assurance (currently exercised by DCO)
 - ix. Investigating and regulating performers in GM (currently exercised by DCO)
 - x. GP revalidation (currently exercised by the Responsible Officer for Lancashire and Greater Manchester)
 - xi. Complaints (currently exercised by DCO)
 - xii. Certain functions relating to local authorities
 - xiii. Certain civil contingencies and Emergency Preparedness Resilience and Response (EPRR) functions (currently exercised by DCO)
 - xiv. Certain ancillary functions
14. As requested by DPOG, Appendix A sets out additional information about how complaints, EPRR, performers list and revalidation functions will be exercised following devolution.
15. The GM CO will not take on all the relevant functions immediately on 1 April 2016. With the aim of ensuring a seamless handover, and mindful that the appointment of a substantive GM CO is still in process, the internal delegation of certain functions will not take effect until a later date (see below).

16. From 1 April 2016 (pending appointment of the GM CO) the following areas of responsibility will be transferred to the GM CO:
 - i. Transferring responsibilities for managing staff and functions other than those specified in paragraph 18
 - ii. Budgets as designated
17. The following items will transfer at a later date, for reasons of readiness or safety, subject to review depending upon recruitments to other posts. Where they are retained, NHSE regional team will carry out the functions with full involvement and sight of the GM team:
 - i. EPRR (to transfer 1 June 2016)
 - ii. Financial accounting and final accounts (to transfer 1 June 2016, after completion of final accounts for 2015/16)
 - iii. CCG assessment (to transfer 15 May 2016 – hence regional team will undertake final CCG assessment for 2015/16)
18. NHS England's Scheme of Delegation, most recently updated in December 2015, allocates each of NHS England's functions to one or more NHS England officials, identified by job title. In some cases, a function is allocated to 'Nominated Employees'.
19. Standing Order 7.4.7 provides as follows:

Where the scheme of delegation refers to 'nominated Employee(s)' or uses other non-post specific terminology the delegation will rest with the most senior Director in each ... Region, National Directorate, Commissioning Support Unit, NHS Improving Quality or the NHS Sustainable Development Unit, as appropriate.
20. The proposed approach to amending the Scheme of Delegation is to add an option for 'Nominated Employees' to each function which is proposed to be exercised by the GM CO (where the function is not already internally delegated to Nominated Employees).
21. Following Board approval of the Scheme of Delegation changes, the Chief Executive can issue a document confirming for the purposes of SO 7.4.7 that the GM CO will be the Nominated Employee for each relevant function in the GM area.
22. A benefit of this approach is that if NHS England wishes to adopt a similar model of internal delegation to a local officer in relation to any future devolution arrangement, further amendments of the Scheme of Delegation itself (which require Board approval) would not be required unless the future arrangement related to functions other than those delegated in GM.
23. Appendix B to this paper is the proposed form by which the Chief Executive will confirm the GM CO as Nominated Employee in relation to GM for the relevant functions. This sets out a complete list of the NHS England functions that are proposed to be internally delegated to the GM CO in relation to GM.
24. The effective date for internal delegation of each relevant function is marked in Appendix B.
25. Proposed amendments have been made to the corresponding Standing Financial Instructions. It is proposed that the GM CO limits will be aligned to those of a National/Regional Director.
26. No changes to the Scheme of Delegation are required in relation to GP services because these are being delegated from NHS England to CCGs, rather than delegated internally within

NHS England to the GM CO. NHS England's internal arrangements in relation to primary medical services (as recorded in the Scheme of Delegation) will not change.

DECISIONS REQUESTED

27. The Board is invited to :

- i. approve the proposed summary list of NHS England functions to be internally delegated to the GM Chief Officer (GM CO) in relation to GM; and
- ii. approve the proposed changes to NHS England's Reservation of Powers and Delegation of Functions ("Scheme of Delegation") and Standing Financial Instructions.

