

Primary (General Practice) Care Commissioning Committee

1. Introduction

- 1.1 The Primary (General Practice) Care Commissioning Committee ('the Committee') is established in accordance with the NHS Cheshire CCG Constitution, Prime Financial Policies and Scheme of Delegation. These terms of reference define the membership, remit, responsibilities and reporting arrangements of the Committee which meet the requirements of the Constitution of the CCG and Managing Conflicts of Interest: Statutory Guidance for CCGs.
- 1.2 The accountability and decision making of the Committee has been delegated to the Committee by the Clinical Commissioning Group and NHS England.

2. Statutory Framework

- 2.1 Simon Stevens, the Chief Executive of NHS England, announced on 1 May 2014 that NHS England was inviting CCGs to expand their role in primary care commissioning and to submit expressions of interest setting out the CCG's preference for how it would like to exercise expanded Primary Medical Care commissioning functions. One option available was that NHS England would delegate the exercise of certain specified primary care commissioning functions to a CCG.
- 2.2 In accordance with its statutory powers under section 13Z of the National Health Service Act 2006 (as amended), NHS England has delegated the exercise of the functions specified in Schedule 2 of the respective delegation agreements to these Terms of Reference to NHS Cheshire CCG.
- 2.3 The CCG has established the NHS Cheshire CCG Primary Care Commissioning Committee. The Committee will function as a corporate decision-making body for the management of the delegated functions and the exercise of the delegated powers.
- 2.4 Arrangements made under section 13Z may be on such terms and conditions (including terms as to payment) as may be agreed between NHS England and the CCG.
- 2.5 Arrangements made under section 13Z do not affect the liability of NHS England for the exercise of any of its functions. However, the CCG acknowledges that in exercising its functions (including those delegated to it), it must comply with the statutory duties set out in Chapter A2 of the NHS Act and including:
 - a) Management of conflicts of interest (section 14O);
 - b) Duty to promote the NHS Constitution (section 14P);

- c) Duty to exercise its functions effectively, efficiently and economically (section 14Q);
- d) Duty as to improvement in quality of services (section 14R);
- e) Duty in relation to quality of primary medical services (section 14S);
- f) Duties as to reducing inequalities (section 14T);
- g) Duty to promote the involvement of each patient (section 14U);
- h) Duty as to patient choice (section 14V);
- i) Duty as to promoting integration (section 14Z1);
- j) Public involvement and consultation (section 14Z2).

2.6 The CCG will also need to specifically, in respect of the delegated functions from NHS England, exercise those set out below:

- Duty to have regard to impact on services in certain areas (section 13O);
- Duty as respects variation in provision of health services (section 13P).

2.7 The Committee is established as a Committee of the CCG in accordance with Schedule 1A of the “NHS Act”.

2.8 The members acknowledge that the Committee is subject to any directions made by NHS England or by the Secretary of State.

3. Role of the Committee

3.1 The Committee has been established in accordance with the above statutory provisions to enable the members to collectively consider the strategy, planning and procurement of primary care services in Cheshire, under delegated authority from NHS England.

3.2 In performing its role, the Committee will exercise its management of the functions in accordance with the agreement entered into between NHS England and NHS Cheshire CCG which will sit alongside the delegation and terms of reference.

3.3 The functions of the Committee are undertaken in the context of a desire to promote increased co-commissioning to increase quality, efficiency, productivity and value for money and to remove administrative barriers.

3.4 The role of the Committee shall be to carry out the functions relating to the commissioning of primary medical services under section 83 of the NHS Act except those relating to the Reserved Functions of NHS England.

3.5 This includes but is not limited to the following activities:

- GMS, PMS and APMS contracts (including the design of PMS and APMS contracts, monitoring of contracts, taking contractual action such as issuing branch/remedial notices, and removing a contract;
- newly designed enhanced services (“Local Enhanced Services” and “Directed Enhanced Services)
- design of local incentive schemes as an alternative to the Quality Outcomes Framework (QOF);
- Decision making on whether to establish new GP practices in an area;
- approving practice mergers;

- making decisions on 'discretionary' payments (e.g., returner/retainer schemes).
- 3.6 The decisions of the Committee shall be binding on the CCG and NHS England. Decisions will be published by the CCG.
- 3.7 The Committee will also carry out the following activities:
- a) to plan, including needs assessment, primary [medical] care services in Cheshire;
 - b) to undertake reviews of primary [medical] care services in Cheshire;
 - c) to co-ordinate a common approach to the commissioning of primary care services generally;
 - d) to manage the budget for commissioning of primary [medical] care services in Cheshire.
 - e) to commission, review and authorise policies where they are explicitly related to areas within the remit of the Committee as outlined within the TOR, or where specifically delegated by the Governing Body and/or NHS England/Improvement.

