

Board Meetings held in Common

Date: 27 June 2019

Agenda item: 9

Paper Title: Governance update

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Decision Making Responsibility:

NHS England	<input type="checkbox"/>
NHS Improvement	<input checked="" type="checkbox"/>
NHS England and NHS Improvement	<input type="checkbox"/>
N/A - joint discussion	<input type="checkbox"/>

Summary

1. An updated Governance Framework, which includes the board committees previously established by the Boards as well several executive groups, has now been agreed and shared with staff.
2. Work is ongoing on revisions to the Schemes of Delegation for NHS England and NHS Improvement following changes to the Operating Model which have occurred recently or are due to occur over coming weeks. The Scheme of Delegation, together with any proposed revisions to the Terms of Reference for board committees, will be circulated to the Boards in correspondence in July 2019.
3. In May 2019, the NHS Improvement Board considered and agreed the terms of reference (ToR) for the Provider Oversight Committee and Regional Support Groups, attached at Annex A and Annex B respectively. A summary of the remit of the Committee and Groups is set out below.
4. The Boards of NHS Improvement and NHS England are asked to note this report.

Provider Oversight Committee

5. The purpose of the Committee is to support the Board by providing strategic oversight of transactions and investments, and regulatory policy and decisions. The Committee meets on a monthly basis, according to business requirements.



Membership

6. To ensure appropriate executive and senior oversight of the business of the Committee and input from all relevant areas of the business, the membership of the Committee comprises:
 - a. The Chief Executive Officer of NHS Improvement (Chair);
 - b. The seven Directors of Strategy and Transformation, representing each of the NHS Improvement / NHS England regions;
 - c. The Director of Provider Transformation;
 - d. The Director of Strategic Finance;
 - e. The National Medical Director;
 - f. The National Director of Improvement / The Director of Intensive Support for Challenged Systems;
 - g. Chief People Officer; and
 - h. The General Counsel or their representative (non-voting).

Duties

7. The Committee is responsible for overseeing the development and implementation of NHS Improvement's oversight policy, including special measures and policy on mergers/acquisitions and consolidation within the trust sector, and the process associated with their application.
8. The Committee is also responsible for a range of provider regulatory decisions, including:
 - a. Deciding on entry to and exit from special measures for quality and/or finance;
 - b. Deciding on regulatory enforcement action against a trust, including leadership changes, i.e. using s.105 or s.111 powers to impose requirements on trusts or introduce additional licence conditions. It is proposed that determination of compliance with s.105 discretionary requirements or removal of an additional licence condition would be the responsibility of the relevant Regional Support Group (see paragraph 12c. below);
 - c. Reviewing/approving mergers, acquisitions and other transactions involving trusts in segment 4, or where a transaction is red-rated or considered to be high risk;
 - d. Revoking or granting new provider licences;
 - e. Resolving Commissioner Requested Services designation disputes;
 - f. Approving action in relation to licensed providers that are not FTs and provide Commissioner Requested Services;
 - g. Overseeing Trust Special Administration or Contingency Planning Team processes;
 - h. Overseeing the assessment process for prospective new NHS foundation trusts;
 - i. Overseeing the accreditation process for foundation groups; and
 - j. Reviewing cases in relation to integration, procurement, patient choice and competition.

9. Where a decision gives rise to significant matters of policy for NHS Improvement, or there is a high level of risk associated with the decision, or conflicts of interest could arise as a result of members of the Committee being NHS England employees, the Committee will refer the matter to the NHS Improvement Board.

Regional Support Groups

10. The purpose of Regional Support Groups is to ensure that NHS Improvement adopts a consistent and appropriate approach to supporting providers¹ of NHS services, as part of local health systems, to continuously improve and to enable the review of all regulatory processes and actions as required of providers and commissioners in line with the NHS Oversight Framework for 2019/20. Where necessary to protect and promote patient interests, this will include using NHS Improvement's formal intervention tools. In addition, members of the Group, acting in their capacity as directors of NHS England, may consider matters relating to oversight and intervention at clinical commissioning groups, including the use of NHS England's formal intervention tools.
11. Individual Regional Support Groups have been established across each of the seven regions and meet once every two months, and more frequently as providers' or commissioners' situations and issues may require.
12. While some regional flexibility has been allowed in regard to the name, membership and frequency of Group meetings, the specific duties delegated to the Groups remains consistent across all seven regions.

