

AGENDA ITEM 8

GOVERNING BODY MEETING IN PUBLIC
4TH FEBRUARY 2016
CO-COMMISSIONING PROGRESS REPORT

Date of the meeting	4 February 2016
Author	Sadie Parker, Associate Director of Primary Care and Engagement
Sponsoring Board Member	Dr Krishna Chaturvedi, Clinical Executive Committee Chair Melanie Craig, Chief Officer
Purpose of Report	To update members on the programme plan to implement shared co-commissioning arrangements with NHS England
Recommendation	The Governing Body is asked to Note the report.
Reason for inclusion in Part II	N/A
Stakeholder Engagement	Letters to all member practices, presentation at CCG Time to Learn in September 2015
Previous GB / Committee/s, Dates	Clinical executive committee in June and August 2015, Governing Body Seminar in January 2016

Monitoring and Assurance Summary

This report links to the following Assurance Domains	<ul style="list-style-type: none"> • Quality • Equality and Diversity • Engagement • Outcomes • Governance • Partnership-Working • Leadership 		
I confirm that I have considered the implications of this report on each of the matters below, as indicated:	Yes [e.g. ✓]	Any action required?	
		Yes Detail in report	No
All three Domains of Quality (Safety, Quality, Patient Experience)	✓		✓
Board Assurance Framework / Risk Register	✓		✓
Budgetary Impact	✓		✓
Legal / Regulatory	✓	✓	
People / Staff	✓		✓
Financial / Value for Money / Sustainability	✓		✓
Information Management & Technology	✓		✓
Equality Impact Assessment	✓		✓
Freedom of Information	✓		✓

Initials: ___SAP___

1. Introduction and background

- 1.1 NHS England has invited all CCGs to consider moving to co-commissioning arrangements for primary medical services. Across England over two-thirds of CCGs now co-commission primary medical services at levels one or two with NHS England, however in Essex only Castle Point and Rochford CCG currently do this.
- 1.2 There are three levels of co-commissioning:
- Level one – fully delegated co-commissioning
 - Level two – shared co-commissioning with NHS England
 - Level three – greater involvement in decision-making
- 1.3 There are many benefits to co-commissioning. These include:
- Providing both support and development to practices from the quality and primary care teams to improve the quality of our primary care to patients within a contractual framework.
 - Driving the development of schemes such as the Shoeburyness and St Luke's primary care centres to improve the capacity, resilience and quality of primary care for local residents.
 - Defining the minimum level and quality of services expected from GP practices and support practices in moving towards this.
 - NHS England is accountable through a national level board which meets in public and is based in Leeds. CCGs are able to bring more accountability at a local level to their own registered population, thus increasing patient and public engagement on a local level.
 - The CCG would be required to hold primary care committee meetings in public as with our current governing body arrangements. This would add transparency at a local level and also potentially allay concerns about perceived conflicts of interest both from patients and our GP membership.
- 1.4 Following discussion at our Clinical Executive Committee, our member practices were invited to consider our recommendation to move to shared co-commissioning arrangements with NHS England.
- 1.5 Of those that chose to express a view (31 from 35 practices), 71% of practices were in favour of moving towards co-commissioning, which is in excess of the recommended minimum of 66% advised by the Essex Local Medical Committee.
- 1.6 This was discussed at the January Governing Body Seminar and NHS England was subsequently notified by the chief officer of the CCG's intention to move to co-commissioning arrangements from 1 April 2016.

