NHS
Kirklees
Clinical Commissioning Group

NHS England and NHS Kirklees Clinical Commissioning Group Primary Care Commissioning Committee Terms of Reference

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Guidance and advice: Terms of reference produced using the NHS England Model terms of reference for delegated commissioning arrangements.

Contents

1. Introduction

1.1. NHS England has invited Clinical Commissioning Groups (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. NHS Kirklees CCG has applied for full delegation of the primary medical services commissioning functions.

1.2. 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 the Delegation document annexed to these Terms of Reference to NHS Kirklees CCG.

1.3. The CCG has established the Primary Care Commissioning Committee ('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. Statutory Framework

2.1. NHS England has delegated to the CCG authority to exercise the primary care commissioning functions set out in Annex A: Delegation document, in accordance with Section 13Z of the NHS Act.

2.2. Arrangements made under Section 13Z may be on such terms and conditions (including terms as to payment) as may be agreed between the NHS England Board and the CCG.

2.3. 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 as 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)

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

a) Duty to have regard to impact on services in certain areas (Section 13O)

b) Duty as respects variation in provision of health services (Section 13P)

2.5. The Committee is established as a committee of the Governing Body of NHS Kirklees CCG in accordance with Schedule 1A of the NHS Act.

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

3. Roles and Responsibilities of the Committee

3.1. The Committee has been established in accordance with the above statutory provisions to enable the members to make collective decisions on the review, planning and procurement of primary medical care services in Kirklees, 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 Kirklees 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.

3.5. This includes the following:

- GMS, PMS and APMS contracts (including the design of PMS and APMS contracts, monitoring of contracts, taking contractual action such as issuing breach/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' payment (e.g. returner/retainer schemes).

3.6. The CCG will also carry out the following activities:

- Plan, including needs assessment, primary medical care services in Kirklees.
- Undertake reviews of primary medical care services in Kirklees.
- Coordinate a common approach to the commissioning of primary care services generally.
- Have oversight and review the financial plans for primary medical care services in Kirklees.
- Take procurement decisions in respect of primary medical services. These shall be in line with statutory requirements and guidance, the CCG's Constitution and Standing Orders and the Delegation Agreement between NHS England and the CCG.

4. Membership

4.1. The Committee shall consist of:

Core membership:

- Lay member leading on patient and public involvement
- Lay member leading on audit, governance and conflict of interest
- Lay member leading on finance and remuneration
- Chief Officer
- Chief Finance Officer (or nominated deputy)

- Chief Quality & Nursing Officer (or nominated deputy)
- Two External Independent Advisors (non-conflicted and external GPs)

Required attendees:

- Head of Primary Care Support & Development (or nominated deputy)
- Head of Contracting & Procurement (or nominated deputy)
- Head of Corporate Governance (or nominated deputy)
- Representative of NHS England

4.2. Other individuals shall be required to attend according to the business being considered by the Committee.

4.3. The Committee may invite such other person(s) to attend all or any of its meetings, or part(s) of a meeting, in order to assist it in its decision-making and in its discharge of its functions as it sees fit. Any such person may speak and participate in debate, but may not vote.

4.4. The Committee will invite the following to appoint a representative to attend its meetings and participate in the way described in paragraph 4.3:

- Health & Well-Being Board
- Local Healthwatch
- Council of Members
- Local Medical Committee (2 representatives – one from Huddersfield Division and one from Dewsbury Division)
- Patient Group Representative

4.5. The Committee will also invite 3 Governing Body GP Members/Other Primary Care Professional Practice Members (including at least 2 GPs) to attend its meetings and participate in the way described in paragraph 4.3.

4.6. Substitutions

Committee members with substitutes listed above may be substituted by that person only. For a substitution to take effect, the Chair of the Committee shall be notified in advance of the meeting. The substitution will be recorded in the minutes.

4.7. Chairing

The Chair and Vice Chair of the Committee will be appointed from the Lay Member: PPI and Lay Member: Finance and Remuneration.

5. Meetings and Voting

5.1. The Committee will meet bi-monthly, with additional meetings scheduled if required.

5.2. The Committee shall adopt the Standing Orders of NHS Kirklees CCG insofar as they relate to the:

a) Notice of the Meetings

b) Handling of Meetings

c) Agendas

d) Circulation of papers

5.3. For the avoidance of doubt, in the event of any conflict between the terms of the Delegation and Terms of Reference and the Standing Orders or Standing Financial Instructions of any of the members, the Delegation will prevail.

5.4. **Conflicts of Interest**

If any member has an interest, financial or otherwise, in any matter and is present at the meeting at which the matter is under discussion, he/she will declare that interest as early as possible and act in accordance with the CCG's Conflicts of Interest Policy and Constitution.

