NHS Commissioning Board
A special health authority

NHSCBA/20/9/2012/3

BOARD PAPER - NHS COMMISSIONING BOARD AUTHORITY

Title: CCG Authorisation Governance
Clearance: Dame Barbara Hakin, National Director: Commissioning Development
Purpose of paper: • to secure approval for the proposed approach to the final steps of the authorisation process for clinical commissioning groups (CCGs).
Key issues and recommendations: The paper identifies four key stages to decision-making and the recommended approach for each stage; 1. <u>Evidence review panel (section 1)</u> Recommendation: • key assessor and local area team (LAT) director prepare a final evidence report for each application that will summarise the assessment completed, provide structured narrative analysis of root cause, risk and local context, and reflect any comments made by the applicant on their assessment. 2. <u>Moderation panel (section 2)</u> Recommendation: • proposed terms of reference and membership of the moderation panel is endorsed. 3. <u>Conditions panel (section 3)</u> Recommendations: • proposed terms of reference and membership of the conditions panel is endorsed; • regional directors approve the recommendations made on conditions and support for each CCG being considered from their region, prior to consideration by the conditions panel; • regional directors take informal soundings locally prior to the conditions

panel on options where the panel is likely to consider that a CCG needs intensive support;
- the output of the conditions panel is shared with CCGs prior to consideration by the sub-committee in order to give a further opportunity for issues that have been resolved by the CCG since the site visit to be reflected in decisions. The sub-committee decision will therefore be approximately five to seven weeks after each CCG's final evidence report is issued; and
- there is a review of conditions across all CCGs in March 2013, and quarterly thereafter.

4. Board sub-committee – authorisation (section 4)
   Recommendations:
   - Establish a Board sub-committee – authorisation;
   - Proposed terms of reference and membership of the Board authorisation sub-committee is endorsed; and
   - The conclusions of each sub-committee meeting should be published immediately after each meeting, once decision letters have been issued.

Actions required by Board members:

The Board is asked to:

- **note** and **receive assurance** on the process leading to final decisions on CCG authorisation;
- **approve** the terms of reference and membership of the moderation and authorisation panels; and
- **establish** a sub-committee, with delegated authority to agree the authorisation of individual CCGs and any conditions associated with authorisation, on which the establishment of CCGs in line with the Health and Social Care Act, will be based.

CCG authorisation governance

Background

1. At its July meeting, the Board of the NHS Commissioning Board Authority (NHS CBA) agreed to outline proposals on how the moderation, conditions-setting and decision phases of authorisation would operate. A preference was expressed that conditions should not be set that are immediately lifted.