APPENDIX A: additional information about Complaints, EPRR and Performers List functions

EPRR

1. EPRR will transfer on 1 June 2016. In the meantime, current arrangements for first and second on call will continue. We are proposing that, from 1 June 2016, the GM CO is added to the list of nominated NHSE employees for those exercising functions of the Board under subsection 7 and 8 of s242A of the NHS Act 2006 (as amended by the H&SC Act 2012).

Complaints

2. GM will be responsible for complaints management from 1 April 2016, delivered through continuation of a contract with GM CSU rather than in-house. The GM devo team has committed to increase funding on a recurrent basis for the contract for 2016/17 to provide greater confidence to the CSU and allow higher levels of substantive staff recruitment. The GM Devo team is also ensuring that robust contract management arrangements are put in place to ensure delivery of a high quality complaints service to GM through this contract.

Performers' lists and GP validation

3. It is confirmed that both functions are for delegation to GM CO:
 - i. We have put in place arrangements to separate GM and Lancashire committees
 - ii. GM will have its own responsible officer – Dr Raj Patel is part of the NHSE assignment to GM, though GM has yet to confirm which Executive portfolio this responsibility will sit within
 - iii. The responsible officer will have dual accountability to GM CO and the Regional Medical Director
 - iv. The GM Quality and Performance team have been assigned to GM and will continue to support current processes using NHS England's policy framework.

APPENDIX B: Form of Chief Executive internal delegation statement

Confirmation of GM Chief Officer as Nominated Employee

The NHS England *Reservation of Powers to the Board and Delegation of Powers* specifies that certain functions shall be delegated to 'Nominated Employees'. It further specifies that functions which have not been reserved to the Board or delegated by the Board will be exercised in accordance with arrangements to be devised by the Chief Executive.

Standing Order 7.4.7 provides as follows:

Where the scheme of delegation refers to 'nominated Employee(s)' or uses other non-post specific terminology the delegation will rest with the most senior Director in each..., Region, National Directorate, Commissioning Support Unit, NHS Improving Quality or the NHS Sustainable Development Unit, as appropriate.

The Chief Executive confirms that, with effect from the date specified below and until further notice the Chief Officer for Greater Manchester Health & Social Care shall be the Nominated Employee for the exercise in Greater Manchester of the functions of the NHS Commissioning Board listed in the Annex to this document.

Signed: _____

Chief Executive

Date: _____

ANNEX

(All statutory references are to National Health Service Act 2006 unless otherwise stated)

1. With effect from 1 April 2016, the Chief Officer for Greater Manchester Health & Social Care shall be the Nominated Employee for the exercise in Greater Manchester of the following functions of the NHS Commissioning Board:

Dental services: community and other specified	
s3B(1)(a); para 6 and Sch 2 of NHSCB Regulations	Implement overall commissioning strategy
s3B(1)(a); para 6 and Sch 2 of NHSCB Regulations	Exercise general duties in relation to the commissioning and/or provision
s3B(1)(a); para 6 and Sch 2 of NHSCB Regulations	Enter into arrangements, contractual or otherwise, subject to compliance with delegated financial limits, to secure provision
s3B(1)(a); para 6 and Sch 2 of NHSCB Regulations	Ensure contracts and other arrangements are correctly monitored and governed including ensuring that all contractors sign the NHS CB's data confidentiality code of conduct and IT security policy where relevant.
s3B(1)(a); para 6 and Sch 2 of NHSCB Regulations	Authorisation to investigate any complaint related to the provision of relevant services by any provider from whom the NHS CB commissions such services, either directly or indirectly.
s3B(1)(a); para 6 and Sch 2 of NHSCB Regulations	Urgent and emergency action to safeguard and maintain provision
s3B(1)(a); para 6 and Sch 2 of NHSCB Regulations	Ensure processes in place to determine IFRs
Prescribed specialised services, designated by NHS England and GM Health & Social Care as 'tier 1' specialised services	
s3B(1)(d); para 11 and Sch 4 of NHSCB Regulations	Implement overall commissioning strategy
s3B(1)(d); para 11 and Sch 4 of NHSCB Regulations	Exercise general duties in relation to the commissioning and/or provision
s3B(1)(d); para 11 and Sch 4 of NHSCB Regulations	Enter into arrangements, contractual or otherwise, subject to compliance with delegated financial limits, to secure provision
s3B(1)(d); para 11 and Sch 4 of NHSCB Regulations	Ensure contracts and other arrangements are correctly monitored and governed including ensuring that all contractors sign the NHS CB's data confidentiality code of conduct and IT security policy where relevant.
s3B(1)(d); para 11 and Sch 4 of NHSCB Regulations	Authorisation to investigate any complaint related to the provision of specialised commissioned services by any provider from whom the NHS CB commissions such services, either directly or indirectly.
s3B(1)(d); para 11 and Sch 4 of NHSCB Regulations	Urgent and emergency action to safeguard and maintain provision
s3B(1)(d); para 11 and Sch 4 of NHSCB Regulations	Work with CCGs, local authorities and HWBs to deliver specialised commissioned services in their area
s3B(1)(d); para 11 and Sch 4 of NHSCB Regulations	Ensure processes in place to determine IFRs

