

Primary Care Commissioning Committee Terms of Reference

Governing Body meeting

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1 November 2018

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Purpose of Paper	
<p>The Terms of Reference for this committee are reviewed on an annual basis in line with all formal committees of the CCG's Governing Body.</p> <p>This paper summarises the revisions to the current Terms of Reference which PCCC agreed at its meeting in September 2018 to recommend to Governing Body for approval</p>	
Key Issues	
<ul style="list-style-type: none"> The main aim of the annual review of each committee's Terms of Reference it to make sure that these continue to reflect the functions delegated to the Committee and that it has the membership and other arrangements in place to help it effectively function and discharge its responsibilities. Of particular note at the time of this review was whether there were any changes required to membership to take account of the role of the extended role of the Committee in approving commissioning proposals where Governing Body has determined that the level and nature of conflicts of interest prevent decisions being taken by the Governing Body as set out in the CCG's Standing Orders 	
Is your report for Approval / Consideration / Noting	
Approval	
Recommendations / Action Required by Governing Body	
The Governing Body is asked to approve the revised Terms of Reference of the Primary Care Commissioning Committee	
Governing Body Assurance Framework	
<p><i>Which of the CCG's objectives does this paper support?</i></p> <p>5. Organisational development to ensure CCG meets organisational health and capability requirements.</p>	
Are there any Resource Implications (including Financial, Staffing etc)?	
No	

Have you carried out an Equality Impact Assessment and is it attached?

Please attach if completed. Please explain if not, why not

No, not applicable to Terms of Reference

Have you involved patients, carers and the public in the preparation of the report?

No

Primary Care Commissioning Committee Review of Terms of Reference

Governing Body meeting

1 November 2018

1. Introduction / Background

The Terms of Reference for the Primary Care Commissioning Committee are reviewed on an annual basis. This year committee members particularly considered if any changes were required to take account of the impact of delegated decision making related to transformation change (for example primary care in urgent care) where conflict of interest issues prevent Governing Body being quorate and hence unable to make the decision.

This paper presents the Primary Care Commissioning Committee’s recommendations for revised Terms of Reference and asks the Governing Body to consider and approve them.

2. Summary of Changes

The table below provides a summary of the changes:

Page	Section	Change
1	1, paragraph 2	Addition of “or where in relation to other commissioning proposals where the Governing Body determines...”
2	2, DECISIONS paragraphs 2	Addition of: The Committee will manage any conflicts of interest in line with the national guidance, taking advice from the CCG’s Governance Lead where required. All members of the committee will have completed the Conflicts of Interest training, in line with CCG policy
4	3, 7e	Addition of: Approval of commissioning proposals where the Governing Body determines that conflicts of interest prevent decisions being taken by the Governing Body as set out in the CCG’s Standing Orders
4	3, 7f	Addition of: Ensuring commissioning of primary care services meets the public sector equality duty
5	Table of membership Non-Voting Member	NHSE Representative position amended to Senior Primary Care Manager

The Primary Care Commissioning Committee considered whether or not it would benefit from the addition of an Out of Area GP Representative to its membership as a voting member. This is set out as an option in national guidance to support decision making for commissioning proposals where Governing Body has delegated its decision making authority having determined a conflict of interest that prevents it making the decision. The

Primary Care Commissioning Committee did not feel that there would be any additional value in introducing a single GP from outside of the local health system effectively to ensure there was voting member who is a GP. The rationale for this was that the Committee has two Governing Body GPs along with the Medical Director who are all non voting members able to input to discussions at the committee, including from a perspective of also being members of Governing Body and so understanding the overall strategic commissioning context etc of the CCG. In addition the committee has a further GP, the CCG's Clinical Director – Out of Hospital Care as a non voting member. This post holder is the CCG's clinical lead for a number of the issues discussed at committee and is able to provide insight and information on them to the committee to support decision making.

3. Recommendations

The Governing Body is asked to approve the revised Terms of Reference of Primary Care Commissioning Committee

Paper prepared by Nicki Doherty, Director of Delivery - Care Outside of Hospital

22 October 2018

Terms of Reference

Name of Committee/Group	Primary Care Commissioning Committee
Type of Committee/Group	Committee of Governing Body