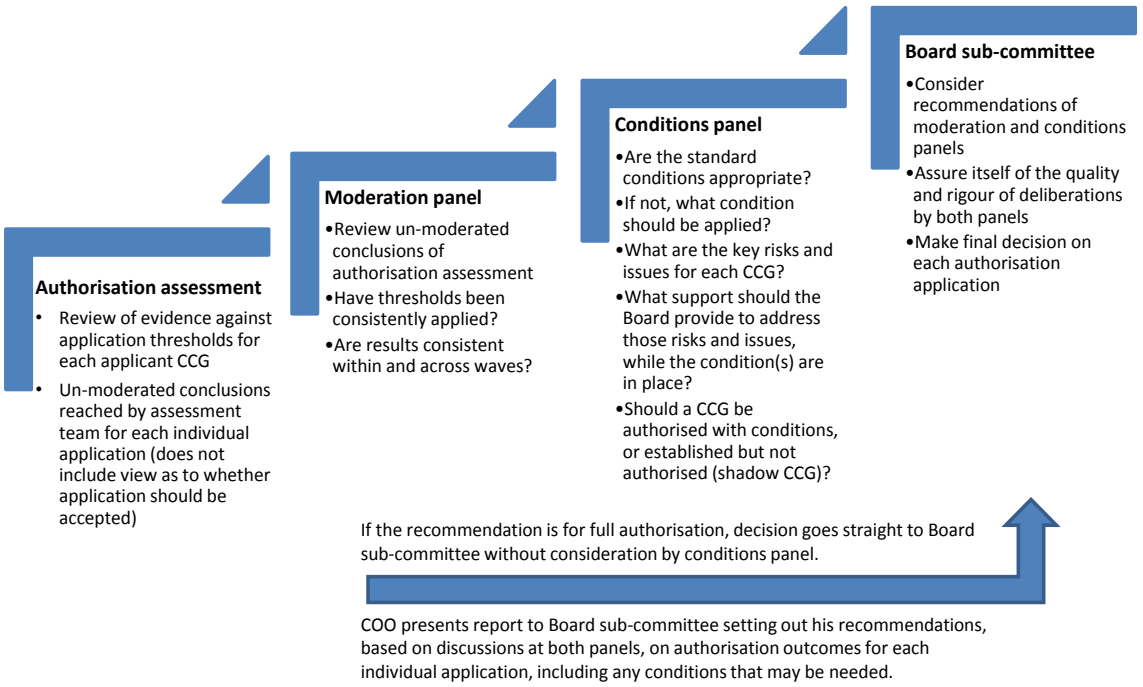
Purpose

2. This paper sets out further proposals for approval on how the moderation, conditions-setting and decision phases of CCG authorisation could operate, building on the July paper.

3. The intention is to design an approach to moderation, conditions and decisions that is consistent, proportionate, transparent, and legally compliant, supporting the delivery of an efficient and consistent decision-making process. The process design will be accompanied by template documents and conditions to further support efficiency and consistency. This rigorous approach will also protect both the NHS Commissioning Board (NHS CB) and CCGs by ensuring that the risks of CCGs taking on responsibilities before they are ready to do so are minimised, whilst maximising the opportunities for full authorisation.

Overview

4. This section summarises the approach agreed at the July Board meeting.



5. The diagram above summarises the proposed approach to decision-making on authorisation. This should be seen in the context of the overall developmental nature of authorisation, and the ongoing dialogue that takes place between the NHS CB and CCGs during assessment. In this context the decision letter should be seen as a further stage in this dialogue as most CCGs will use the period between establishment and taking on their commissioning responsibilities on 1 April 2013 to continue to develop, including discharging many of the conditions that may have been put in place at authorisation.

Section 1: Evidence review

6. Following the site visit, a report of that visit will be prepared and shared with the applicant CCG. It will set out the conclusions of the site visit, both in terms of individual outcomes and assessor views of CCG strengths, areas for development and any areas of concern. For those authorisation requirements which have not been met, the report will cover distance from target and any view expressed by the CCG at the visit as to how they were going to meet particular criteria they recognised they didn't currently meet.

7. The CCG will have the opportunity to check for factual accuracy, and to log any challenge over individual criteria outcomes. The CCG will also be made aware that the site visit report will form the basis of the final evidence report (the main difference being the inclusion of their comments) and therefore decision-making on their application. They will be asked to consider whether there are any areas where they might be able to make rapid progress over

the next three to four weeks, as there will be a final opportunity to submit evidence before their application is considered by the Board sub-committee.

8. The key assessor, LAT director[1], and authorisation sector lead will then prepare a final evidence report. The content of this report should largely be generated from authorisation knowledge management systems and the site visit report. The final evidence report will:

    - set out the recommended outcomes for all 119 criteria;
    - provide a structured narrative analysis of underlying themes, root causes and conclusions; as well any risks and local context which should be taken into account when determining support needed by that CCG;
    - reflect any factual accuracy points raised by the CCG; and
    - set out any difference of opinion between the assessors and the CCG over recommended outcomes.

9. This report will be completed within 13 days of the site visit and will form the key evidence for the moderation and conditions panels and the Board sub-committee.

Section 2: Moderation

10. The NHS CBA Board has agreed that a moderation panel will be established to ensure consistency. It will review the un-moderated conclusions of the assessment team, any disagreements between assessors and applicants over individual outcomes, results of a number of tests to ensure that appropriate quality assurance is in place, and consider outliers where a given CCG's result appears at odds with the national trend.

11. In those instances where a CCG is assessed not to have met the required standard the moderation process does not include a consideration of the conditions which are to be applied or the support to be provided.

