

## Ealing CCG's Primary Care Commissioning Committee Terms of

### Reference

#### Purpose and statutory framework

- 1.1 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 to these Terms of Reference to Ealing CCG.
- 1.2 The CCG has established the Ealing CCG 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.
- 1.3 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.
- 1.4 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).
- 1.5 The CCG will also need to specifically, in respect of the delegated functions from NHS England, exercise those in accordance with the relevant provisions of section 13 of the NHS Act, such as regards impact on services in certain areas and variation in provision of health services.
- 1.6 The Committee is established as a committee of the Governing Body of [Name] CCG in accordance with Schedule 1A of the "NHS Act".
- 1.7 The Committee is formally accountable for furnishing the Finance and Audit Committees with the formal reports it requires to assure the CCG Governing Body that Primary Care delegation is being effectively governed and managed. It will additionally report to the Quality Committee in order that the CCG's approach to quality is consistent and can be understood alongside the CCG's other areas of commissioning responsibility.

## 2. Secretariat

- 2.1 The CCG will provide secretariat support to the Committee including preparation and distribution of papers, the taking of minutes and facilitating agendas. Additionally, the secretariat will support

the pro-active and careful management of conflicts of interest, in accordance with the CCG's conflicts of interest management policy.

2.2 The secretariat will be responsible for supporting the Chair in the management of the Committee's business and for drawing the Committee's attention to best practice, national guidance as it emerges, and other relevant documents as appropriate.

2.3 A record of actions and decisions will be circulated by the secretariat to the Committee within five working days. The minutes/notes as agreed by the Committee Chair, will be circulated to attendees of the Committee at the latest within 15 working days of each Committee meeting.

### **3. Frequency and notice of meetings**

3.1 The Committee will typically convene monthly and in public.

3.2 Papers will be issued no later than five working days before each meeting. The dates of the meetings and papers will be available on the CCG's website.

3.3 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.

### **4. Authority and reporting**

4.1 The Committee is established under [name] Clinical Commissioning Group's constitution as a committee of the Governing Body and will make decisions within the bounds of its remit.

4.2 The Committee will present its minutes and an executive summary report to NHS England London Region and the Governing Body for information.

4.3 There is a statutory requirement that the Committee publishes a register of its decisions, outlining the management of any Conflicts of Interest. This shall be made available via the CCG's website.

4.4 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 agreement entered into between NHS England and Ealing CCG, are recorded in a scheme of delegation, are governed by appropriate terms of reference and reflect appropriate arrangements for the management of conflicts of interest.

### **5. Membership**

#### **Voting members** (lay and executive majority)

- Governing Body Lay Member, Ealing CCG (Chair)
- Governing Body Lay Member, Ealing CCG (Vice Chair)
- CCG Managing Director/Chief Operating Officer, Ealing CCG, or their deputy
- CCG Chief Finance Officer, or their deputy
- Non-conflicted clinicians x 2 (secondary care doctor / nurse / out-of-area GP / allied health professional)

### **Non-voting members**

- NHS England representative
- Three elected Governing Body members, Ealing CCG
- Heads of Primary Care (CCG; seconded NHSE staff)
- Public Health borough representative
- Local authority representative of borough Health and Wellbeing Board
- HealthWatch borough representative
- Local Medical Committee representative

**No person who is a practising GP in the CCG area may be a voting member of the Committee.**

## **6. Quoracy, voting and confidentiality**

- 6.1 The quorum shall comprise of a minimum of three voting members and include at least one lay member, one CCG officer and one clinician.
- 6.2 The Committee shall have a non-conflicted majority at all times.
- 6.3 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 consensus decision-making wherever possible.
- 6.4 Members of the Committee, with agreement from the Chair, may send a designated deputy with full authority if they cannot attend in person.
- 6.5 Members of the Committee shall respect confidentiality requirements as set out in the CCG Constitution or Standing Orders.

