

Report on Acute Commissioning System

Governance Paper

410

Introduction

This paper is written to advise NHS East Riding of Yorkshire CCG (“ERYCCG”), NHS Scarborough and Ryedale CCG (“SCRCCG”) and NHS Vale of York CCG (“VOYCCG”) on the potential governance arrangements for closer working across the acute commissioning sector. This paper should be considered legally privileged and therefore should not be shared outside the CCGs without consultation with each Chief Officer as this would waive privilege on behalf of all.

ERYCCG, SCRCCG and VOYCCG all have acute commissioning contracts with York Teaching Hospital Foundation Trust (“YTHFT”).

ERYCCG, SCRCCG, VOYCCG and YTHFT have all been placed into the National Health Service England (“NHSE”) and National Health Service Improvement (“NHSI”) programme, ‘capped expenditure’. It is unclear at this stage what status this programme has and direction has been sought from NHSE/NHSI. What is apparent is that the direction from both NHSE and NHSI is that NHS partners must work as a system to reduce cost.

This paper is intended to outline the potential governance structures available to support the system working and make a recommendation as to which will be most effective at this time.

Options

Contract Management Board

ERYCCG, SCRCCG, VOYCCG and YTHFT currently have contract management boards to manage their acute contracts. These have come together to form one contract management board although there are currently three different contracts in place.

Contract Management Board arrangements could oversee the move to one contract however service specification/KPIs etc would need consideration by Governing Body of each CCG.

In this arrangement each CCG would be required to approve any changes to formula or thresholds separately and each decision except where they relate specifically to managing performance issues within the contract would need to be approved separately by each CCG. This would mean co-ordination of Governing Body meetings and each CCG would need to confirm the reporting mechanisms internally to enable more strategic changes to be made.

Joint Committees

Joint Committee structures were introduced by the amendments to the National Health Services Act 2006, amended in 2014 with the introduction of s14Z3. Essentially this was a mechanism whereby CCGs were formally enabled to delegate decision making from the Governing Body to a formal committee. The membership of the committee could include other commissioners (ie other CCGs) and enables collective strategic decisions which are binding on the CCGs.

The delegation can be in one of two ways, it can either be through reporting to the Governing Body of each CCG prior to the decision being made to establish what can be agreed at the Joint Committee, or a work plan can be agreed which will enable the joint committee to work within the agreed work plan and make whatever decisions are required to deliver the aims of the workplan without the need to revert back to the CCG governing body.

The terms of reference could allow for YHTFT (and Local Authority Partners) to be in attendance at the Joint Committee if that were deemed to be required.

The joint committee would require robust terms of reference and the workplan would need to be sufficiently detailed to enable the Governing Body to determine whether it was appropriate to delegate decision making to the committee.

To support the joint committee it would be appropriate to consider the use of a Section 75 agreement between the CCGs to establish pooled budgets and the financial management around that.

Committee in Common

This would be a possible means of supporting the process with Governing Bodies meeting virtually to discuss and determine outcomes and decisions. This would require the arrangement of meetings on the same day with a means of linking the meetings so that they are held together and decisions are made together. This would require all to agree on the decision and outcome before matters could be actioned and may require the convening of extraordinary meetings. This has been used as a tool successfully elsewhere for example in audit committees where the agenda is generally standard and items for discussions are not particularly fluid in nature.

Establish a Health and Social Care Trust

This would be the establishment of a separate legal entity which would deliver the services under the acute contract with the management from the partner agencies. This is particularly effective where there is a view that health and social partners will come together to commission services. That said the process to set this up is long and complex and requires Department of Health approval. It may be that this is something to consider in the long term.

Recommendation

Although there is some work to be undertaken in terms of establishing the Joint Committee structure, the formal delegation of decision making powers to this committee would reduce the requirement to report to the Governing Body as regularly as the contract management board mechanism.

A joint committee would also appear a stronger statement to partners that the Commissioners intended to unify as one voice for the delivery of better and more cost effective services on the patch.

As the staffing structure has been established to include a Chief Officer and Senior Appointments it would seem appropriate that this ought to be an autonomous structure across the organisations and the joint committee with a s75 agreement would support this to deliver savings and different care outcomes whilst still reporting into the Governing Body of each organisation on progress on the work plan. A pooled budget would need to be held by one of the CCGs on behalf of the others, it would make some sense for this to be held by the CCG who has the Chief Finance Officer oversight of the work.

Updated position

The paper was sent to NHS East Riding CCG Senior Management Team, NHS Scarborough and Ryedale CCG Business Committee and NHS Vale of York CCG for comment. The primary concerns arising from that were:-

- NHS East Riding CCG were to be members of the committee
- NHS East Riding CCG were not formally in the capped expenditure programme
- NHS East Riding CCG and NHS Scarborough and Ryedale CCG both requested that a clinical member of each Governing Body be listed as a member of the joint committee
- NHS Vale of York CCG requested that a Lay Member of each CCG Governing Body be listed as a member of the joint committee.
- All requested additional detail in relation to the workplan and therefore the matters which would be delegated to the Joint Committee for decision and those which would remain with the CCG. As a result an initial draft workplan has been produced and the terms of reference updated to reflect these comments.