12. Proposed panel membership (for all national directors, a nominated deputy may represent the directorate in question)

    Chair – Dame Barbara Hakin, National Director: Commissioning Development
    Chief Operating Officer or Regional Director representing operations directorate
    Paul Baumann, Chief Financial Officer
    Jim Easton, National Director: Transformation
    John Bewick, director, CCG development and support/ authorisation

[1] The LAT director may not have been on the site visit panel, but will still be on the evidence review panel given their knowledge of the local context in which the CCG would operate

Sarah Pinto-Duschinsky, Head of authorisation process
Louise Edwards, Head of authorisation content
Clinical representative from clinical commissioning coalition

13. In attendance: panel secretariat and PwC representative to report on process/ quality assurance.

Proposed panel terms of reference

- review the un-moderated conclusions of the assessment team and determine whether or not the criteria have been met;
- determine whether thresholds for authorisation have been consistently applied;
- review the final evidence report for each CCG and approve the assessment of 119 authorisation criteria (red/green) and overall structured narrative, including commentary on desk top review and site visit outcomes including strengths and development areas before passing onto the conditions panel;
- determine whether proposed results are consistent within and across waves;
- make recommendations to the Board sub-committee on which CCGs should be fully authorised, and which authorised with conditions; but
- the panel will not consider conditions arising from the thresholds that have not been met.

Proposed frequency and duration of panels

14. The panel will meet once per month/ wave (October 2012-January 2013) so that all CCGs in each wave will be moderated together in one meeting (two meetings per wave for waves 2 and 3 due to the number of CCGs in these waves). It is anticipated that the panel meeting for wave 1 will take one whole day, but that subsequent meetings may be of shorter duration.

Proposed papers

- Briefing on the *quality assurance* processes done to support moderation. This technical briefing will be a standard document for all panel meetings, explaining how the results in the summary pack (see next bullet point) have been arrived at.
- Summary pack demonstrating *quality assurance* tests done for applications being considered by the panel, including comparison across regions and CCGs grouped by similar characteristics and variance analysis with key themes and issues for discussion by the panel highlighted. This paper will set the agenda and focus of the panel meeting.
- *Final Evidence Report* for each CCG comprising:
  - *Traffic light buttons* outcomes for each CCG against each 119 criteria (with explanations for each outcome) generated directly from the Knowledge Management System (KMS);

- *Structured narrative* for each CCG. Includes local context, key underlying themes and issues, judgements and conclusions; and
- *Log of any unresolved disagreements between assessment team and applicant.*

Proposed outputs

- A summary of the moderation findings, to be documented on KMS, including a detailed explanation for any changes in traffic lights during the moderation process.
- A recommendation as to whether the outcome of each application should be fully authorised or authorised with conditions.

Section 3: Conditions

15. The NHS CBA Board has agreed that a separate panel should be convened to consider what support is required where a CCG has not supplied sufficient evidence to meet a threshold for one or more authorisation criteria.

16. Before the conditions panel meets, the relevant regional director will have the opportunity to review the recommended approach for each of their CCGs and indicate whether they are content. In doing this review for those CCGs where more intensive support is indicated, for example, where functions might be removed from a CCG, the regional director will also take informal soundings from the CCGs affected and other relevant parties as to whether all possible options for support have been explored.

17. Each unmet criteria has a condition applied to it. The wording for these conditions will be largely standardised and would not relate to the distance from target or the reasons why the CCG did not meet the criteria. However, CCGs would be aware of the reasons why they had not met the criteria from the final evidence report of the assessment process, and these reasons would be addressed in the rectification plan. This would also be sign-posted in the decisions letter.