2. NHS planning guidance 2016/17 – 2020/21

- 2.1 The planning guidance published in December 2015 requires CCGs to lead the development of a five-year Sustainability and Transformation Plan (STP) which will be place-based (ie system-wide) and drive the five-year forward view. (This is in addition to a one-year operational plan for the CCG.)
- 2.2 The guidance explicitly states that CCGs will be responsible, regardless of co-commissioning status, for leading the planning of primary medical services. From 2017/18 onwards, the STP will be the single method of application and approval for funding related to transformation programmes, which will include accessing funding for new care models, technology roll-out, primary care access and infrastructure.
- 2.3 The guidance highlights three national must-do's under the banner of seven-day services, one of which is for primary care:
 - Improving access to primary care at weekends and evenings where patients need it by increasing the capacity and resilience of primary care over the next few years
- 2.4 For 2016/17 the guidance sets out a requirement for the CCG to develop and implement a local plan to address the sustainability and quality of general practice, including workforce and workload issues.
- 2.5 In order to support these requirements, overall funding for primary medical care will increase by 4-5% each year and more sensitive allocation formulae will be developed for primary care and for CCGs. To support CCGs in developing their understanding of their place-based commissioning spend, allocations for primary care (and specialised services) will be published.

3. Moving towards implementation of co-commissioning arrangements

- 3.1 NHS England has published several documents to support CCGs in moving towards co-commissioning arrangements. This includes standard model templates for the necessary changes to CCG Constitutions and Terms of Reference for new Primary Care Committees, as well as guidance on managing Conflicts of Interest.
- 3.2 These documents have been used to develop our proposed amendments and are appended to this paper at appendices 1 and 2. They meet the national requirement to have a lay/ executive majority on the Primary Care Committee, to have a lay chair and vice chair and to provide an invitation to both Healthwatch and the Health and Wellbeing Board.
- 3.3 In order to commence shared co-commissioning arrangements on 1 April 2016, the CCG and the director of operations from our local NHS England team must jointly apply to the NHS England regional team. The CCG has to provide reassurance to the local team of its ability to undertake shared co-commissioning arrangements and these discussions are continuing.

3.4 The CCG has to provide assurance to NHS England in the following areas:

- Compliance with statutory duties regarding the involvement of members and other key local stakeholders in the development of joint commissioning arrangements
- Involvement of its members in the development of joint commissioning arrangements and the governing body has ratified the proposed governance changes
- Clearly defined objectives and benefits of the arrangement
- CCG Constitution or proposed constitutional amendment has been updated in line with the [guidance](#) (and this has also been approved by the NHS England regional office and sent to england.co-commissioning@nhs.net prior to this submission)
- Governance documentation has been updated in line with the Next Steps [guidance](#) (joint committee terms of reference incorporating scheme of delegation)
- Review of our conflicts of interest policy in line with the statutory managing conflicts of interest [guidance](#)
- IG Toolkit meets level 2 criteria as a minimum

3.5 We have developed a simple project plan to support this programme of work over the next few months and this can be seen at appendix 3. This also highlights work already completed against the criteria set out above.

4. Recommendations

4.1 Governing Body members are invited to:

- Note the update on our progress towards co-commissioning primary medical services from 1 April 2016
- Approve the model Terms of Reference in principle
- Approve the proposed amendments to the CCG's Constitution

4.2 Assuming members approve the recommendations, next steps in implementing the action plan will be to agree and implement the process for providing assurance with NHS England and add milestones to the action plan

APPENDICES

APPENDICES	
Appendix 1	Terms of reference for primary care committee
Appendix 2	Amendments to Constitution
Appendix 3	Project plan

JOINT PRIMARY CARE COMMITTEE

Terms of reference for joint commissioning arrangements including scheme of delegation

Introduction

1. Simon Stevens, the Chief Executive of NHS England, announced on 1 May 2014 that NHS England was inviting 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. One option available was that NHS England and CCGs would jointly commission primary medical services.
2. The NHS England and NHS Southend CCG joint commissioning committee is a joint committee with the primary purpose of jointly commissioning primary medical services for the people of Southend-on-Sea.