Joint Committee of Clinical Commissioning Groups

NHS East Riding of Yorkshire CCG

NHS Scarborough and Ryedale CCG

NHS Vale of York CCG

Acute Commissioning

410.

Terms of Reference

1. Introduction

1.1 The NHS Act 2006 (as amended) (“the NHS Act”) was amended in 2014 to allow Clinical Commissioning Groups (CCGs) to form joint committees. This means that two or more CCGs exercising commissioning functions jointly may form a joint committee. The Legislative Reform Order (“LRO”), which amended section 14Z3 (CCGs working together) of the NHS Act, was passed by Parliament and the reforms took effect from 1 October 2014. The reforms mean that CCGs will no longer find it necessary to operate work around arrangements such as committees in common, encouraging integration and co-working.

Joint Committees are a statutory mechanism which give CCGs an additional option for undertaking collective strategic decision making.

In addition, the NHS Act provides, at Section 13Z that some of the 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.

Individual CCGs will still remain accountable for meeting their statutory duties. The aim of the LRO is to encourage the development of strong collaborative and integrated relationships and decision making between partners.

1.2 The Joint Committee of the Clinical Commissioning Groups (“Joint Committee”) is a joint committee of: NHS East Riding of Yorkshire CCG, NHS Scarborough and Ryedale CCG and NHS Vale of York CCG; with the primary purpose of commissioning acute services which are provided by York Teaching Hospitals NHS Foundation Trust.

1.3 The health leaders across NHS East Riding of Yorkshire CCG, NHS Scarborough and Ryedale CCG and NHS Vale of York CCG (“the system CCGs”) have collectively committed to change the way certain elements of health care is provided in the acute sector to deliver high quality care within the resources available.

The intention would be to develop high quality care and deliver consistent clinical standards in the acute sector within the financial envelope which is available over the geographical patch.

1.4 Guiding principles:

- The needs of patients in the system CCGs area will have priority over organisation interests
- NHS and Local Authority Commissioners and provider will work collaboratively and urgently on system reform and transformation
- Costs will be reduced by better co-ordinated care pathways
- Waste will be reduced, duplication avoided and activities stopped which have limited value.
- Patients, wherever possible, will be discharged promptly from hospital and cared for in their own home or local care facilities
- Develop strong working relationships between health and social care commissioners with clear aims and a shared vision putting the needs of the population first
- The CCGs will maintain and further develop closer working relationships with the local community, workforce, and voluntary/independent sectors.

2. Statutory Framework

The NHS Act which has been amended by Legislative Reform Order 2014/2436 provides at Section 14Z3 that where two or more CCGs are exercising their commissioning functions jointly, those functions may be exercised by a joint committee of the groups.

The CCGs named in paragraph 1.2 have delegated the functions set out in schedule 1 to the Joint Committee

3. The Role of the Joint Committee

The Joint Committee's primary purpose is to arrange and commission acute services on a York Teaching Hospitals NHS Foundation Trust footprint. This will include monitoring and managing performance against constitutional targets and managing demand within the system.

The Joint Committee will initially work to identify the areas of work where a 'system' approach will be beneficial to the outcomes for patients and making the best use of public finances. Ultimately, the Joint Committee will work within the framework set out in the workplan which will have been approved by the Governing Body of each of the system CCGs from June 2018 and thereafter a workplan will be refreshed on a quarterly basis.

The role of the Joint Committee therefore shall be to carry out the functions relating to making decisions about future acute services undertaking formal public consultation as necessary and making decisions on the issues which are the subject of the consultation in relation to the commissioned services. The workplan will provide delegated decision making powers to the Joint Committee on behalf of the three Commissioners. This will be reflected in each CCGs constitution and scheme of delegation as appropriate.

NB: It is the responsibility of each member CCG to ensure that their Governing Body is appropriately briefed and clear on what is delegated to the Joint Committee and that the Governing Body is provided with regular updates on the

business of the Joint Committee so that they are clear on the implications of the decisions made. Implementation of the decisions will be the remit of each member CCG.

4. Geographical Coverage

The Joint Committee will comprise:

- NHS East Riding of Yorkshire CCG
- NHS Scarborough and Ryedale CCG
- NHS Vale of York CCG

NHS England may be involved where Specialised Commissioning is involved.