18. It is a legal requirement that all conditions are accompanied by an offer of support from the Board. This support, although subject to regular review, is provided by the Board from as soon as practicable after authorisation until such time as the condition is discharged by the CCG. Until such time as a CCG can discharge its conditions, the NHS CBA Board has agreed that the NHS CB should select from a range of support:

    i. Model document/guidance, with informal advice available if needed
    ii. Make advice/expertise available to the CCG - more structured and proactive than under (i)
    iii. CCG decisions must be signed off or approved by the Board, either at local, regional or national level
    iv. The Board will provide or insert a specific team or individual to give in-house support to the CCG

v. The Board does not ratify the appointment of the proposed AO and appoints an alternative AO
vi. The CCG has specific functions removed – these could be carried out by another CCG or by the Board (there are particular legal considerations to be made in this case)
vii. All functions removed

19. Within the generic support packages for iii-vii the specifics (e.g. for iv the specific individual/ team deployed, or the precise function(s) to be removed for vi) would be determined for each occasion they were used. For iv-vii, implementation of this support would be finalised by the regional office in discussion with the CCG in question in order to ensure that the support provided made best use of neighbouring expertise and capacity as well as that available nationally. Any support provided before 31 March 2013 would be funded by SHAs and PCTs, and after 1 April 2013, any costs linked to support options i-iii would be funded by the CCG. Operations, finance and commissioning development directorates are working together to understand the capacity, resources and sourcing options required for the NHS CB to mobilise support options iv-vii and the funding implications post April 2013.

20. In deciding whether or not to remove function(s) from a CCG, the Board would base its decisions on the principle of whether there is an alternative solution for delivering that function that would deliver better results (the informal soundings taken by the regional director would inform this discussion). Where possible, the preferred option of the NHS CB would be to strengthen the CCG rather than to remove its' functions.

21. In many instances it is anticipated that a condition could be discharged before 1 April 2013 with only limited support from the Board (for example, the CCG simply needs time to act on the feedback received during authorisation). In these circumstances the support offered would be '(i) model documents/ guidance with informal advice available if needed'.

22. It is recommended that a standard review date of March 2013 is built in to all conditions (particularly for waves 1-3) to enable adjustments, where necessary, to reflect that CCGs move from preparation to delivery on 1 April 2013. The CCG may submit evidence to the relevant regional office of the Board prior to the review date. It will be for the regional office to determine whether the condition can be removed. Where support options v-vii have been used, national level approval to condition removal will be necessary.

<u>Proposed panel membership</u>
Chair– Ian Dalton, Chief Operating Officer (or deputy)
Paul Baumann, Chief Financial Officer

Richard Barker, Regional Director for the North
Anne Rainsberry, Regional Director for London
Paul Watson, Regional Director for Midlands and East
Andrea Young, Regional Director for the South
John Bewick, Director, CCG development and support/ authorisation
Sarah Pinto-Duschinsky, Head of authorisation process

In attendance: authorisation head of governance and panel secretariat

Papers will be sent to the National Medical Director and Chief Nursing Officer who may attend/ send a representative if they wish to do so.

Proposed panel terms of reference

- the conditions panel will consider what conditions should be applied for each CCG where there are one or more red radio buttons, and the associated support actions to be taken by the NHS CB. The key function of the panel is to ensure that underlying risks and root causes are mitigated through the application of conditions;
- in setting conditions the panel will make recommendations on:
- whether a non-standard condition should be set, and if so what;
- whether a non-standard review date should be set, and if so what;
- the associated support to be provided by the NHS CB;
- the panel will also consider whether a CCG should be authorised with conditions, or established but not authorised (shadow CCG). Shadow CCG is likely to be used either:

    - where such a number of functions would be removed through the application of conditions that the CCG would not be operable as an organisation, or
    - where a smaller number of functions would be removed through the application of conditions but removal of these functions would mean that the CCG would not be able to function effectively.

23. Work is underway to establish how the NHS CB would operate shadow CCGs. Options being explored include partnerships with neighbouring CCGs, appropriate delegation to shadow CCGs as well as direct delivery by the NHS CB:

    - make recommendations to the Board sub-committee on which CCGs should be authorised with conditions and which should be established but not authorised. For both groups, make recommendations as to what conditions should be set, and what support provided to CCGs by the NHS CB; and
    - the conditions panel does not review judgements made by the moderation panel.

Proposed frequency and duration of panels

The panel will meet fortnightly for half a day to consider smaller groups of CCGs within each wave. Consistency of decision-making will be assured by the secretariat and raised with the panel as necessary.