Public health functions	
ss 2, 2A, 2B & 12	Provide or secure the provision of a range of defined services covering: * immunisation programmes * screening programmes *public health care for prisoners and detainees *sexual assault referral centres *child health information systems
s7A	To seek to achieve key deliverables focused on achieving positive health outcomes for the population and reducing inequalities in health, as defined in the section 7A agreement related to public health functions to be exercised by the NHS CB.
s7A	To, as far as is practicable, share with the Health and Social Care information Centre all information collected, or required from providers, in the exercise of functions pursuant to the section 7A agreement.
s7A	To ensure relevant unpublished information is shared on a timely basis with the Department of Health and Public Health England for the exercise of their functions.
s7A	To share information with the Department of Health and Public Health England to enable effective joint planning of future section 7A agreements, including prospective changes in services or new services that may be commissioned under a future agreement.
s7A	To, without delay, inform the Department of Health in writing of any significant concerns the NHS CB has in relation to the delivery by providers of services covered under the section 7A agreement.
Primary dental services	
s99	Exercise general duties in relation to the commissioning and/or provision of dental services
s99	Enter into arrangements, contractual or otherwise, subject to compliance with delegated financial limits, to secure provision
s99	Ensure contracts and other arrangements are correctly monitored and governed including ensuring that all contractors sign the NHS CB's data confidentiality code of conduct and IT security policy where relevant.
s99	Authorisation to investigate any complaint related to the provision of dental services by any provider from whom the NHS CB commissions such services, either directly or indirectly.
s99	Take urgent and emergency action to safeguard and maintain the provision of primary medical services
s99	Ensure that processes are in place to make determinations over IFRs in respect of dental services
Primary ophthalmic services	
s115	Exercise general duties in relation to the commissioning and/or provision of primary ophthalmic services

s115	Enter into arrangements, contractual or otherwise, subject to compliance with delegated financial limits, to secure provision
s115	Ensure contracts and other arrangements are correctly monitored and governed including ensuring that all contractors sign the NHSCB's data confidentiality code of conduct and IT security policy where relevant.
s115	Authorisation to investigate any complaint related to the provision of primary ophthalmic services by any provider from whom the NHSCB commissions such services, either directly or indirectly.
s115	Take urgent and emergency action to safeguard and maintain the provision of primary ophthalmic services
s115	Ensure that processes are in place to make determinations over IFRs in respect of primary ophthalmic services
Additional pharmaceutical services	
s 127	Exercise general duties in relation to the commissioning and/or provision of pharmaceutical services
s 127	Enter into arrangements, contractual or otherwise, subject to compliance with delegated financial limits, to secure provision
s 127	Ensure contracts and other arrangements are correctly monitored and governed including ensuring that all contractors sign the NHS CB's data confidentiality code of conduct and IT security policy where relevant.
s 127	Exercise contractual obligations to performance manage pharmaceutical contractors
s 127	Authorisation to investigate any complaint related to the provision of pharmaceutical services by any provider from whom the NHS CB commissions such services, either directly or indirectly.
s 127	Take urgent and emergency action to safeguard and maintain the provision of pharmaceutical services
s 127	Ensure that processes are in place to make determinations over IFRs in respect of pharmaceutical services
NHS England functions in relation to Direct payments.	
s12A	Apply arrangements to make direct payments and make decisions on such payments
NHS England functions in relation to CCGs: establishment etc.	
s14A	Exercise general duties in relation to CCGs
NHS England functions in relation to CCGs: guidance and support	
s14S	Power to obtain assistance and support from CCGs in discharging NHS England's obligations under s13E so far as relating to continuous improvement in the quality of primary