Statutory Framework

3. The National Health Service Act 2006 (as amended) ("the NHS Act") provides, at section 13Z, that NHS England's functions may be exercised jointly with a CCG, and that functions exercised jointly in accordance with that section may be exercised by a joint committee of NHS England and the CCG. Section 13Z of the NHS Act further provides that arrangements made under that section may be on such terms and conditions as may be agreed between NHS England and the CCG.
4. **[Include reference to statutory provisions used to jointly exercise CCG functions, if any have been delegated by the CCG to the joint committee. This is permitted by section 14Z9 of the NHS Act 2006 (as amended). If such arrangements are made, the CCG will need to formally delegate the functions in question to the joint committee. A draft delegation has been prepared and is set out as Schedule 1 to this document.]**
5. **[This paragraph only needs to be included if paragraph 4 above applies, i.e. the CCG has delegated CCG functions to the joint committee]** Section 14Z9 of the NHS Act was amended by Legislative Reform Order (2014/2436) ("LRO") to enable the joint exercise by NHS England and a CCG of any of the CCGs commissioning functions and any other functions of the CCG which are related to the exercise of those functions.

Where such arrangements are made, the LRO enabled them to be exercised by a joint committee established between the parties.

Role of the Joint Committee

6. The role of the Joint 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 individual GP performance management, which have been reserved to NHS England **[and such CCG functions under sections 3 and 3A of the NHS Act as have been delegated to the joint committee]**.

7. This includes 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; and
 - Making decisions on ‘discretionary’ payment (e.g., returner/retainer schemes).

8. **[In performing its role the Joint Committee will exercise its management of the functions in accordance with the agreement entered into between NHS England and NHS Southend CCG, which will sit alongside the delegation and terms of reference.] – [This is the proposed agreement to deal with such as information sharing, resource sharing, contractual mechanisms for service delivery (and ownership) and interplay between contractual and performance list management.]**

Geographical coverage

9. The Joint Committee will comprise NHS England Midlands and East (East), and NHS Southend CCG. It will undertake the function of jointly commissioning primary medical services for Southend-on-Sea.

Membership

10. a) The Joint Committee shall meet the requirements of NHS Southend CCG’s Constitution.

b) **Voting members:** The following will serve as voting members on the joint committee:

- Lay member chair (not audit committee chair) – mandated
- Lay member vice chair (audit committee chair acceptable) – mandated
- Secondary care doctor
- CCG Chief nurse
- CCG Chief officer
- Chief finance officer
- NHS England representative
- Associate director of primary care and engagement
- Clinical leads – number to be determined but lay and executive members must be in the majority

b) The Chair of the Joint Committee shall be the Lay Member for Patient and Public Involvement of NHS Southend CCG.

c) The Vice Chair of the Joint Committee shall be the **Lay Member for Audit and Governance of NHS Southend CCG**.

d) **Non-voting members:** There shall be a standing invitation for representatives from Healthwatch Southend and Southend Health and Wellbeing Board to attend, both of whom shall be non-voting members.

Meetings and Voting

11. The Joint Committee shall adopt the Standing Orders of NHS Southend CCG insofar as they relate to the:

- a) Notice of meetings;
- b) Handling of meetings;
- c) Agendas;
- d) Circulation of papers; and
- e) Management of conflicts of interest.

12. Each voting member of the Joint Committee shall have one vote. The Joint Committee shall reach decisions by (a simple majority of members present, but with the committee chair having a second and deciding vote, if necessary). NHS England will have an equal number of votes to the CCG in respect of NHS England's statutory functions. NHS England will also have the casting vote in response of its statutory functions. NHS Southend CCG shall have the casting vote in respect of its statutory functions.
(Position to be confirmed as part of the final arrangements for voting procedures and make-up of the committee).

13. **The meeting will be quorate with a majority of lay/ executive members present, NHS England in attendance and the chief nurse or secondary care doctor.**

14. **Meetings will be held monthly but may be held more frequently if required.**

15. Meetings of the Joint Committee:

- a. Shall, subject to the application of 7(b), be held in public.
- b. The Joint 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.

16. Members of the Joint Committee have a collective responsibility for the operation of the Joint 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.