Proposed papers

- *Final Evidence Report* for each CCG.
- *Proposed conditions and support* for each of the red-button criteria for each CCG. This proposal will have been signed-off by the relevant regional director. Where appropriate alternative options for conditions/ support will also be included, and where the recommended option would lead to inconsistency with previous decisions this will be highlighted and the rationale set out. It is anticipated that discussion will focus on those CCGs where it is proposed that support levels iv-vii were felt necessary.

Proposed outputs

1. *Recommended conditions* for each CCG considered, including review period, and support package. See below.
2. *Record of discussion*, including rationale for any non-template conditions applied.

CCG review

24. The output of the conditions panel would be a report with the recommended conditions and related support for each CCG (if the recommendation from the moderation panel was not for full authorisation). This report would be shared with the CCG prior to consideration by the Board sub-committee. The CCG would have two weeks to comment, including providing any new evidence that obviates the need for a specific condition, recognising that progress may have been made since their site visit. Doing this will maintain dialogue with the CCG, and minimise the number of conditions that need to be set.

25. The combined effect of this and the other stages of dialogue with CCGs during the decision-making phase would be to extend the published timescales for decisions for each wave by four to five weeks, with decisions being made five to seven weeks after final evidence reports are issued.

Section 4: Decisions

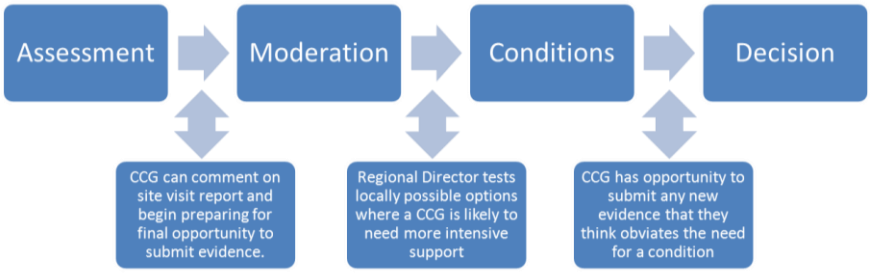
26. The draft mandate states that the NHS CB should focus on achieving full authorisation for as many CCGs as possible who are ready and willing to take on their commissioning responsibilities from April 2013.

27. Once a formal application is made to the Board by a CCG, the Board is required to grant it, if it is satisfied that it meets the set criteria. The Health and Social Care Act 2012 makes no provision for the establishment to be

deferred. However, given the phased approach to authorisation, the Act does therefore enable the Board during the initial period (i.e. between October 2012 and April 2013) to grant an initial application and establish CCGs with conditions, if it is not satisfied that a CCG has fully met the criteria. However, as soon as a CCG ceases to be subject to conditions, it is deemed to be fully authorised.

28. For those CCGs established with conditions in the earlier phases of authorisation, it will therefore be important that they receive appropriate support, to enable those conditions to be met in as many cases as possible, so that they are deemed to be fully authorised by 1 April 2013.

29. For these reasons, for most CCGs, the decision letters will not represent the position they will be in on 1 April 2013. We anticipate that many conditions set at authorisation will be able to be removed when reviewed in March 2013. It is anticipated that during the March 2013 review and at subsequent reviews, conditions with a linked support level of i-ii would have evidence for removal reviewed by the relevant LAT director, levels iii-iv by the relevant regional director, whilst sub-committee sign-off would be required in order to remove conditions with a linked support level of v-vii. Any such submissions would require endorsement from a regional director, and mechanisms would be put in place to ensure rigorous maintenance of authorisation thresholds and consistency of assessment. Authorisation decision letters should therefore be seen as a further, albeit critical, step in the on-going dialogue between CCGs and the NHS CB on CCG development and preparation for establishment.



30. In this spirit it is proposed that the recommendations of the conditions panels should be shared with the applicant CCGs prior to consideration by the sub-committee, so that the sub-committee can take their views, and any progress made by the CCG which obviates the need for a condition, into account. Recommendations on any new evidence submitted by the applicants will be set out by the Chief Operating Officer (COO) in his paper to the sub-committee (see below).