	medical care
s14Z10	Consider and determine requests by CCGs for the NHS CB to provide assistance or support to the CCG. Should a request be accepted then make arrangements for the NHS CB to provide such support or assistance as it is determined the CCG requires.
s13W	Responsibility for the generation of income through the activities of Commissioning Support Units, which the NHS CB hosts with the NHS Business Services Authority, and for oversight and assurance to the Audit and Risk Assurance Committee.
s14Z10	Responsibility for the generation of income through the activities of Commissioning Support Units, which the NHS CB hosts with the NHS Business Services Authority, and for oversight and assurance to the Audit and Risk Assurance Committee.
NHS England performers list functions: Primary medical healthcare professionals performers list	
s91	Exercise the functions specifically that of investigating and regulating performers, as described in the NHS (Performers Lists) Regulations and in accordance with guidance issued by the National Director: Commissioning Operations and National Medical Director.
s91	Make arrangements to have a panel in place to determine performers list issues raised locally in pursuance of their function to investigate and regulate performers under the Regulations
NHS England performers list functions: Dental care performers list	
s106	Exercise the functions specifically that of investigating and regulating performers, as described in the NHS (Performers Lists) Regulations and in accordance with guidance issued by the National Director: Commissioning Operations and National Medical Director.
s106	Make arrangements to have a panel in place to determine performers list issues raised locally in pursuance of their function to investigate and regulate performers under the Regulations
NHS England performers list functions: Primary ophthalmic services performers list	
s123	Exercise the functions specifically that of investigating and

	regulating performers, as described in the NHS (Performers Lists) Regulations and in accordance with guidance issued by the National Director: Commissioning Operations and National Medical Director.
s123	Make arrangements to have a panel in place to determine performers list issues raised locally in pursuance of their function to investigate and regulate performers under the Regulations
NHS England performers list functions: Pharmaceutical service providers	
s129	Exercise any functions of investigating and regulating performers currently exercised by NHS England in accordance with applicable guidance
s129	Exercise any functions currently exercised by NHS England to make arrangements to have a panel in place to determine performers list issues raised locally in pursuance of their function to investigate and regulate performers under the Regulations
NHS England performers list functions: performers of pharmaceutical services	
s147A	Exercise any functions of investigating and regulating performers currently exercised by NHS England in accordance with applicable guidance
s147A	Exercise any functions currently exercised by NHS England to make arrangements to have a panel in place to determine performers list issues raised locally in pursuance of their function to investigate and regulate performers under the Regulations
NHS England functions: GP appraisal and revalidation	
The Medical Profession (Responsible Officers) Regulations 2010	Function of appointing a Responsible Officer in relation to GP appraisal and revalidation.
NHS England finance functions	
s13V	Power to establish pooled funds with one or more CCGs
s13W	Board's power to generate income
s13X	Make arrangements to exercise the power to make grant to a voluntary organisation
s13Y	Exercise of the Board's incidental powers to in particular enter into agreements, acquire and dispose of property and to accept gifts, subject to compliance with delegated financial limits.

