

Primary Medical Care Commissioning and Contracting: Governance Review

Terms of Reference

NHS East Lancashire CCG

1. Introduction and Background

NHS England (NHSE) became responsible for the direct commissioning of primary medical care services on 1 April 2013. Since then, following changes set out in the NHS Five Year Forward View, primary care co-commissioning has seen the Clinical Commissioning Groups (CCGs) invited to take on greater responsibility for general practice commissioning, including full responsibility under delegated commissioning arrangements.

In 2017/18, 84% of CCGs had delegated commissioning arrangements (82% - £6,247.6 million – of the primary medical care budget, with the remainder being spent directly by NHSE local teams). In 2018/19 this has increased to 96% with 178 CCGs now fully delegated.

In agreement with NHSE Audit and Risk Assurance Committee, NHSE will be requiring the following from 2018/19:

- **Internal audit of delegated CCGs primary medical care commissioning arrangements.** The purpose of this is to provide information to CCG's that they are discharging NHSE's statutory primary medical care functions effectively, and in turn to provide aggregate assurance to NHSE and facilitate NHSE's engagement with CCGs to support improvement.

The Primary Medical Care Commissioning and Contracting Internal Audit Framework for Delegated CCGs was issued in August 2018. This document provides a framework for delegated CCG's to undertake an internal audit of their primary medical care commissioning arrangements.

The audit framework is to be delivered as a 3-4 year programme of work to ensure this scope is subject to annual audit in a managed way within existing internal audit budgets. This will focus on the following areas:

- Commissioning and procurement of services
- Contract Oversight and Management Functions
- Primary Care Finance
- Governance (common to each of the above areas)

For 2018/2019, the review of **Governance** is to be undertaken. The remaining reviews will be incorporated into the planning cycle for the internal audit plan.

2. Objective

The overall objective is to evaluate the effectiveness of the arrangements put in place by the CCG to exercise the primary care medical care commissioning function (**Governance**) of NHS England as set out in the Delegation Agreement.

3. Scope

The following is in the scope of the NHSE primary medical services audit framework for the review of **Governance**:

Operation and oversight of the Primary Care Commissioning Committee in regards to points a-c as set out in Appendix A (but not in relation to the management of Conflicts of Interest)

An evaluation of the following elements are incorporated within the scope of the audit as set out in Appendix B:

Core Elements
• Delegation Agreement / Memorandum of Understanding
• CCG Constitution
• Patient engagement & involvement plan / Consultation
• GP Contracts
• Composition, Establishment and Duties
• Operation and Oversight
• Decision Making
• Risk Management
Additional Elements
• Primary Care Charter / Enhanced Quality Schemes
• Strategic Plans
• Annual Report

As part of the audit, this will also consider the following, as set out by NHSE:

- Relevant policies, procedures and guidance have been authorised and communicated to relevant personnel
- Local processes established by the CCG are aligned to NHSE policies and guidance, e.g Primary Medical Care Policy and Guidance Manual
- Roles and responsibilities for activities have been clearly defined
- Processes are in place to confirm compliance with policies and procedures
- Documentation is retained, including records of decisions. There is evidence to show decisions were exercised in accordance with NHSE statutory duties.
- With specific relation to decisions impacting GP practices registered population (e.g mergers / closures / relocations) the CCG undertakes all necessary involvement and consultation and keeps clear records thereof. The consultation is appropriate and proportionate in the circumstances of each case and should include consulting with the Local Medical Committee and affected patients.

- The CCG has considered its obligations in relation to procurement where appropriate.

Whilst performing the audit, we will also consider any previous internal audit work undertaken and any additional areas of risk to be included.

4. Reporting

A report will be produced detailing the observations identified from the annual audit, the recommendations required to ensure the appropriate delivery of the delegated functions and the agreed management actions (including responsible owners and timeframes for implementation).

For each audit, an overall assurance level of either Full, Substantial, Limited or No Assurance will be provided in accordance with NHSE definitions and guidance.

The outcome of each annual audit will be reported to the CCG's Audit Committee. The CCG's Primary Care Commissioning Committee should lead in discussing and agreeing the report. The outcome should be reported in the CCGs annual report and governance statement. The subsequent report and management actions will need to be discussed with the NHSE local team as appropriate.

5. Proposed Timescales

	Planned Date
Fieldwork Starts	February 2019
Discussion Document to Client	March 2019
Responses by Client	March 2019
Final Report	March 2019

6. Key Contacts and Report Distribution

Name	Title	Report Distribution
David Swift	Lay Member for Governance	Final
Kirsty Hollis	Chief Finance Officer	Draft/ Final
Alex Walker	Interim Director of Commissioning	Draft/ Final
Lisa Cunliffe	Primary Care Development Manager	Draft/ Final

7. Your Acceptance

Please do not hesitate to contact MIAA should you have any comments regarding the Terms of Reference (these will be assumed as agreed if MIAA are not informed otherwise).