4. Geographical Coverage

- 4.1 The Committee will comprise the Cheshire CCG area.

5. Membership

- 5.1 The Committee shall consist of the following membership:
- at least two Independent Lay Governing Body Members
 - at least one Independent Clinical Governing Body Member
 - CCG Accountable Officer or nominated deputy
 - CCG Executive Director of Finance & Contracts (Chief Finance Officer), or nominated deputy
 - CCG Executive Director of Strategy & Partnerships, or nominated deputy
 - CCG Executive Director of Planning & Delivery or nominated deputy
 - CCG Executive Director of Quality & Patient Experience or nominated deputy
 - CCG Joint Medical Director or nominated deputy.
- 5.2 Members of the Committee will be listed in the CCG annual report and accounts.
- 5.2 Committee members may appoint a deputy to represent them at meetings of the Committee. Committee members should inform the Committee Chair at least 48 hours ahead of the meeting of their intention to nominate a deputy to attend/act on their behalf. They should provide assurance that any such deputy is suitably briefed and suitably qualified, and that the individual fulfils the requirements of the role and is not disqualified by whichever schedules of the regulations that may apply. Alternatively, where appropriate members' views may be sought by email and reported verbally at the Committee meeting.

- 5.3 The Committee may determine which other individuals from within and outside of the CCG to invite to attend Committee meetings. Regular attendees do not have any authority to cast a vote.
- 5.4 Key regular attendees with a standing invite to attend Committee meetings will be:
- x4 General Practice Representatives
 - Associate Director of Primary Care
 - CCG Practice Manager Representative
 - Cheshire Local Medical Committee Representative
 - Healthwatch Cheshire Representative
 - NHS England & Improvement Representative.
- 5.5 A standing invitation will be open to the following observers to attend and participate in the meeting:
- Cheshire East Council Health and Wellbeing Board Representative
 - Cheshire West and Chester Council Health and Wellbeing Board Representative
 - Cheshire East Council Public Health Representative
 - Cheshire West and Chester Council Public Health Representative.
- 5.6 Individuals in attendance do not have any authority to cast a vote in any of the decisions undertaken by the Committee.

6. Chair Arrangements

- 6.1 The Chair and Vice Chair of the Committee must be undertaken by an individual in the role of an Independent Lay Member on the Governing Body who is not the CCGs Governance, Audit and Risk Committee Chair or Conflicts of Interest Guardian.

7. Meetings and Voting

- 7.1 The Committee will operate in accordance with the CCG's Standing Orders. The Secretary to the Committee will be responsible for giving notice of meetings. This will be accompanied by an agenda and supporting papers and sent to each member representative no later than seven days before the date of the meeting. When the Chair of the Committee deems it necessary in light of the urgent circumstances to call a meeting at short notice, the notice period shall be such as s/he shall specify.
- 7.2 Each voting member of the Committee shall have one vote. The Committee shall reach decisions by a simple majority of members present, but with the Chair having a second and deciding vote, if necessary. However, the aim of the Committee will be to achieve decision-making by consensus wherever possible.

- 8. Quorum.** A quorum necessary for the Committee to undertake its business shall be at least four voting members of the Committee, comprising:

- Chair (or nominated Vice Chair in the absence of the Chair)
- One other Independent Governing Body Member

- Two Directors from the CCGs Executive Team.

8.2 Although not voting members of the Committee, to facilitate the involvement of General Practice Representation in the discussions of the Committee, if no General Practice Representatives are available to attend a meeting the Chair may consider the rescheduling of the meeting.

8.3 Where a meeting is not quorate, owing to the absence of certain members, the meeting may be deferred until such time as a quorum can be convened. Where there is a need for urgent decision-making between meetings, this will be undertaken by email or through an extraordinary meeting if required. This will be on an exceptional basis and all decisions will be brought to the next Committee meeting for ratification.

8.4 Where a quorum cannot be convened from the membership of the meeting, owing to the arrangements for managing conflicts of interest or potential conflicts of interests, the Chair of the meeting shall consult with the CCG Chief Officer or Chief Finance Officer on the action to be taken. There should be due consideration given by the Chair of the Committee of Clinical Representation at the meeting amongst the members.