NHS England information governance functions	
s13R	Make arrangements to establish and operate a system for collecting and analysing information on the safety of services provided by the health service.
NHS England functions re Local Authorities	
s75	Arrangements between NHS bodies and local authorities
s244	Perform duty to advise and consult the local authority health and overview scrutiny committee for the area on issues relating to NHS commissioning arrangements
s244	Perform duty to advise and consult the local authority health and overview scrutiny committees or any joint committee for issues relating to NHS commissioning arrangements which cover more than one area.
Care Act 2014, s6	General reciprocal duty to cooperate with local authorities in (a) their respective functions relating to adults with needs for care and support, and (b) their respective functions relating to carers.
Care Act 2014, s7	Duties 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).
Care Act 2014, s22	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.
Local Government and Public Involvement in Health Act 2007, s116B(2)	Have regard to needs assessment (JSNA) and joint health and wellbeing strategy when arranging for the provision of health services in relation to the area of a responsible local authority
NHS England functions: domestic homicide reviews	
Domestic Violence, Crime and Victims Act 2004, s9	Undertake domestic homicide reviews
NHS England duties ancillary to commissioning decisions	
s13E	Make arrangements to comply with the duty as to exercising the functions of the NHS CB with a view to securing improvement in the quality of services in connection with: <ul style="list-style-type: none"> - The prevention, diagnosis or treatment of illness; or, - The protection or improvement of public health.

s13G	Ensure functions are exercised having regard to the need to reduce inequalities with respect to access to health services and outcomes achieved by the provision of those services.
s13H	Make arrangements to comply with the duty to promote patient involvement
s13I	Implement arrangements so that the duty as to patient choice is complied with in exercising functions, duties and powers.
s13K	Implement arrangements so that the duty as to innovation is complied with in exercising functions, duties and powers.
s13L	Duty in respect of promoting research in the exercise of its functions.
s13M	Comply with duty to assist the Secretary of State in respect of promoting education and training to persons who are employed, or who are considering becoming employed, in an activity which involves or is concerned with the provision of services as part of the health service in England.
s13N	Make arrangements to ensure compliance with the duty to promoting integration for health services and, where appropriate, social care services.
s13O	Make arrangements to ensure compliance with the duty to have regard to the likely impact on services for those who live close to the border in Scotland and Wales, from commissioning decisions made by the NHS CB in England.
s13P	Comply with duty not to exercise the NHS CB's functions so as to cause a variation in the proportion of services provided by the public or private sector
s13Q	Implement arrangements to secure public involvement and consultation on an area basis
s13Q	Implement arrangements to secure public involvement and consultation which cover more than one area

2. With effect from 15 May 2016, the Chief Officer for Greater Manchester Health & Social Care shall be the Nominated Employee for the exercise in Greater Manchester of the following functions of the NHS Commissioning Board:

NHS England functions in relation to CCGs: assurance	
s14Z16	Conduct, each financial year, a performance assessment of each CCG.
s14Z18	Make arrangements to exercise the power to require any information, documents, records or other items which the NHS CB considers necessary or expedient to have for the purposes of any of its functions in relation to CCGs. Such power must only be exercised in accordance with circumstances set out in section 14Z17 NHS Act 2006.
s14Z19	Make arrangements to exercise the power to require a CCG to provide an explanation of any matter which relates to the exercise, or proposed exercise, by the CCG of any of its functions. Such power must only be exercised in accordance with circumstances set out in section 14Z17 NHS Act 2006.

3. With effect from 1 June 2016, the Chief Officer for Greater Manchester Health & Social Care shall be the Nominated Employee for the exercise in Greater Manchester of the following functions of the NHS Commissioning Board:

NHS England functions: EPRR	
s252A	Put in place appropriate steps for the NHS CB and CCGs to be properly prepared for dealing with a relevant emergency.
s252A	Oversee the local geography in respect of CCGs and assure the Audit and Risk Assurance Committee that such functions are exercised and monitored in accordance with the legal framework and Board and/or National Directors guidance.
Civil Contingencies Act 2004	Implement local arrangements to comply with obligations as a Category 1 responder in their area