17. The Joint Committee may call additional experts to attend meetings on an ad hoc basis to inform discussions.

18. Members of the Joint Committee shall respect confidentiality requirements as set out in the Standing Orders referred to above unless separate confidentiality requirements are set out for the joint committee in which event these shall be observed.

19. The secretariat to the committee will be provided by the Corporate Services team.

20. The secretariat to the Joint Committee will:

- a) Circulate the minutes and action notes of the committee with 5 working days of the meeting to all members.
- b) Present the minutes and action notes to **NHS England Midlands and East (East)** and the governing body of **NHS Southend CCG**.

21. These Terms of Reference will be reviewed from time to time, reflecting experience of the Joint Committee in fulfilling its functions and the wider experience of NHS England and CCGs in primary medical services co-commissioning.

Decisions

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

23. The decisions of the Joint Committee shall be binding on NHS England and **NHS Southend CCG**.
24. Decisions will be published by both NHS England and **NHS Southend CCG**.
25. The secretariat will produce an executive summary report which will be presented to **NHS England Midlands and East (East)** and the governing body of **NHS Southend CCG** at each of its meetings in public for information.

Key Responsibilities

This will include areas such as planning, including carrying out needs assessments, primary medical care services for the geographical area in question; undertaking reviews as appropriate; co-ordinating a common approach to primary care commissioning as appropriate; managing relevant budgets.

Review of Terms of Reference

26. These terms of reference will be formally reviewed by NHS England EAST of NHS England and **NHS Southend CCG** in April of each year, following the year in which the joint committee is created, and may be amended by mutual agreement between **NHS England Midlands and East (East)** and **NHS Southend CCG** at any time to reflect changes in circumstances which may arise.

[Signature provisions]

[Schedule 1 – Delegation by CCG to joint committee – CCG functions [include if relevant]

Schedule 2 - List of Members – populate once membership agreed]

- Lay member chair (not audit committee chair) – mandated
- Lay member vice chair (audit committee chair acceptable) – mandated
- Secondary care doctor
- CCG Chief nurse
- CCG Chief officer
- Chief finance officer
- NHS England representative(s)
- Associate director of primary care and engagement
- Clinical leads – number to be determined but lay and executive members must be in the majority

The Chair of the Joint Committee shall be the Lay Member for Patient and Public Involvement of NHS Southend CCG.

The Vice Chair of the Joint Committee shall be the **Lay Member for Audit and Governance of NHS Southend CCG.**

d) **Non-voting members:** There shall be a standing invitation for representatives from Healthwatch Southend and Southend Health and Wellbeing Board to attend, both of whom shall be non-voting members.

Appendix 2 – Amendments to Constitution

1.0 The following extracts show the relevant sections of the CCG’s Constitution, setting out the permissions retained by the CCG when appointing committees.

“6.4 Committees of the CCG

6.4.1 *The CCG may at any time appoint such committees as it considers appropriate.*

6.4.2 *Membership of a committee of the CCG may consist of or include persons as outlined in section 6.6.5.*

6.4.3 *Committees will only be able to establish their own sub-committees, to assist them in discharging their respective responsibilities, if this responsibility has been delegated to them by the CCG or the committee they are accountable to.*

6.4.4 *An individual shall be ineligible for appointment to or shall otherwise be disqualified from membership of a committee or sub-committee if he is or she is a person who is disqualified from membership of a clinical commissioning group’s Governing Body under Schedule 5 of the CCG Regulations.*

6.5 Joint Arrangements

6.5.1 *The CCG may enter into the following types of joint working arrangements:*

- a) *Joint (or collaborative) arrangements with other clinical commissioning groups.⁴⁶*
- b) *Joint committees in respect of designated functions defined in an agreement under section 75 of the 2006 Act with a local authority.”*

1.2 The extracts below show the existing committees (a to d) and also the addition of a new paragraph (e) that shows the new Joint Primary Care Committee.