9. Frequency of meetings

9.1 The Committee shall be convened on a bi-monthly basis with a minimum of six meetings per year.

9.2 Meetings of the Primary (General Medical) Care Commissioning Committee meetings will be held in public unless the CCG considers that it is not in the public's interest to permit members of the public to attend a meeting or part of a meeting.

9.3 Members of the public and press will be able to attend all Primary (General Medical) Care Commissioning Committee meetings held in public with the exception of in those circumstances it is deemed necessary to prevent disruption or where publicity on a matter would be prejudicial to the public interest. On the rare occasion where press or public are excluded, members of the Primary (General Medical) Care Commissioning Committee, and employees in attendance will be required not to disclose confidential contents of papers or minutes, or content of any discussion at the meeting on these topics outside the CCG without the express permission of the Committee.

9.4 Members of the Committee have a collective responsibility for the operation of the Committee. They will participate in discussion, review evidence and provide objective expert input to the best of their knowledge and ability, and endeavour to reach a collective view.

9.5 The Committee may delegate tasks to such individuals, sub-committees or individual members as it shall see fit, provided that any such delegations are consistent with the parties' relevant governance arrangements, are recorded in a scheme of delegation, are governed by terms of reference as appropriate

and reflect appropriate arrangements for the management of conflicts of interest.

- 9.6 The Committee may call additional experts to attend meetings on an ad hoc basis to inform discussions.
- 9.7 Members of the Committee, including the non-voting members and attendees, shall respect confidentiality requirements as set out in the CCG's Constitution.
- 9.8 The Committee will present the minutes of its meetings to the Governing Body of NHS Cheshire CCG at the next appropriate meeting for information, including the minutes of any sub-committees to which responsibilities are delegated under paragraph 9.5 above.
- 9.9 The Committee will also comply with any reporting requirements set out in its Constitution.
- 9.10 These Terms of Reference will be reviewed from time to time, reflecting experience of the Committee in fulfilling its functions. NHS England may also issue revised model terms of reference from time to time.

10. Accountability of the Committee

- 10.1 The Committee is accountable to the CCG membership and to NHS England. The decision-making scope of the Committee is outlined within the NHS Cheshire CCG Constitution and specifically the Scheme of Reservation and Delegation.
- 10.2 The minutes of the Committee will be formally recorded and presented to the Governing Body at the earliest practicable meeting.
- 10.3 The Committee is responsible for both overseeing the management of primary care delegated budgets and ensuring decisions made do not exceed the primary care delegated budget.
- 10.4 The Committee will ensure that patient/public consultation is considered and undertaken when appropriate to aid decision making.

11. Procurement of Agreed Services

- 11.1 The Committee will ensure that Procurement, Patient Choice and Competition (No.2) Regulations 2013 are followed.
- 11.2 No contracts for NHS healthcare services will be awarded where conflicts or potential conflicts of interest affect or appear to affect the integrity of the award.

12. Decisions

- 12.1 The Committee will make decisions within the bounds of their remit.
- 12.2 The decisions of the Committee shall be binding on NHS England and the CCG.

12.3 The Committee will produce an executive summary report which will be presented to NHS England's regional team and the Governing Body of NHS Cheshire CCG bi-monthly for information.

13. REVIEW OF PERFORMANCE

13.1 These Terms of Reference were approved on 15 July 2021.

13.2 The Committee shall undertake an annual review of its performance and effectiveness to ensure it has discharged its functions as intended. Any changes to the Terms of Reference resulting from any such review will need to be approved by the CCG Governing Body.

13.3 A review log of all Committee Terms of Reference is held within the CCG Corporate Governance Handbook.

14. SCHEDULE ONE – DELEGATED FUNCTIONS

Delegation by NHS England

1 April 2020

Delegation by NHS England to NHS Cheshire Clinical Commissioning Group

Delegation

1. In accordance with its statutory powers under section 13Z of the National Health Service Act 2006 (as amended) ("NHS Act"), NHS England has delegated the exercise of the functions specified in this Delegation to NHS Cheshire CCG to empower NHS Cheshire CCG to commission primary medical services for the people of Cheshire.
2. NHS England and the CCG have entered into the Delegation Agreement that sets out the detailed arrangements for how the CCG will exercise its delegated authority.
3. Even though the exercise of the functions passes to the CCG the liability for the exercise of any of its functions remains with NHS England.
4. In exercising its functions (including those delegated to it) the CCG must comply with the statutory duties set out in the NHS Act and/or any directions made by NHS England or by the Secretary of State and must enable and assist NHS England to meet its corresponding duties.

