Primary care co-commissioning briefing for Healthwatch

Key Dates

<table>
<thead>
<tr>
<th>Activity</th>
<th>Date</th>
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<tbody>
<tr>
<td>Next steps to primary care co-commissioning published</td>
<td>10 Nov 2014</td>
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<tr>
<td>Managing Conflicts of Interest: guidance for CCGs published</td>
<td>17 Dec 2014</td>
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<tr>
<td>NHS to support CCGs to develop their proposals for joint and delegated commissioning arrangements</td>
<td>Nov 2014-Jan 2015</td>
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<tr>
<td>Delegated proposals submitted to NHS England</td>
<td>9 Jan 2015</td>
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<tr>
<td>Joint commissioning proposals submitted to NHS England</td>
<td>30 Jan 2015</td>
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<tr>
<td>Moderation panels to review proposals</td>
<td>Feb 2015</td>
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<tr>
<td>Financial transfer for delegated arrangements</td>
<td>March 2015</td>
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<td>Joint and delegated arrangements to be implemented locally, including staff arrangements etc.</td>
<td>1 April 2015</td>
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Purpose

The purpose of this briefing is to highlight the changes to the commissioning of primary care locally. These changes will come into effect on 1 April 2015 (and beyond) and will impact on the role of local Healthwatch.

Background Information

In May 2014, NHS England (NHS E) invited Clinical Commissioning Groups (CCGs) to take on an increased role in the commissioning of primary care services. The intention was to empower and enable CCGs to improve primary care services locally. There has been a strong response from CCGs wishing to assume greater primary care commissioning responsibilities. In November 2014, NHS E published Next steps to primary care co-commissioning to support the implementation of co-commissioning arrangements locally.

The co-commissioning of primary care by NHS E and CCGs is one of a series of changes set out in the NHS Five Year Forward View. Co-commissioning is seen as a key enabler in developing seamless, integrated out-of-hospital services based around the diverse needs of local populations, and in driving the development of new models of care.

Different types of models

Next steps to primary care co-commissioning invited CCGs to apply to participate in one of three models of primary care co-commissioning for April 2015. The models are:

- a. Greater involvement in primary care decision-making with NHS E
- b. Joint commissioning arrangements with NHS E
- c. Delegated commissioning arrangements from NHS E.

The scope of primary care co-commissioning arrangements in 2015/16 is general practice services only. The model of ‘Delegated Commissioning Arrangements’ will include contractual GP performance management, budget management and complaints management. Changes to primary care complaints management are unlikely to come into effect this year. There will be a distinction between complaints about individual GPs (handled by NHS E) and complaints about the practice which will go to the CCG. We are still seeking clarity on this arrangement including how potential conflict of interest will be managed and will update you on this when we know more. However, co-commissioning excludes all functions relating to individual GP performance management.
In joint arrangements NHS E and CCGs, or in delegated arrangements, CCGs, may vary or renew existing contracts for primary care provision or award new ones depending on local circumstances. CCGs and NHS E must comply with public procurement regulations and with statutory guidance on conflicts of interest.

The three models are outlined below:

### Model 1: Greater involvement

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<thead>
<tr>
<th>Model description</th>
<th>CCGs will collaborate more closely with NHS E sub-regions</th>
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<tr>
<td>Governance arrangements</td>
<td>No new governance arrangements are required for a CCG to have greater involvement in the commissioning of primary care services and this involvement could be agreed between the CCG and its NHS E sub-region.</td>
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<tr>
<td>Approval process</td>
<td>No formal process. Many CCGs are already working closely with their NHS E sub-region to influence and shape primary care decision making.</td>
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### Model 2: Joint commissioning arrangements