Membership

13. The membership of the Groups is made up of, at a minimum, the following directors for the relevant region:
- a. Regional Director (Chair);
 - b. Regional Director of Strategy and Transformation;
 - c. Regional Director of Performance and Improvement;
 - d. Regional Finance Director or a nominated representative;
 - e. Regional Medical Director and Chief Clinical Information Officer or a nominated representative / Regional Chief Nurse or a nominated representative; and
 - f. Regional Director of Commissioning.
14. Additional members may be added as deemed appropriate by the Groups, ensuring that a proportionate increase is reflected in the quorum for meetings.

Duties – Providers of NHS Services

¹ For the purpose of the ToR 'providers' shall include all providers of NHS services whether NHS trusts or NHS foundation trusts or the independent sector.

15. The Groups are responsible for a range of provider regulatory decisions, including:
 - a. Reviewing and determining the segmentation of and support required by trusts in segments 1 to 3, and determining the support required by a trust in segment 4 (special measures) following a decision by the Provider Oversight Committee for a trust to enter the regime;
 - b. Deciding on proposals to accept enforcement undertakings from providers, i.e. using s.106 powers, and making recommendations to the Provider Oversight Committee on regulatory enforcement action against a trust under s.105 or s.111;
 - c. Reviewing and determining trusts' compliance with s.106 enforcement undertakings and/or s.105 discretionary requirements, and removal of a s.111 additional licence condition; and
 - d. Reviewing/approving mergers, acquisitions and other transactions, and making recommendations to the Provider Oversight Committee where the transaction involves a trust in segment 4 or is red-rated or considered to be high risk.

Clinical Commissioning Groups

16. In accordance with NHS England's Scheme of Delegation, authority to take decisions on issuing directions and formally intervene at clinical commissioning groups (CCGs), or to decide on CCG mergers, sits with the NHS England Board and NHS England Statutory Committee.
17. To support parity of decision making across the provider and commissioner sectors under the current Schemes of Delegation, members of the Groups, in their capacity as employees of NHS England, can collectively consider and make recommendations to the NHS England Board or, where appropriate, NHS England Statutory Committee on the exercise of NHS England's powers in respect of CCGs to:
 - a. Issue directions to CCGs over how to discharge their functions and whether to terminate the appointment of the CCG's Accountable Officer;
 - b. Requests by CCGs for NHS England to exercise functions of the CCG;
 - c. Applications for the establishment of CCGs;
 - d. Applications for merger by two or more CCGs; and
 - e. Proposals to dissolve one or more CCGs.

Annex A

Provider Oversight Committee Terms of Reference

Approved by the Board on xxx 2019



1. Purpose

- 1.1 The Boards of Monitor and the NHS Trust Development Authority, together known as NHS Improvement, have established a Provider Oversight Committee (the Committee) to support the Board's respective duties and powers by providing strategic oversight of transactions and investments, and regulatory policy and decisions, including those relating to special measures.

2. Composition

Membership

- 2.1 The members of the Committee are appointed by the Board and shall be made up of:
- a) The Chief Executive of NHS Improvement¹;
 - b) The seven Directors of Strategy and Transformation, representing each of the NHS Improvement / NHS England regions;
 - c) The Director of Provider Transformation;
 - d) The Director of Strategic Finance;
 - e) The National Medical Director;
 - f) National Director of Improvement / The Director of Intensive Support for Challenged Systems;
 - g) Chief People Officer; and
 - h) The General Counsel or their representative (non-voting).

Committee Chair

- 2.2 The Committee will be chaired by the Chief Executive of NHS Improvement. In the absence of the Committee Chair, the National Medical Director will chair the meeting.

Secretary

- 2.3 The Head of Governance or their nominee will act as the secretary of the Committee.

3. Meeting arrangements

Attendance

- 3.1 Members of the Committee are expected to attend meetings wherever possible.
- 3.2 At the invitation of the Committee chair others may also attend Committee meetings.
- 3.3 The Committee chair may ask any person in attendance who is not a member of the Committee to withdraw from a meeting to facilitate open and frank discussion of a particular matter.

¹ From [date], the Chief Executive of NHS Improvement will also be the Chief Operating Officer of NHS Improvement and NHS England.