31. Annex A sets out the proposed constitution for the authorisation sub-committee;

Proposed papers

- *Cover paper* from the COO (drafted by the authorisation secretariat on behalf of the COO) setting out his recommendations, their rationale and assessment of consistency. This paper will highlight any difficult or contentious recommendations on which the sub-committee should focus discussion. It will also summarise feedback received from the CCG on the output of the conditions panel, including any new evidence submitted that obviate the need for some of the conditions recommended by the panel, and any amendments made to the conditions panels' recommendations as a result.
- *Draft decision letters* for the CCGs in question
- Provided for information:
    - *Final Evidence Report for* each CCG being considered. NB this will include the response from the CCG in between conditions panel and sub-committee, and the NHS CB's assessment of that response.

Proposed outputs

- *Decision letter* for each CCG considered
- *Record of discussion*, including points for regional directors to take into account in agreeing rectification plans
- A "for information" *Board paper* listing the applications considered by the sub-committee, the decision reached on each application including any conditions imposed and how they relate to the 2012 Act (legal requirement), and any key messages or themes that could inform wider Board business

Decision letters will need to be issued immediately after the relevant sub-committee meeting to the applicant, and prior to any publication of overall outcomes. It is recommended that in the interests of transparency (and to manage communications proactively) the NHS CB publishes the decisions of each sub-committee meeting as they happen, and once decision letters have been issued.

Section 5: Outputs

Decision Letter

For all applicants, the decision letter will be a key part of fulfilling the Board's legal obligations and will set out:

- the decision of the Board (including annex with outcome for each authorisation requirement and how this relates to the matters prescribed by the 2012 Act);
- notification that the Board will not review the decision and that the Act does not provide for any appeal against it;

- statement of responsibilities and duties that apply at the point of authorisation;
- statement of what will happen on 1 April 2013;
- invitation to agree a plan for development beyond authorisation with the NHS CB; and
- guidance on next steps to prepare for transition.

Where a CCG has not been fully authorised it will also set out:

- any conditions/ directions imposed, and how they relate to the 2012 Act;
- support that the Board will provide to the CCG to help them address any conditions imposed;
- timescale for review of any conditions; and
- timescale and process for agreement of a rectification plan, and signposting to information on why authorisation criteria were not met.

Accountable Officer appointment

A letter will be sent to the proposed Accountable Officer (where found to be suitable) formally appointing them to their post, and setting out their responsibilities as an Accountable Officer.

Rectification plan

A rectification plan for each CCG that is not fully authorised would be agreed after the Board sub-committee had made the final decision on authorisation status and the decision letter had been issued. The plan will be based on the reasons why criteria were not assessed to be met (as set out in the final evidence report) and set out the CCG's proposed response in order to achieve the authorisation threshold, allowing conditions to be discharged. The rectification plan would be agreed between the relevant LAT director and the CCG Accountable Officer. This reflects that the authorisation decision is a responsibility for the Board but the actions to be taken if the criteria has not been met are a matter for the CGG to propose and the NHS CB to agree is reasonable and proportionate. The NHS CB would monitor progress against the rectification plan and would determine whether it was appropriate for a condition to be revised or removed based on the progress demonstrated by the CCG in question. First review of conditions would be in March 2013 to enable as many conditions as possible to be removed prior to CCGs taking on their commissioning responsibilities.

Section 6: Next steps

32. Next steps are to schedule panel and sub-committee meetings, finalise an internal guide to this stage of authorisation, prepare template reports and decision letters, as well as model conditions and support options for each criteria.

Section 7: Recommendations

33. The Board is asked to note and receive assurance on the process leading to the final decisions on CCG authorisation. This is that:

- key assessors and LAT directors prepare a final evidence report for each application that will summarise the assessment completed, provide structured narrative analysis of root cause, risk and local context, and reflect any comments made by the applicant on their assessment;
- regional directors approve the recommendations made on conditions and support for each CCG being considered from their region, prior to consideration by the conditions panel;
- regional directors take informal soundings locally prior to the conditions panel on options where the panel is likely to consider that a CCG needs intensive support;
- the output of the conditions panel is shared with CCGs prior to consideration by the sub-committee in order to give a further opportunity for issues that have been resolved by the CCG since the site visit to be reflected in decisions. The sub-committee decision will therefore be approximately five to seven weeks after each CCG's final evidence report is issued;
- there is a review of conditions across all CCGs in March 2013, and quarterly thereafter; and
- the conclusions of each sub-committee meeting should be published immediately after each meeting, once decision letters have been issued.