<table>
<thead>
<tr>
<th>Model description</th>
<th>CCGs will assume joint commissioning responsibilities with their NHS England sub-region, through a joint committee.</th>
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<tr>
<td>Governance arrangements</td>
<td>The model enables one or more CCGs to assume responsibility for jointly commissioning primary medical services with their NHS England sub-region through a joint committee. A local Healthwatch representative and a local authority representative from the local Health and Wellbeing Board will have the right to join the joint committee as non-voting attendees. NHS England and individual CCGs will remain accountable for meeting their own statutory duties. CCGs and NHS England must ensure that any governance arrangements put in place do not compromise their ability to fulfil statutory duties.</td>
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<tr>
<td>Approval process</td>
<td>Proposals will be agreed by regional teams and must comply with the governance framework.</td>
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### Model 3: Delegated commissioning arrangements

| Model description | CCGs will assume full responsibility for commissioning general practice services. This will include the following functions:  
- General Medical Services, Personal Medical Services and Alternative Provider Medical Services 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 (LES)" and "Directed Enhanced Services (DES)")  
- Design of local incentive schemes as an alternative to the Quality and Outcomes Framework (QOF)  
- The ability to establish new GP practices in an area; Approving practice mergers  
- Making decisions on ‘discretionary’ payments (e.g., returner/retainer schemes). |
| Governance arrangements | The recommendation is that CCGs establish a primary care commissioning committee to oversee the exercise of the delegated functions. A local Healthwatch representative and a local authority representative from the local Health and Wellbeing Board will have the right to join the delegated committee as non-voting attendees. Liability for primary care commissioning remains with NHS England. NHS England will require robust assurance that its statutory duties are being discharged effectively. |
| Approval process | To be guided by a regional and national moderation process, and approved by a national executive steering group. During the approvals process regions will review how CCGs propose to handle and mitigate conflicts of interest. |

### Conflict of interest management

It is likely that co-commissioning will increase the range and frequency of real and perceived conflicts of interest for CCGs. In response, a national framework for conflicts of interest in primary care co-commissioning was published, [Managing Conflicts of Interest: guidance for CCGs](#).

The new conflicts of interest guidance includes a strengthened approach to:

- the make-up of the decision-making committee
- national training for CCG lay members
- external involvement of local stakeholders
- register of interest
- register of decisions.
Role of local Healthwatch in these changes

In joint commissioning and delegated arrangements, the CCG is required to invite a representative from local Healthwatch to attend the commissioning committee meetings as a non-voting attendee. There is no obligation on the part of local Healthwatch to participate\(^1\).

**Next steps to primary care co-commissioning** associates the participation of local Healthwatch in the primary care co-commissioning committee with transparency, mitigating conflicts of interest and to support alignment in decision making across the local health and social care system. However, NHS England has confirmed that none of these roles are explicit statutory functions of local Healthwatch. To the contrary, the responsibility for transparency and the management of conflicts of interest rests with the CCG.

Healthwatch England broadly supports the aims of primary care co-commissioning and, as a principle would advise local Healthwatch to participate in the primary care co-commissioning arrangements. We note that the ‘delegated’ model transfers the management of GP complaints from the NHS E Local Area Team to the CCG and are concerned that the public may perceive this as removing independent oversight from the complaints system. We are still seeking clarity on this issue from NHS England and will update the network once we have more information.

Participation as a ‘non-voting’ attendee is entirely consistent with the governance arrangements of local Healthwatch and the role it has established for itself to ensure its independence.

The ‘seat’ for local Healthwatch is not mandatory but the potential benefits include:

- Contributing to discussions about primary care development for local populations
- Further representing the voice of patients and service users in the committees
- Improving partnership working across the local area
- Providing scrutiny and challenge in the local committees.

We have received a number of queries from local Healthwatch about these changing commissioning arrangements and we welcome NHS England’s continued commitment to inform the Healthwatch network of the changes. This included a webinar on 9\(^\text{th}\) February which provided the network with an opportunity to raise questions directly with those NHS England staff who led the primary care co-commissioning changes. We will continue to work jointly with the primary care co-commissioning team and feedback the experiences of local Healthwatch in regard to the changes.

**Questions and Answers**

1. **Will we have capacity to accept an ‘observational seat’ on the committee meetings?**

   The guidance requires a standing invitation to be made to a member of the local Healthwatch organisation. Healthwatch England were consulted on the development of the guidance and are broadly supportive, but highlighted potential concerns about

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\(^1\) NHS E consulted with us on the draft ‘Next steps towards primary care co-commissioning’ but tight timescales did not allow consultation with the network. This has been considered for future changes to commissioning.
capacity locally. This is why the invitation is mandated but the attendance to the committee is not. It is up to each local Healthwatch to make a decision, based on its resources and local priorities, whether it takes up the observational seat on the commissioning committee. Local Healthwatch are not expected to manage conflict of interests as this sits firmly with the CCG. In joint commissioning arrangements, engaging with the co-commissioning committee might also involve multiple local Healthwatch. Therefore, you might want to consider having a ‘rotational seat’ with other local Healthwatch and feeding back committee discussions collectively within your region.