Meetings

- 3.4 The Committee will meet (including by telephone or video conferencing) monthly or as determined by the Committee Chair. Any member of the Committee can ask for a meeting to be convened in person, by video-conference or by telephone, or for a matter to be considered in correspondence.
- 3.5 The quorum for meetings is five members, including either the Chief Executive or the National Medical Director. A duly convened meeting of the Committee at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the Committee.
- 3.6 Unless otherwise determined by the Committee Chair, notice of each meeting confirming the venue, time and date together with an agenda and supporting papers shall be circulated to each member of the Committee and any other person required to attend, no later than five working days before the date of the meeting.
- 3.7 The secretary shall minute the proceedings and decisions of all meetings of the Committee, including recording the names of those present and in attendance.
- 3.8 Draft minutes of the Committee meetings shall be circulated to all members of the committee within four working days. Once approved, minutes should be circulated to all other members of the NHS Improvement Board, unless it would be inappropriate to do so.
- 3.9 Except as outlined above, meetings for the Committee shall be conducted in accordance with the relevant provisions of NHS Improvement's Rules of Procedure.

4. Duties

- 4.1 The Committee will support the Board by providing strategic oversight of transactions and investments, and regulatory policy and decisions (including special measures). Where a decision gives rise to significant matters of policy for NHS Improvement, or there is a high level of risk associated with the decision, or conflicts of interest could arise as a result of members of the Committee being NHS England employees, the Committee will refer the matter to the NHS Improvement Board.

Strategic oversight and policy duties

- 4.2 The Committee will be responsible for providing strategic oversight of transactions and investments, reviewing system reconfiguration proposals at an early stage to enable timely feedback to system leaders.
- 4.3 The Committee will be responsible for overseeing the development and delivery of NHS Improvement's oversight policy (including special measures), through:

- a. reviewing the approach taken with regard to the monitoring of the performance of all providers and NHS Improvement's interventions to prevent or manage service failure;
- b. reviewing the processes associated with NHS Improvement's regulation work;
- c. reviewing provider policy, including the published special measures policy, and the processes associated with their application; and
- d. making recommendations, as appropriate, to the Board on any changes to policy, including the content of the Single Oversight Framework and Risk assessment framework for independent sector providers of NHS services².

Operational duties related to regulation

4.4 In relation to regulation including special measures and the Single Oversight Framework, the Committee will take the following operational decisions:

- a. In accordance with published special measures guidance, to decide whether to place NHS foundation trusts and NHS trusts in special measures (and segment 4 of the Single Oversight Framework), whether for quality or finance reasons, and to decide on whether a trust may exit such measures;
- b. to review and determine proposals for the imposition of enforcement requirements, and the provision of any associated support, where a provider³ is in, or is proposed to be placed in, segment 3 or 4, except where the proposals are for amendments to existing enforcement requirements consequential upon enforcement undertakings approved by a Regional Support Group;
- c. to review and determine proposals to accept enforcement undertakings from a provider where the undertakings are to be considered in conjunction with enforcement requirements to be reviewed by the Committee, or where the proposals have been referred by a Regional Support Group for other reasons;
- d. to decide on proposals for modifying or adding to a provider's licence conditions;
- e. In relation to Commissioner Requested Services (CRS):
 - i. to review the case for designating or de-designating a service as a CRS and to decide upon the designation, where NHS Improvement has been requested by a commissioner or provider to make a ruling on a disputed designation in accordance with the CRS designation guidance; and
 - ii. to review and determine whether to issue a direction that a provider should continue providing CRS.
- f. to review and determine proposals to notify a provider that NHS Improvement is concerned about its ability to carry on as a going concern;

² Or its successor document. This applies to all references to the Single Oversight Framework in this Terms of Reference.

³ For the purpose of these ToR 'providers' shall include all providers of NHS services whether NHS trusts or NHS foundation trusts or the independent sector.