34. The Board is asked to approve the terms of reference and membership of the moderation and authorisation panels.

35. The Board is asked to establish a sub-committee with delegated authority to agree the authorisation of individual CCGs and any conditions associated with authorisation on which the establishment of CCGs, in line with the Health and Social Care Act, will be based.

Annex A

NHS Commissioning Board

Terms of Reference

Clinical Commissioning Group authorisation sub-committee

Constitution

The NHS Commissioning Board (the Board) hereby resolves to establish a sub-committee to be known as the Clinical Commissioning Group authorisation sub-committee (the sub-committee). The committee is a non-statutory sub-committee of the Board, to which the Board delegates authority to make decisions and report to the Board on the outcome of applications received from aspiring clinical commissioning groups (CCGs) for establishment and authorisation.

Membership

The CCG authorisation sub-committee will consist of the following members:

- three non–executive directors, one of whom will be the chair of the sub-committee;
- the Board's national medical director OR chief nursing officer (or their nominated deputy);
- the Board's chief operating officer (or nominated deputy); and
- the Board's national director of commissioning development (or nominated deputy).

Attendance at meeting

- the director of CCG development (or nominated deputy) will attend meetings; and
- other directors may be invited to attend the meeting for the purpose of providing advice and/or clarification to the sub-committee.

Quoracy

The meeting will be quorate if two of the non-executive sub-committee members and one of the executive directors is present.

Frequency of meetings

There are four proposed waves of authorisation for CCGs between July 2012 and March 2013. The sub-committee shall meet twice per wave between October 2012 and February 2013. Once initial authorisation decisions have been made, the sub-

committee will meet quarterly (first meeting in March 2013) to consider any submissions from CCGs for a condition to be removed.

Authority

Subject to any restrictions set out in relevant legislation, the CCG authorisation sub-committee is authorised by the Board to determine and to act on any matter within its terms of reference.

The sub-committee will have full delegated authority from the Board to decide on which CCGs can be authorised and any conditions to be applied.

Duties

The CCG authorisation sub-committee's primary aim is to approve the authorisation of CCGs with or without conditions.

The sub-committee's remit includes:

1. consideration of the recommendations of the moderation and conditions panels;
2. to receive assurance and to provide assurance to the Board of the quality and rigour of the deliberations of the moderation and conditions panels;
3. to make the decision to authorise the aspiring CCGs in each wave;
4. to communicate immediately after the meeting, the outcome of its deliberations to all applicant CCGs in the form of a decision letter; and
5. to consider and approve or reject the request for removal of a condition.

Reporting arrangements and mechanisms

The sub-committee will report in writing to the Board following each of its meetings in the form of a report from the chair of the sub-committee detailing the decision taken on each application considered, and any emerging key themes or messages that could inform wider Board business. The actions taken will be recorded in the sub-committee's minutes which will be copied to all members of the sub-committee.

Decision letter

For all applicants, the decision letter will be a key part of fulfilling the Board's legal obligations and will set out:

- the decision of the Board (including annex with outcome for each authorisation requirement and how this relates to the matters prescribed by the 2012 Act);
- notification that the Board will not review the decision and that the Act does not provide for any appeal against it;
- statement of responsibilities and duties that apply at the point of authorisation, and from 1 April 2013;
- invitation to agree a plan for development beyond authorisation with the NHS CB; and
- guidance on next steps to prepare for transition.

Where a CCG has not been fully authorised it will also set out:

- any conditions/ directions imposed, and how they relate to the 2012 Act;
- support that the Board will provide to the CCG to help them address any conditions imposed;
- timescale for review of any conditions; and
- timescale and process for agreement of a rectification plan, and signposting to information on why authorisation criteria were not met.

Accountable Officer appointment

A letter will be sent to the proposed Accountable Officer (where found to be suitable) formally appointing them to their post, and setting out their responsibilities as an Accountable Officer.

Administration

The sub-committee will be supported by the nominated officer from the authorisation secretariat who is acting as secretary to the sub-committee.