## **7. Remit and responsibilities**

- 7.1 The Committee recognises that the rationale for NHSE's delegation of primary care medical services commissioning to the CCG is to increase quality, efficiency, productivity and value for money, and to remove administrative barriers, which in turn will serve to strengthen and stabilise general practice.
- 7.2 In performing its role, the Committee will exercise its management of the functions in accordance with its terms of reference, delegation of authority and the agreement entered into between NHS England and Ealing CCG.
- 7.3 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. This includes the following:
- a. 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);
  - b. Providing assurance to the Governing Body and NHS England on quality, performance and finance of all services commissioned from primary care which incorporate the delegated funding and funding from the core CCG allocation (for example prescribing, incentive schemes and local primary care contracts).

- c. Newly designed enhanced services (“Local Enhanced Services” and “Directed Enhanced Services”);
- d. Design of local incentive schemes as an alternative to the Quality Outcomes Framework (QOF);
- e. Decision making on whether to establish new GP practices in an area;
- f. Approving practice mergers; and
- g. Making decisions on ‘discretionary’ payment (e.g., returner/retainer schemes).
- h. Agreeing and monitoring a financial plan and budget; risk assessment, performance framework and annual workplan.

- 7.4 The CCG will also carry out the following activities, in collaboration with other NWL CCGs:
- a. To plan, including needs assessment, primary medical care services in the [name] area;
  - b. To undertake reviews of primary medical care services in the [name] area;
  - 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 the [name] area;
- 7.5 The Committee is accountable for exercising the agreed delegated functions from NHS England. The agreed delegated functions are set out in Schedule 2. NHSE retains the responsibility for individual practitioner performance whilst the CCG will have responsibility for practice contract performance.

## **8. Governance structure and effectiveness**

- 8.1 The Committee will be responsible for seeking assurance in order that strategy, commissioning, performance, quality and finance considerations guide and inform effective primary care medical services commissioning.
- 8.2 The Committee will ensure, on behalf of the Governing Body, the effective design and delivery of primary care medical services to meet the needs of our local population, in line with the CCG’s long-term strategic objectives, as expressed in the Sustainability and Transformation Plan (STP) for the borough and for North West London.
- 8.3 The Committee shall remain the decision-making committee for all areas within its remit, whilst taking due account of any recommendations and reviews that may from time to time be provided by other committees of the CCG’s Governing Body.
- 8.4 The Committee may appoint ad-hoc members to advise it on specific matters within its terms of reference from time to time as appropriate.
- 8.5 The Committee shall review its own effectiveness after its first six months and annually thereafter, and submit any proposed changes to its terms of reference to the Governing Body for ratification.

## **9. Sub-structure**

The joint committee may establish local task and finish groups as required (which will operate as non-decision making working groups); these will be properly constituted with terms of reference approved by the Committee. Where appropriate, existing committees will be reviewed and refreshed to support the effective delivery of the new functions of this Committee.

## Appendix

### Delegation Agreement

The core provisions of the Delegation Agreement (such as those set out at Schedules 1 and 2, below) form part of the committee's terms of reference. This Delegation Agreement will be complemented by the detailed Memorandum of Understanding between the CCG and NHS England, which remains under development.

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 Ealing **CCG** to empower Ealing CCG to commission primary medical services for the people of Ealing.
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 2017.
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 Ealing 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.

The parties may terminate the Delegation in accordance with the process set out in the Delegation Agreement.

**Signed by** [confirm current post-holder]

Chief Financial Officer

for and on behalf of **NHS England**

## Schedule 1 – Delegated functions at Level 3 of primary care commissioning arrangements

### [Those functions delegated from NHS England to the CCG]

- 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.