- g. where NHS Improvement has notified an NHS foundation trust or other licensed provider that NHS Improvement is concerned about its ability to carry on as a going concern, to determine matters under condition CoS2(5) (consent to disposal of assets) and condition CoS6 (Contingency Planning Team) of the NHS Provider Licence Standard Condition; and
 - h. to decide whether to grant or revoke a provider licence.
- 4.5 The Committee may delegate the function of deciding on the grant or revocation of provider licences to the Director of Provider Transformation or a subcommittee. This paragraph shall not apply to cases where revocation constitutes enforcement action proposed in response to a licence breach.
- 4.6 Once it has been determined that a licensed provider should be subject to a Contingency Planning Team (CPT) or Trust Special Administration (TSA) process, the Committee shall be responsible for:
- a. reviewing the progress being made by the CPT or TSA, seeking assurance on the management of risks;
 - b. considering any strategic implications arising from the work of a CPT or TSA; and
 - c. considering (ahead of their circulation to the Board, if they give rise to significant policy or high-risk decisions), any formal submissions made by a CPT or TSA.
- 4.7 With regard to segmentation under NHS Improvement's Single Oversight Framework, the Committee shall be responsible for periodic review of segmentation decisions for NHS foundation trusts and NHS trusts, with a view to ensuring consistency.

Operational duties related to groups, transactions and systems working

- 4.8 The Committee shall be responsible for ensuring a robust process for accreditation of foundation groups including reviewing individual requests for accreditation.
- 4.9 With regard to transactions involving NHS foundation trusts and NHS trusts in segment 4, or where a transaction is red-rated or considered to be high risk, the Committee shall be responsible for:
- a. reviewing the risk ratings of significant investments, divestments and transactions, including the creation of subsidiaries, and determining whether the proposed transaction would place the provider/s in breach of their licence conditions;
 - b. reviewing proposed mergers and acquisitions, and deciding on these;
 - c. reviewing applications for the separation of an NHS foundation trust (into two or more trusts) or the dissolution of an NHS foundation trusts, and deciding on these;
 - d. reviewing the assessment of proposals for NHS trusts to dissolve and transfer property and liabilities to other NHS trusts or NHS foundation

- trusts, or to receive property and liabilities arising from dissolution, merger or acquisitions of other NHS trusts or NHS foundation trusts, and making recommendations on those proposals; and
- e. where a transaction is considered to be very high risk or policy determining, advising the Board on the most appropriate course of action.

4.10 With regard to Monitor's functions in relation to integration, procurement, patient choice and competition, the Committee shall be responsible for:

- a. reviewing cases relating to enforcement of the integrated care licence condition or relating to procurement, patient choice or competition (including advice to the Competition and Markets Authority on patient benefits of mergers involving NHS foundation trusts) and deciding upon these or, where the decision gives rise to significant issues of policy and/or is very high risk, referring the matter to the Board;
- b. reviewing and, where necessary, making recommendations to the Board on policy issues relating to co-operation and competition; and
- c. scoping potential cases for regulatory market studies, for agreement by the Board.

Operational duties related to NHS foundation trust assessment

4.11 With regard to the authorisation of NHS foundation trusts, the Committee shall ensure that there is a robust assessment process through:

- a. reviewing individual applications from NHS trusts for foundation status in accordance with NHS Improvement's applicable guidance and deciding on these or, where the decision is considered to be marginal, advising the Board on the most appropriate course of action; and
- b. reviewing information on the assessment pipeline and issues arising within individual aspirant NHS foundation trusts to ensure a consistent approach, including the approach to commissioning further assessment work.

Other

4.12 The Committee will discuss any matter which any member of the Committee believes to be of such importance that it should be brought to the attention of the Committee.

4.13 In this Duties section:

“enforcement requirements” means:

- a. in relation to an NHS trust, requirements imposed by a direction in response to a breach of an equivalent condition,
- b. in relation to an NHS foundation trust, discretionary requirements under section 105 of the 2012 Act or an additional licence condition under section 111 of the 2012 Act or any requirement imposed or action taken under it,
- c. in relation to any other provider, discretionary requirements under section 105 of the 2012 Act.

“enforcement undertakings” means:

- a. in relation to a provider other than an NHS trust, enforcement undertakings under section 106 of the 2012 Act,
- b. in relation to an NHS trust, a formal written undertaking by the trust to take action to secure that a breach of an equivalent condition does not continue or recur, or that the position is restored to what it would have been if the breach in question was not occurring or had not occurred;

“equivalent condition” means a condition which is equivalent to a licence condition for providers other than NHS trusts and which NHS Improvement has deemed appropriate to apply to NHS trusts.