5.5. **Voting**

In line with the CCG's Standing Orders, it is expected that decisions will be reached by consensus. Should this not be possible, then a vote of members will be required, the process for which is set out below:

Majority necessary to confirm a decision – simple majority of those present and voting

Casting vote – Chair

Dissenting views – dissenting views must be recorded in the minutes

5.6. **Quoracy**

5.6.1. The Committee will be quorate with four members present; this must include:

- Two from: Lay Member (Audit and Governance), Lay Member (Patient and Public Involvement), and Lay Member (Finance and Remuneration). This must include the Chair or Vice-Chair.
- One External Clinical Advisor.
- At least one of the following: Chief Officer, Chief Finance Officer or Chief Quality and Nursing Officer.

5.6.2. Members of the Committee may participate in meetings by telephone or by the use of video conferencing facilities where they are available and with prior agreement from the Chair. Participation by any of these means shall be deemed to constitute presence in person at the meeting.

5.6.3. Where the meeting is not quorate, owing to the absence of certain members, the discussion will be deferred until such time as a quorum can be convened. 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 interest, the chair of the meeting shall consult with the Accountable Officer on the action to be taken.

5.7. **Admission of the Public and Press**

5.7.1. Meetings of the Committee shall, subject to the application of 5.6.2, be held in public.

5.7.2. The Committee may resolve to exclude the public from a meeting that is open to the public (whether during the whole or part of the proceedings) whenever publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of that business or of the proceedings or for any other reason permitted by the Public Bodies (Admission to Meetings) Act 1960 as amended or succeeded from time to time.

5.8. 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.

5.9. **Secretariat**

Support to the Committee will be provided by the CCG's Governance & Corporate Team. Duties will include:

- Agreement of the agenda with the Chair.
- Circulation of agendas and supporting papers to Committee members five working days prior to the meeting.
- Drafting of minutes for approval by the Chair within five working days of the meeting
- Keeping an accurate record of attendance.
- Matters arising and issues to be carried forward.
- Maintaining an ongoing list of actions, specifying members responsible, due dates and keeping track of these actions.
- Advising the Committee on pertinent areas/issues.
- Enabling the development and training of members.

6. Accountability of the Committee

6.1. The Committee has delegated authority from the Governing Body to make decisions within the bounds of its remit. Specifically:

- Financial plans in respect of primary medical services.
- Procurement of primary medical services.
- Practice payments and reimbursement.
- Investment in practice development.
- Contractual compliance and sanctions.

6.2. The decisions of the Committee shall be binding on NHS England and NHS Kirklees CCG.

6.3. The Committee is authorised by the Governing Body to investigate any activity within its terms of reference. It is authorised to seek any information it requires within its remit, from any employee of NHS Kirklees CCG or member of the

Governing Body, and they are directed to co-operate with any reasonable request made by the Committee.

6.4. The Committee is authorised by the Governing Body to commission reports or surveys it deems necessary to help fulfil its obligations, within the budget available.

6.5. In exceptional cases, the Committee is authorised to obtain legal or other independent professional advice and secure the attendance of advisors with relevant expertise if it considers this necessary. In doing so, the Committee must follow any procedures put in place by the Governing Body for obtaining legal or professional advice. The Governing Body is to be informed of any issues relating to such action.

6.6. 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.

7. Decisions

7.1. The Committee will make decisions within the bounds of its remit.

7.2. The decisions of the Committee shall be binding on NHS England and NHS Kirklees CCG.

7.3. The Committee will produce an executive summary report which will be presented to West Yorkshire and Harrogate Locality Team of NHS England and the Governing Body of NHS Kirklees CCG each quarter for information.

8. Conduct of the Committee

8.1. All members will have due regard to and operate within the Constitution of the CCG, Standing Orders, Standing Financial Instructions and other financial procedures.

8.2. Members of the Committee will abide by the 'Principles of Public Life' (The Nolan Principles) and the NHS Code of Conduct.

8.3. Members of the Committee shall respect confidentiality requirements as set out in the CCG's Constitution.

8.4. The Committee will undertake an annual self-assessment of its own performance against the terms of reference. Any resulting changes to the terms of reference should be submitted for approval by the Governing Body.

9. Reporting Arrangements

9.1. The Committee shall submit its minutes to West Yorkshire and Harrogate Locality Team of NHS England and the Governing Body of the CCG for information following each meeting. The Chair of the Committee shall draw to the attention of the Governing Body any issues that require disclosure to the full Governing Body, or require executive action.

10. Review of Terms of Reference

10.1. These terms of reference will be formally reviewed by the committee on an annual basis, but may be amended at any time.

10.2. Any proposed amendments to the terms of reference will be submitted to the Governing Body for approval. Changes will not be implemented until after an application to NHS England to vary the constitution has been agreed.

10.3. A record of the date and outcome of reviews is kept in the CCG's Governance Handbook.

END

Annex A – Delegation Document

Delegation by NHS England

1 April 2021

Delegation by NHS England to NHS Kirklees CCG

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 Kirklees CCG to empower NHS Kirklees CCG to commission primary medical services for the people of Kirklees.
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 2021.
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 Kirklees 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 …….

Richard Barker

NHS England Regional Director – North East & Yorkshire

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;