8. MIAA Key Contacts

The key contacts for this review will be;

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APPENDIX A

The following is in the scope of the NHSE primary medical services audit framework for the review of **Governance**:

Operation and oversight of the Primary Care Commissioning Committee in regards to points a-c as set out below (but not in relation to the management of Conflicts of Interest)

a. Commissioning and procurement of primary medical services;

- i. planning the provision of primary medical care services in the area, including carrying out needs assessments and consulting with the public and other relevant agencies as necessary
- ii. the processes adopted in the procurement of primary medical care services, including decisions to extend existing contracts
- iii. the involvement of patients / public in those commissioning and procurement decisions
- iv. the effective commissioning of Directed Enhanced Services and any Local Incentive Schemes (including the design of such schemes)
- v. commissioning response to urgent GP practice closures or disruption to service provision

b. Contract Oversight and Management Functions. Generally these will be those relating to the accessibility and quality of GP services, including but not limited to ensuring relevant national and locally applied contract terms in relation to;

- i. GP Practice opening times and the appropriateness of sub contracted arrangements
- ii. Managing patient lists and registration issues (for example, list closures, targeted list maintenance, out of area registration, special allocation schemes)
- iii. Identification of practices selected for contract review to assure quality, safety and performance, and the quality of the subsequent review and implementation of outcomes
- iv. Decisions in relation to the management of poorly performing GP practices and including, without limitation, contractual management 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)
- v. Overall management of practice: (1) mergers (2) closures

c. Primary Care Finance

- i. Overall management and the reporting of delegated funds – processes for forecasting, monitoring and reporting

- ii. ii. Review of financial controls and processes for approving payments to practices
- iii. iii. Review of compliance with coding guidance on a sample basis
- iv. iv. Processes to approve and decisions regarding 'discretionary' payments (e.g. Section 96 funding arrangements, Local Incentive Schemes)
- v. v. Implementation of the Premises Costs Directions

APPENDIX B

An evaluation of the following elements are proposed within the scope of the audit (*details of elements 14, 15 and 16 are detailed in Appendix A*)

CORE ELEMENTS

DELEGATION AGREEMENT / MEMORANDUM OF UNDERSTANDING

- 1) The CCG has an approved Delegation Agreement/Memorandum of Understanding (MOU) that clearly sets out the agreed working arrangements for the delivery of primary care general practice delegated commissioning and the respective role of the CCG and NHSE and the related functions/services.
- 2) The Agreement/MOU defines the authority/decision making processes for the delegated roles and responsibilities.

CCG CONSTITUTION

- 3) The Constitution reflects the delegated and designated roles and responsibilities in relation to delegated Primary Care responsibilities.

PATIENT ENGAGEMENT & INVOLVEMENT PLAN / CONSULTATION

- 4) The CCG has developed and implemented a patient engagement and involvement Plan (PEI) and this is integral to the delegated responsibilities to the CCG for Primary Care Commissioning. If no PEI, the CCG can evidence its statutory duties to consult when necessary.

GP CONTRACTS

- 5) GP Contracts are in place as per General Practice Medical Services (GMS) Contract for England for 2017/18.

PRIMARY CARE COMMISSIONING COMMITTEE: COMPOSITION, ESTABLISHMENT AND DUTIES

- 6) The CCG has a Primary Care Commissioning Committee or Joint Committee with NHS England that is separate to the CCG's Governing Body and has a greater proportion of lay and executive members compared to clinical members.
- 7) The Chair and Vice Chair of the Primary Care Commissioning Committee or Joint Committee are both lay members.
- 8) A standing invitation has been made to the CCG's local HealthWatch representative and a local authority representative from the local Health and Wellbeing Board to join the Primary Care Commissioning Committee or Joint Committee as non-voting attendees.
- 9) The committee is quorate for each meeting.

CORE ELEMENTS

- 10) Meeting frequency is sufficient for the committee to discharge its responsibilities.
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- 11) Declarations of interest are a standing item on meeting agendas and the chair of meetings should have access to a declaration of interest checklist.
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- 12) The committee undertakes its duties as per its Terms of Reference.
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- 13) Reporting processes are well designed and operating effectively, including oversight arrangements.

PRIMARY CARE COMMISSIONING COMMITTEE: OPERATION AND OVERSIGHT (as per Appendix A)

- 14) Commissioning and procurement of primary medical services
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- 15) Contract Oversight and Management Functions
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- 16) Primary Care Finance

DECISION MAKING

- 17) There is evidence to show decisions were exercised in accordance with NHSE's statutory duties, e.g
- Equality and Health Inequalities duties
 - The 'Regard Duties'
 - The 'View to Duties'
 - The 'Promote Duties'
 - The 'Involvement Duties'
 - Duty to act fairly and reasonably
 - Duty to 'obtain appropriate advice'
 - Duty to exercise functions effectively
 - Duty not to prefer one type of provider
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- 18) Clear records are retained with specific relation to decisions impacting GP practices registered population (e.g mergers / closures / relocations).
- Evidence is retained to support consultation with the Local Medical Committee and affected patients
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- 19) The CCG has considered its obligations in relation to procurement, where appropriate.
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- 20) Conflict Resolution occurrence are minimal and robust processes are clearly defined should the need to use them occur.

RISK MANAGEMENT

CORE ELEMENTS

21) The CCG has a robust risk management process in place for those risks identified in respect of the Primary Care objectives and work streams

ADDITIONAL ELEMENTS

PRIMARY CARE CHARTER

1) An approved Primary Care Charter is in place and all relevant parties are cited and signed up to this.

STRATEGIC PLANS

2) A Strategic Plan for delivering Accountable Care across the CCGs population is in place.

3) Primary Care Implementation Plans for each Care Community/Locality are in place.

PRIMARY CARE COMMISSIONING COMMITTEE: COMPOSITION, ESTABLISHMENT AND DUTIES

4) The committee prepares an annual report on its work and performance for the governing body.