5. Reporting responsibilities

- 5.1 The Committee’s Chair shall report formally to the NHS Improvement Board on its proceedings after each meeting on all matters within its duties and responsibilities.
- 5.2 The Committee shall make whatever recommendations to the Board it deems appropriate on any area within its remit where action or improvement is needed.

6. Other matters

The Committee will:

- 6.1 have access to sufficient resources to carry out its duties, including access to the Head of Governance for assistance as required.
- 6.2 consider any other matters where requested to do so by the NHS Improvement Board.
- 6.3 review on an annual basis its own performance and terms of reference to ensure that it is operating effectively. The results of these reviews, together with any proposed changes, should be reported to the Board.

7. Authority

The Committee is authorised:

- 7.1 to seek any information it reasonably requires, or request attendance at a meeting, from any employee of NHS Improvement or NHS England in order to perform its duties;
- 7.2 to obtain, at NHS Improvement’s expense, outside legal or other professional advice on any matter within its terms of reference (subject to budgets agreed by the Board). For legal advice, the General Counsel shall be consulted prior to procurement of external advice, which procurement will be managed by the NHS Improvement Legal Team; and
- 7.3 to appoint, with the agreement of the Board, sub-committees with such membership and terms of reference as the Committee may determine and delegate any of its responsibilities to such a sub-committee.

Annex B

Regional Support Group ([insert relevant region]) Terms of Reference

Approved by the Board on xxx 2019



1. Purpose

- 1.1 The Group helps ensure that NHS Improvement and NHS England adopt a consistent and appropriate approach to supporting providers¹ and commissioners of NHS services, as part of local health systems, to continuously improve and to enable the review of all regulatory processes and actions as required of providers and commissioners in line with the NHS Oversight Framework for 2019/20. Where necessary to protect and promote patient interests, this will include using NHS Improvement's and NHS England's formal intervention tools.
- 1.2 The Group is a committee of both Monitor and the National Health Service Trust Development Authority, the statutory bodies that comprise NHS Improvement, and exercises the functions of those bodies as set out in section 4. In addition, however, to the business of the Group as an NHS Improvement committee, the members of the Group may, acting in their capacity as directors of NHS England, discuss and agree matters relating to the functions of that body, as set out in section 5.
- 1.3 Chaired by the Regional Director ([insert relevant region]) the Group meets once every two months and more frequently as providers' or commissioners' situations and issues may require.

2. Composition

Membership

- 2.1 The Group shall be made up of the following directors for the [insert relevant region] Region:
 - 2.1.1 Regional Director;
 - 2.1.2 Regional Director of Strategy and Transformation;
 - 2.1.3 Regional Director of Performance and Improvement
 - 2.1.4 Regional Finance Director or a nominated representative;
 - 2.1.5 Regional Medical Director and Chief Clinical Information Officer or a nominated representative / Regional Chief Nurse or a nominated representative; and
 - 2.1.6 Regional Director of Commissioning.
- 2.2 In addition to the members above, the following will be regular attendees at Group meetings:

¹ For the purpose of these ToR 'providers' shall include all providers of NHS services whether NHS trusts or NHS foundation trusts or the independent sector.

- 2.2.2 A Legal Director or other appropriate representative of the NHS Improvement Legal Team;
- 2.2.3 Regional Senior Oversight and Regulation Lead;
- 2.2.4 [xxx]...;
- 2.2.5 A member of the Governance team; and
- 2.2.6 Others may attend as relevant to the items being considered or at the invitation of the Chair.

Group Chair

- 2.3 The Group will be chaired by the Regional Director. In the absence of the Chair, a deputy nominated by the Regional Director will act as Chair.

Secretary

- 2.4 A member of the Governance team will act as the secretary of the Group.

3. Meeting arrangements

Attendance

- 3.1 Members of the Group are expected to attend meetings wherever possible; however, if a member of the Group is unable to attend a meeting they may appoint another member of their team to deputise on their behalf. Deputies will have the same rights and responsibilities as Group members.

Quorum

- 3.2 The quorum for meetings is three members, including the Regional Director or their nominated deputy. No more than two deputies shall count towards the quorum. A duly convened meeting of the Group at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the Group.
- 3.3 The Group may resolve that any of the duties in section 5 may be exercised by a member of the Group acting alone, subject to the conditions below and to any other conditions the Group considers appropriate at the time.
 - 3.5.1 Any novel, contentious or high-risk matters must be considered by the Group in a meeting held in accordance with paragraph 3.4.
 - 3.5.2 Only decisions relating to individual cases or matters may be taken by a member of the Group. The Group may not resolve that all the decisions relating to a particular duty are to be taken by a single member.