Commencement

5. This Delegation, and any terms and conditions associated with the Delegation, take effect from 1 April 2020.
6. NHS England may by notice in writing delegate additional functions in respect of primary medical services to the CCG. At midnight on such date as the notice will specify, such functions will be Delegated Functions and will no longer be Reserved Functions.

Role of the CCG

7. The CCG will exercise the primary medical care commissioning functions of NHS England as set out in Schedule 1 to this Delegation and on which further detail is contained in the Delegation Agreement.
8. NHS England will exercise its functions relating to primary medical services other than the Delegated Functions set out in Schedule 1 including but not limited to those set out in Schedule 2 to this Delegation and as set out in the Delegation Agreement.

Exercise of delegated authority

9. The CCG must establish a committee to exercise its delegated functions in accordance with the CCG's constitution and the committee's terms of reference. The structure and operation of the committee must take into account guidance issued by NHS England. This committee will make the decisions on the exercise of the delegated functions.
10. The CCG may otherwise determine the arrangements for the exercise of its delegated functions, provided that they are in accordance with the statutory framework (including Schedule 1A of the NHS Act) and with the CCG's Constitution.
11. The decisions of the CCG Committee shall be binding on NHS England and NHS Cheshire CCG.

Accountability

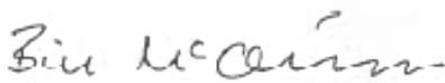
12. The CCG must comply with the financial provisions in the Delegation Agreement and must comply with its statutory financial duties, including those under sections 223H and 223I of the NHS Act. It must also enable and assist NHS England to meet its duties under sections 223C, 223D and 223E of the NHS Act.
13. The CCG will comply with the reporting and audit requirements set out in the Delegation Agreement and the NHS Act.
14. NHS England may, at its discretion, waive non-compliance with the terms of the Delegation and/or the Delegation Agreement.
15. NHS England may, at its discretion, ratify any decision made by the CCG Committee that is outside the scope of this delegation and which it is not authorised to make. Such ratification will take the form of NHS England considering the issue and decision made by the CCG and then making its own decision. This ratification process will then make

the said decision one which NHS England has made. In any event ratification shall not extend to those actions or decisions that are of themselves not capable of being delegated by NHS England to the CCG.

Variation, Revocation and Termination

16. NHS England may vary this Delegation at any time, including by revoking the existing Delegation and re-issuing by way of an amended Delegation.
17. This Delegation may be revoked at any time by NHS England. The details about revocation are set out in the Delegation Agreement.
18. The parties may terminate the Delegation in accordance with the process set out in the Delegation Agreement.

Signed by



Bill McCarthy

NHS England Regional Director, North West

for and on behalf of **NHS England**

Schedule 1 –Delegated Functions

- a) decisions in relation to the commissioning, procurement and management of Primary Medical Services Contracts, including but not limited to the following activities:
 - i) decisions in relation to Enhanced Services;
 - ii) decisions in relation to Local Incentive Schemes (including the design of such schemes);
 - iii) decisions in relation to the establishment of new GP practices (including branch surgeries) and closure of GP practices;
 - iv) decisions about 'discretionary' payments;
 - v) decisions about commissioning urgent care (including home visits as required) for out of area registered patients;
- b) the approval of practice mergers;
- c) planning primary medical care services in the Area, including carrying out needs assessments;

- d) undertaking reviews of primary medical care services in the Area;
- e) decisions in relation to the management of poorly performing GP practices and including, without limitation, decisions and liaison with the CQC where the CQC has reported non-compliance with standards (but excluding any decisions in relation to the performers list);
- f) management of the Delegated Funds in the Area;
- g) Premises Costs Directions functions;
- h) co-ordinating a common approach to the commissioning of primary care services with other commissioners in the Area where appropriate; and
- i) such other ancillary activities as are necessary in order to exercise the Delegated Functions.

Schedule 2- Reserved Functions

- a) management of the national performers list;
- b) management of the revalidation and appraisal process;
- c) administration of payments in circumstances where a performer is suspended and related performers list management activities;
- d) Capital Expenditure functions;
- e) section 7A functions under the NHS Act;
- f) functions in relation to complaints management;
- g) decisions in relation to the GP Access Fund; and
- h) such other ancillary activities that are necessary in order to exercise the Reserved Functions;