2. **We are concerned that the guidance suggests it will be the role of local Healthwatch to manage the conflict of interest, is this right?**

   Next steps to primary care co-commissioning associates the participation of local Healthwatch in the primary care co-commissioning committee with transparency, mitigating conflicts of interest and to support alignment in decision making across the local health and social care system. We have full confirmation from NHS England that none of these roles are explicit statutory functions of local Healthwatch. To the contrary, the responsibility for transparency and the management of conflicts of interest rests with the CCG.

3. **What happens to Health and Wellbeing Boards, do they need to change in light of these new arrangements?**

   From a legislative perspective, Health and Wellbeing Boards (HWBs) are not required to change. However this will need to be agreed locally. It may be determined that the HWB terms of reference need to be amended to support services that are currently commissioned through local arrangements for the Better Care Fund. In South West London, CCG commissioners believe that co-commissioning primary care will offer the opportunity to ensure that services in general practice are responsive and meet the rising demand of care. SWL CCG commissioners welcome the opportunity to have greater influence over how general practice is shaped, and how this aligns with local plans for out-of-hospital care and implementation of the Better Care Fund.

4. **If we join as an observational seat, will we be excluded from ‘closed sessions’ of meetings that are not public?**

   NHS E have informed us that it is the intention that local Healthwatch should not be excluded from the commissioning committee meetings at times that it is in closed session (i.e. when it is closed to the public). However, there may be commercially sensitive times where local Healthwatch is asked to leave but NHS E have suggested this will be in exceptional circumstances and not usual practice.

5. **Should GPs also sit on the decision making committee?**

   The committee membership and its roles and responsibilities are up to the CCG to determine but GPs must not be in the majority. The governing body (CCG) should be assured that there is sufficient oversight of conflicts of interest through these arrangements. Secondary care clinicians and nurse members may also sit on this committee and it may include members who are not currently on the CCG, such as CCG lay members without statutory responsibilities, if applicable. CCGs may also choose to include external GPs without pecuniary interests on the committee if provision for this is made in the terms of reference and in the CCG constitution.
6. CCGs wrestle with conflicts of interest now, and often struggle to get GPs involved in commissioning. Will this limit the strategic involvement of GPs in commissioning in the future?

The issue of CCG succession planning needs to be considered in the round, and is not just reserved to this policy area. NHS E have recognised these concerns and are working with the NHS Leadership Academy to ensure CCGs have access to a range of talent management and succession planning tools and resources. Strategic clinical leadership must be protected by using common sense and good judgement when managing conflicts of interest. NHS E are developing training to support lay members in their increased involvement in managing conflicts of interest and looking at ways to support them to voice concerns. NHS E hope that the new conflicts of interest guidance will be of benefit to everyone, particularly GP leaders.

7. There is a requirement to conduct engagement when setting arrangements; who would you expect CCGs to engage with?

NHS E would expect CCGs to engage with their membership about the preferred co-commissioning model, but any wider engagement is for local discretion. NHS E have advised CCGs that it would be good practice to talk to the Health and Wellbeing Board, local Healthwatch and extend the engagement to patient participation groups if appropriate. They would expect CCGs to be able to evidence this engagement.

8. I’m concerned that under the delegated arrangement model, complaints will be delegated to CCGs; what about conflict of interest?

Changes to primary care complaints are unlikely to come into effect this year. There will be a distinction between complaints about individual GPs (handled by NHS E) and complaints about the practice which will go to the CCG. We are still seeking clarity on the issue and will update you on this.

Further information

The commissioning lead at Healthwatch England is Phil Brough, Public Policy Adviser. Please contact Phil on 02079728044 or phil.brough@healthwatch.co.uk if you have any queries at all.

List of useful links

- Next steps to primary care co-commissioning
- Managing Conflicts of Interest: guidance for CCGs
- NHS England primary care co-commissioning

Please contact us if you would like this policy in another language or format (for example in large print, in Braille or on CD).

13 March 2015