Meetings

- 3.4 The Group will meet (including by telephone or video conferencing) once every two months or as determined by the Chair. Any member of the Group can ask for a meeting to be convened in person, by video-conference or by telephone, or for a matter to be considered in correspondence.
- 3.5 Unless otherwise agreed, notice of each meeting confirming the venue, time and date together with an agenda of items to be discussed shall be circulated to each member of the Group and any other person required to attend, no later than four working days before the date of the meeting. Supporting papers shall be sent to Group members, and to other attendees as appropriate, no later than four working days before the date of the meeting.
- 3.6 The secretary shall minute the proceedings and decisions of all meetings of the Group, including recording the names of those present and in attendance.
- 3.7 Draft minutes of the Group meetings shall be circulated promptly to all members of the Group.
- 3.8 Except as outlined above, meetings for the Group shall be conducted in accordance with the relevant provisions of NHS Improvement's Rules of Procedure.

4. Declarations of Interest

- 4.1 All members and attendees of the Group must declare any relevant personal, non-personal, pecuniary or potential interests at the commencement of any meeting. The Chair of the Group will determine if there is a conflict of interest such that the member and/or attendee will be required not to participate in a discussion or otherwise limit their participation in the meeting.
- 4.2 Any member at any time is entitled to ask the Chair whether an item of business should be discussed outside of a meeting for any reason, including where in the member's view it may create a conflict between the powers or duties of NHS England and NHS Improvement.
- 4.3 The Governance team can provide advice on this matter and in addition, guidance on reporting Declarations of Interests can be found in the [Standards of Business Conduct Policy](#).

5. Duties – Providers of NHS Services

- 5.1 Within the context of the NHS Oversight Framework 2019/20 and the approach to provider oversight, and to protect and promote patient interests, the Group is responsible for considering and determining a consistent and appropriate approach where providers and their local health systems require support, including formal intervention as necessary, with the underlying

objective of supporting those providers in continuously improving their performance in the context of their local health economy.

Segmentation, support and regulation

5.2 The Group is responsible for:

- 5.2.1 reviewing and determining the segmentation of, and support required by, NHS trusts and NHS foundation trusts (NHSFTs) in the region with (i) no concerns (segment 1) (ii) emerging concerns where further investigation of the issues and targeted support are needed (segment 2) and (iii) serious issues where both targeted and mandated support are likely to be needed (segment 3);
- 5.2.2 reviewing and determining the support required by an NHS trust or NHSFT placed in special measures (segment 4);
- 5.2.3 reviewing and determining proposals to accept enforcement undertakings from providers except in relation to cases falling within paragraph 5.2.4;
- 5.2.4 making recommendations to the [Provider Oversight Committee] in relation to proposals to:
 - (a) impose enforcement requirements on a provider, and accept any undertakings in conjunction with those requirements, or
 - (b) accept enforcement undertakings from a provider, where the Group consider that it is appropriate to refer the matter to the Committee;
- 5.2.5 reviewing the progress made by an NHS trust or NHSFT in segment 2, 3 or 4, and any other provider that has been subject to enforcement requirements or undertakings, including its progress in complying with any relevant enforcement requirements or undertakings, and, where appropriate:
 - (a) to decide whether to issue a compliance certificate or statement, or vary enforcement undertakings, or
 - (b) to determine or recommend any further enforcement action or support.

In this paragraph:

“enforcement requirements” means:

- (a) in relation to an NHS trust, requirements imposed by a direction in response to a breach of an equivalent condition,
- (b) in relation to an NHSFT, discretionary requirements under section 105 of the Health and Social Care Act 2012 (the 2012 Act), or an additional licence condition under section 111 of the 2012 or any other requirement imposed or action taken under that section,
- (c) in relation to an independent provider, discretionary requirements under section 105 of the 2012 Act;

“enforcement undertakings” means:

- (a) in relation to an NHS trust, a formal written undertaking by the trust to take action to secure that a breach of an equivalent condition does not continue or recur, or that the position is restored to what it would have been if the breach in question was not occurring or had not occurred,
- (b) in relation to an NHSFT and an independent provider, enforcement undertakings under section 106 of the 2012 Act;

“equivalent condition” means a condition which is equivalent to a licence condition for providers other than NHS trusts and which NHS Improvement has deemed appropriate to apply to NHS trusts.