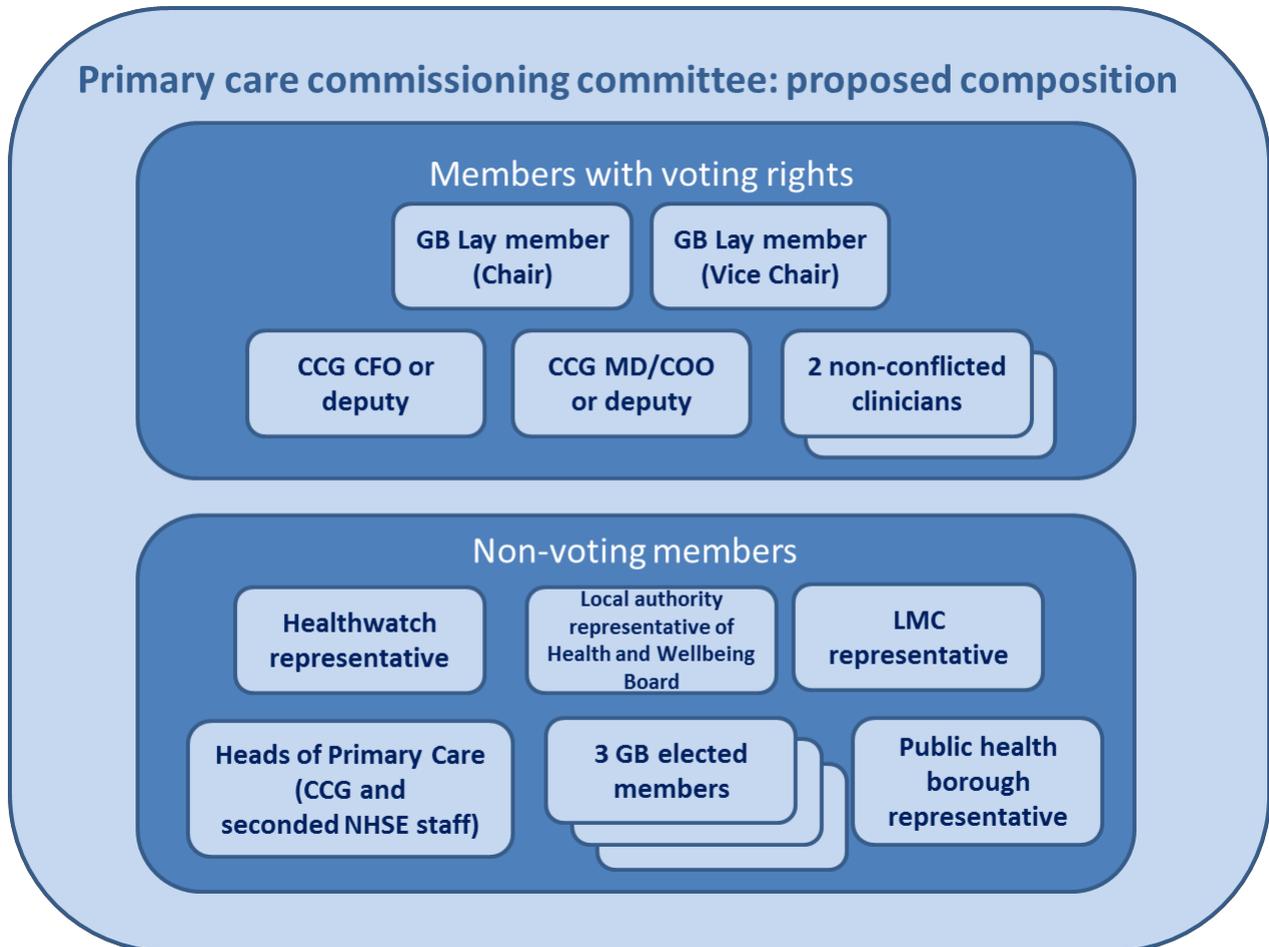
## Schedule 2 – Reserved functions

### [Those functions which NHS England will continue to be responsible for]

- 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 **Prime Minister's Challenge Fund**; and
- h. such other ancillary activities that are necessary in order to exercise the Reserved Functions;

Annex 2 – Committee membership

Figure 1 – Primary Care Commissioning Committee core structure



Other officers shall have a standing invitation to attend meetings of the Primary Care Commissioning Committees as required to advise on and enact the business of the committees.

The committee may choose to exclude non-voting members from certain items of the private meeting when considered appropriate, with particular attention paid to the application of the conflicts of interest policy.

Committees will be chaired by a Lay Member of the Governing body. The Vice Chair will also be a Lay Member. Neither the Chair nor the Vice Chair will be the Lay Member responsible for Audit.

The membership above represents the common core and minimum membership across the eight proposed committees – local variation from this agreed core may be recorded in the Terms of Reference for the boroughs, although these are intended to be minimal.

Committees may wish to include public health representatives in their membership.

Annex 3 – proposed governance structure and operating model

Figure 2 – Primary Care Commissioning governance and operating model