“6.6.3 Committees of the Governing Body - the Governing Body has appointed the following committees and sub-committees:

- a) **Audit and Risk Committee** – *the audit and risk committee, which is accountable to the CCG’s Governing Body, provides the Governing Body with an independent and objective view of the CCG’s financial systems, financial information and compliance with laws, regulations and directions governing the CCG in so far as they relate to financial governance. The Governing Body has approved and keeps under review the terms of reference for the audit and risk committee, which includes information on the membership of the audit and risk committee.*

In addition, the CCG or the Governing Body has conferred or delegated the following functions, connected with the Governing Body’s main function¹, to its audit and risk committee:

¹ See section 14L(2) of the 2006 Act, inserted by section 25 of the 2012 Act

- i) *To support the Governing Body by critically reviewing governance and assurance processes on which the Governing Body places reliance, including the Governing Body Assurance Framework, and making recommendations to the Governing Body where necessary, in line with the latest version of the NHS Audit Committee Handbook.*
- b) **Remuneration Committee**– *the remuneration committee, which is accountable to the CCG’s Governing Body makes recommendations to the Governing Body on determinations about the remuneration, fees and other allowances for employees and for people who provide services to the CCG and on determinations about allowances under any pension scheme that the CCG may establish as an alternative to the NHS pension scheme. The Governing Body has approved and keeps under review the terms of reference for the remuneration committee, which includes information on the membership of the remuneration committee.*
- c) **Quality, Finance and Performance Committee** – *the Quality, Finance and Performance Committee is accountable to the CCG’s Governing Body. The overall objective of the committee is to ensure that the CCG:*
- *Continually seeks improvement in quality;*
 - *Places the patient (and the public) at the centre of everything that it does;*
 - *Fully integrates quality and effective use of resources in all commissioned services;*
 - *Ensures, through effective financial management, the achievement of economy, effectiveness, efficiency, probity and accountability in the use of resources.*

The Governing Body has approved and keeps under review the terms of reference for the Quality, Finance and Performance Committee, which includes information on the membership of the Quality, Finance and Performance Committee.

- d) **Clinical Executive Committee** – *the clinical executive committee, which is accountable to the CCG’s Governing Body, will be responsible for driving forward the development of new clinical pathways and delivering robust review and performance challenge. The Governing Body has approved and keeps under review the terms of reference for the Clinical Executive Committee, which includes information on the membership of the Clinical Executive Committee.”*
- e) **Joint Primary Care Committee** – *the joint primary care committee, which is accountable to the CCG’s Governing Body, will be responsible for driving forward the commissioning of primary care medical services, including the design of contracts, designing new enhanced services, design of local incentive schemes, making decisions on whether to establish new GP practices and approving practice mergers.*

1.3 The extracts below outline potential membership options for committees and how the governance structure supports each one, through regulation via terms of reference and decision-making machinery.

“6.6.4 The Governing Body may appoint such other committees as it considers may be appropriate.

6.6.5 *The other committees of the Governing Body (other than the remuneration committee) may include within its membership, individuals who are not members of the Governing Body but who are:*

- a) a GP partner or employee of a member of the CCG;*
- b) a member of another clinical commissioning group;*
- c) a partner or employee of a member of another clinical commissioning group;*
- d) a member of the Governing Body of another clinical commissioning group;*
- e) a director or officer of NHS England;*
- f) a lay person who is over 18 and resides within the area and who is not disqualified from membership of a clinical commissioning group's Governing Body under Schedule 5 of the CCG Regulations.*

6.6.6 *Committees will only be able to establish their own sub-committees, to assist them in discharging their respective responsibilities, if this responsibility has been delegated to them by the Governing Body or the committee they are accountable to.*

6.6.7 *Each committee and sub-committee of the Governing Body shall regulate its proceedings in accordance with its terms of reference.*

6.6.8 *Any decision taken in good faith at a meeting of the Governing Body or any of its committees or sub-committees shall be valid even if there is a vacancy in its membership or it is discovered subsequently that there was a defect in the calling of the meeting, or the appointment of a member attending the meeting."*