Transactions

- 5.3 With regard to transactions involving NHS trusts and NHSFTs, the Group shall be responsible for:
 - 5.3.1 determining the level of support and assurance on transactions proposed by NHSFTs and NHS trusts and ensuring that appropriate processes are followed drawing on support from national directorates as required;
 - 5.3.2 determining risk ratings for low/medium level investments, divestments and transactions proposed by NHSFTs and NHS trusts, including the creation of subsidiaries, and considering whether these transactions would place trusts in breach of their licence conditions;
 - 5.3.3 reviewing low/medium level proposed mergers and acquisitions, and deciding on these;
 - 5.3.4 reviewing low/medium level applications for the separation of an NHSFT (into two or more trusts) or the dissolution of an NHSFT, and deciding on these;
 - 5.3.5 reviewing the assessment of low/medium level proposals for NHS trusts to dissolve and transfer property and liabilities to other NHS trusts or NHSFT, or to receive property and liabilities arising from dissolution, merger or acquisitions of other NHS trusts or NHSFTs, and making recommendations on those proposals to the Secretary of State for Health and Social Care; and
 - 5.3.6 making appropriate recommendations to the [Provider Oversight Committee] on risk ratings of all transactions proposed by NHSFTs or NHS trusts within segment 4, and all transactions which are red rated and/or considered high risk.

6. Clinical Commissioning Groups

- 6.1 Within the context of the NHS Oversight Framework 2019/20 and the approach to clinical commissioning group (CCG) oversight, and to protect

and promote patient interests, the members of the Group are responsible for considering and recommending a consistent and appropriate approach where commissioners and their local health systems require support with the underlying objective of supporting those commissioners in continuously improving their performance in the context of their local health economy.

- 6.2 The Group members, in their capacity as employees of NHS England, will collectively consider and make recommendations to the NHS England Statutory Committee on the exercise of NHS England's powers in respect of CCGs to:
 - 6.2.1 Issue directions to CCGs over how to discharge their functions and whether to terminate the appointment of the CCG's Accountable Officer (section 14Z21 of the NHS Act 2006)
 - 6.2.2 Consider requests by CCGs for NHS England to exercise functions of the CCG and make recommendations on these to the NHS England Statutory Committee (section 14Z9 of the NHS Act 2006);
 - 6.2.3 Consider applications for the establishment of CCGs and making recommendations on these to the NHS England Statutory Committee (sections 14B and 14C of the NHS Act 2006);
 - 6.2.4 Review applications for merger by two or more CCGs, and make recommendations on these to the NHS England Statutory Committee (section 14G of the NHS Act 2006); and
 - 6.2.5 Review proposals to dissolve one or more CCGs and make recommendations on these to the NHS England Statutory Committee (section 14H of the NHS Act 2006).

7. Reporting responsibilities

- 7.1 The Regional Director shall be responsible for ensuring that the work of the Group is reported to the Provider Oversight Committee as appropriate.
- 7.2 The Regional Director, in their capacity as Regional Director of NHS England, shall report the work of the members of the Group in relation to the matters referred to in section 5 to the NHS England Statutory Committee.
- 7.3 The Group shall make whatever recommendations to the Provider Oversight Committee it deems appropriate on any area within its remit where action or improvement is needed.

8. Other matters

The Group shall:

- 8.1 have access to sufficient resources to carry out its duties, including access to the Governance team for assistance as required.

- 8.2 consider any other matters where requested to do so by the Provider Oversight Committee.
- 8.3 review on an annual basis its own performance and terms of reference to ensure that it is operating effectively. The results of these reviews, together with any proposed changes, should be reported to the Provider Oversight Committee as appropriate.

9. Authority

The Group is authorised:

- 9.1 to seek any information it requires, or request attendance at a meeting, from any employee of NHS Improvement or NHS England in order to perform its duties; and
- 9.2 to obtain, at NHS Improvement's expense, outside legal or other professional advice on any matter within its terms of reference (subject to budgets agreed by the Board). For legal advice, the General Counsel shall be consulted prior to procurement of external advice, which procurement will be managed by the NHS Improvement Legal Team.