5. Membership and Attendance

- Chief Officer NHS Scarborough and Ryedale CCG
- Chief Officer NHS Vale of York CCG
- Chief Officer NHS East Riding of Yorkshire CCG
- The Chief Officer nominated by the member CCGs to have responsibility for overseeing the work of this committee. This person will only have one vote on the committee.
- Chief Finance Officer NHS Scarborough and Ryedale CCG
- Chief Finance Officer NHS Vale of York CCG
- Chief Finance Officer NHS East Riding of Yorkshire CCG
- Executive Director of Nursing NHS Scarborough and Ryedale CCG
- Executive Director of Nursing NHS Vale of York CCG
- Executive Director of Nursing NHS East Riding of Yorkshire CCG
- GP Governing Body Member from NHS Scarborough and Ryedale CCG
- GP Governing Body Member from NHS Vale of York CCG
- GP Governing Body Member from NHS East Riding of Yorkshire CCG
- GP Member from NHS Scarborough and Ryedale CCG
- GP Member from NHS Vale of York CCG
- GP Member from NHS East Riding of Yorkshire CCG
- Assistant Director of Programme Management will be in attendance

- Assistant Director of Service Transformation will be in attendance
- Head of Legal and Governance will be in attendance
- Chair and Vice-Chair will be elected by the members but must be from different member CCGs. The Chair should be a lay member of one of the member CCGs.
- Deputies can attend on behalf of members provided they have the appropriate delegation to make decisions on behalf of their respective CCG.
- Local Authority Partners can attend by invitation but will not play a role in decision making
- York Teaching Hospital NHS Foundation Trust can attend by invitation but will not play a role in decision making

6. Meetings and Voting

6.1 The Joint Committee shall adopt the standing orders of NHS Vale of York CCG in so far as they relate to the:

- Notice of meetings
- Handling of meetings
- Agendas
- Circulation of papers
- Conflicts of interest (together with complying with NHSE Statutory Guidance)

6.2 All decisions of the Joint Committee must be unanimous

6.3 Quorum

At least one full voting member from each CCG must be present for the meeting to be quorate.

There must be at least two GP members not from the same CCG present for the meeting to be quorate.

6.4 Frequency

Meetings will be monthly commencing April 2018

6.5 Transparency

Meetings of the Joint Committee shall be held in public unless the Joint Committee considers that it would not be in the public interest to permit members of the public to attend a meeting or part of a meeting. 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.

6.6 Participation at Meetings

Members of the Joint Committee have a collective responsibility for the operation of the Joint Committee. They will participate in discussion, review information and provide objective expert input to the best of their knowledge and ability, and endeavour to reach a collective view.

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

The Joint Committee has the power to establish working groups and any such groups will be accountable to the Joint Committee.

Members of the Joint Committee shall respect confidentiality requirements as set out in the Standing Orders above unless separate confidentiality requirements are set out for the Joint Committee in which case these shall be observed.

Secretariat support will be provided on a rotating basis in accordance with the location of the meeting. The secretariat support will include:-

- Circulating agenda and associated documents 5 days prior to meetings
- Work with Communication leads for each CCG to publicise the meeting/agenda on CCG website
- Circulate minutes and the decision log within 3 working days of meeting to all members
- Present the minutes, decision log and action log to the Governing Body admin lead to report into each CCG Governing Body.

7. Reporting to the CCGs and NHS England

Joint Committee will make regular written reports to the member Governing Bodies and NHS England and review the aims, objectives, strategy and progress and produce an annual report for the member Governing Body. The Chief Officer nominated to oversee the work of the committee will take responsibility for ensuring this report is available however each CCG will be responsible individually for ensuring this report is presented to their Governing Body for approval in a timely fashion.

8. Withdrawal from the Joint Committee

Should this joint commissioning arrangement cease to be necessary, the Governing Body of any of the member CCGs can decide to withdraw from the arrangement. This withdrawal to be on such terms as are agreed between all the CCG members of the Joint Committee.

9. Decisions

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

9.2 The decisions of the Joint Committee will be binding on the member CCGs

9.3 Decisions of the Joint Committee will be published on each member CCG website

10. Review of Terms of Reference

These terms of reference will be formally reviewed by the CCGs named in 4 above in April of each year, following the year in which the Joint Committee is created and may be amended by mutual agreement between the CCGs at any time to reflect changes in circumstances as they may arise.

Signatures:

.....

Date:.....

Dr Gina Palumbo
Chair of Governing Body
NHS East Riding of Yorkshire CCG

.....

Date:.....

Jane Hawkard
Chief Officer
NHS East Riding of Yorkshire CCG

.....

Date:.....

Dr Phil Garnett
Chair of Governing Body
NHS Scarborough and Ryedale CCG

.....
Date:.....

Simon Cox
Chief Officer
NHS Scarborough and Ryedale CCG

.....
Date:.....

Keith Ramsey
Chair of Governing Body
NHS Vale of York CCG

.....
Date:.....

Phil Mettam
Accountable Officer
NHS Vale of York CCG