**Appendix 3 - Implementation of co-commissioning – project plan
Version 1 – January 2016**

Action	Date	Lead	Update
Contact NHS England to clarify their governance routes for providing assurance	Jan	MC	Email sent to Director of Operations, awaiting response
Letter to GP practices informing them of results of engagement exercise and intent to move to shared co-commissioning arrangements	Jan	SP	Letter sent on 28 January
Letter to Essex Local Medical Committee informing them of results of engagement exercise and intent to move to shared co-commissioning arrangements	Jan	SP	Letter sent on 27 January including request to facilitate identification of options around out of area GPs for primary care committee
Draft terms of reference for primary care committee and agree with Governing Body	Feb	AW MC	Terms of reference drafted by head of corporate services, to be presented to Governing Body on 4 February
Draft amendments to Constitution and agree with Governing Body	Feb	AW MC	Constitution amends drafted by head of corporate services, to be presented to Governing Body on 4 February
Review criteria for providing assurance to NHSE: 1. Compliance with statutory duties regarding the involvement of members and other key local stakeholders in the development of joint commissioning arrangements 2. Involvement of its members in the development of joint commissioning arrangements and the governing body has ratified the proposed governance changes	Jan Feb	SP SP MC	1. Discussion with Overview and Scrutiny Committee in September 2015 on primary care strategy, included co-commissioning. Engagement process with member practices seeking their views on move to co-commissioning – complete 2. Engagement with member practices through letters and session at Time to Learn event with 31 of 35 choosing to express a view. Governing Body members considering proposed governance changes on 4 February

3. Clearly defined objectives and benefits of the arrangement	Jan	SP	3. Objectives and benefits set out in Governing Body seminar paper in January
4. CCG Constitution or proposed constitutional amendment has been updated in line with the guidance (and this has also been approved by the NHS England regional office and sent to england.co-commissioning@nhs.net prior to this submission)	Mar	JS SP	4. Constitution updated by head of corporate services in line with guidance and using model standard template. Being presented to Governing Body on 4 February for approval to enable distribution to member practices and sign off
5. Governance documentation has been updated in line with the Next Steps guidance (joint committee terms of reference incorporating scheme of delegation)	Feb	JS SP	5. Terms of reference drafted using model standard template in guidance. To be agreed by Governing Body on 4 February and NHS England local team as advised
6. Review of our conflicts of interest policy in line with the statutory managing conflicts of interest guidance	Feb	JS AW	6. Completed by head of corporate services and presented to Governing Body members in September 2015 for approval - completed
7. IG Toolkit meets level 2 criteria as a minimum	Mar	JS SP	7. CCG achieved level 2 at 31 March 2015 and expects to again achieve level 2 at 31 March 2016
Investigate options for out of area GPs for membership of primary care committee	Feb	SP	To be included in LMC letter
Investigate options for increasing lay member capacity to support the primary care committee	Feb	SP	
Distribute amended Constitution to member GP practices for signature	Feb	JS SP	Subject to Governing Body approval
Provide copy of amended agreed Constitution to NHS England	Mar	JS SP	Subject to Governing Body approval and practice sign off
Establish meeting schedule for primary care committee	Mar	SP SS	
Complete proforma with NHS England local team	Feb	NHSE	Awaiting response from NHS England for their governance requirements

to apply to regional NHS England team for shared arrangements		MC	
Agree NHS England staff to be aligned to the CCG	TBC	MC SP	
Hold first primary care committee meeting	TBC	SP	Date to be confirmed once process for NHS England is confirmed and documents are approved

Key of leads:

MC – Melanie Craig, chief officer

JS – Jason Skinner, chief finance officer

SP – Sadie Parker, associate director of primary care and engagement

AW – Angela Wood, head of corporate services

SS – Samantha Shepherd, executive assistant

NHSE – NHS England