1. Purpose of Committee/Group	<p>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 NHS Sheffield CCG. The delegation is set out in Schedule 1.</p> <p>The CCG has established the NHS Sheffield CCG Primary Care Committee (hereafter known as “the 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 and for the management and exercise of functions and powers delegated by the Governing Body to the Committee in relation to the CCGs responsibilities for primary care, or where in relation to other commissioning proposals where the Governing Body determines that conflicts of interest prevent decisions being taken by the Governing Body as set out in the CCG’s Standing Orders.</p> <p>It is a committee comprising representatives of the following organisations:</p> <ul style="list-style-type: none"> • NHS Sheffield Clinical Commissioning Group • NHS England
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2. Authority/Accountability	<p>NHS England has delegated to the CCG authority to exercise the primary care commissioning functions set out in Schedule 2 in accordance with section 13Z of the NHS Act.</p> <p>Arrangements made under section 13Z may be on such terms and conditions (including terms as to payment) as may be agreed between the Board and the CCG.</p> <p>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:</p> <ol style="list-style-type: none"> 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);
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- 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);

The CCG will also need to specifically, in respect of the delegated functions from NHS England, exercise those set out below:

- Duty to have regard to impact on services in certain areas (section 13O);
- Duty as respects variation in provision of health services (section 13P).

The Committee is established as a committee of the NHS Sheffield Clinical Commissioning Group Governing Body in accordance with Schedule 1A of the “NHS Act”.

The members acknowledge that the Committee is subject to any directions made by NHS England or by the Secretary of State.

ACCOUNTABILITY OF THE COMMITTEE

Responsibility of this Committee is outlined within the Sheffield Clinical Commissioning Group’s Constitution. The Committee is accountable to the Governing Body of the NHS Sheffield Clinical Commissioning Group.

The Committee is responsible for both overseeing the management of primary care delegated budgets and ensuring decisions made do not exceed the primary care delegated budget for the CCG.

The Committee will ensure that patient/public consultation is considered and undertaken when appropriate to aid decision making.

For the avoidance of doubt, in the event of any conflict between the terms of these Terms of Reference and the Standing Orders or Prime Financial Policies of the CCG, the latter will prevail.

PROCUREMENT OF AGREED SERVICES

The Committee will make procurement decisions relevant to the exercise of the delegated functions in accordance with the detailed arrangements regarding procurement set out in the Delegation Agreement between the CCG and NHS England.

DECISIONS

The Committee will make decisions within the bounds of its remit and decisions will be aligned with the CCG’s Commissioning Plan.

The Committee will manage any conflicts of interest in line with the national guidance, taking advice from the CCG’s Governance Lead where required. All members of the committee will have completed the Conflicts of Interest training, in line with CCG policy.

The decisions of the Committee shall be binding on NHS England and NHS Sheffield CCG.

3. Objectives of Committee/Group

ROLE OF THE COMMITTEE

1. The Committee has been established in accordance with the above statutory provisions to enable the members to make collective decisions on the review, planning and procurement of primary care services in Sheffield under delegated authority from NHS England.
2. In performing its role, the Committee will exercise its management of the functions in accordance with the agreement entered into between NHS England and NHS Sheffield Clinical Commissioning Group, which will sit alongside the delegation and terms of reference.
3. The functions of the Committee are undertaken in the context of a desire to promote increased co-commissioning to increase quality, efficiency, productivity and value for money and to remove administrative barriers.
4. The Governing Body has approved the CCG's Primary Care Strategy. The Committee will monitor delivery of the Strategy on behalf of the Governing Body through a quarterly review. The Committee will also receive regular updates on the work plan for primary care.
5. 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.
6. This includes the following:
 - 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)
7. The CCG will also carry out the following activities:
 - a) To plan, including needs assessment, primary care services in Sheffield;
 - b) To undertake reviews of primary care services in Sheffield;
 - c) To co-ordinate a common approach to the commissioning of primary care

services generally;

d) To manage the budget for commissioning of primary care services in Sheffield.

e) Approval of ~~the recommendations from the special cases advisory group~~ commissioning proposals where the Governing Body determines that conflicts of interest prevent decisions being taken by the Governing Body as set out in the CCG's Standing Orders.

e)f) Ensuring commissioning of primary care services meets the public sector equality duty

8. The CCG also intends that the Committee will take responsibility for conducting the review of the redistribution of the PMS premium funding subject to the subsequent approval of the application for Delegated Commissioning as per paragraph 6 above.

GEOGRAPHICAL COVERAGE

9. The Committee will comprise NHS England – North (Yorkshire and Humber) or successor organisation) and NHS Sheffield CCG. It will undertake the function of jointly commissioning primary medical services for the population of Sheffield.

4. Membership

Note: Members should be referred to by title not name. Chair of Committee/Group should be stated. Minute taker should be stated either as member or in attendance.

The Committee is constituted to have a lay and executive majority, where lay refers to non-clinical. This ensures that the meeting will be quorate if all GPs have to withdraw from the decision-making process due to conflicts of interest.

The Committee shall consist of:

Status	Role	Organisation	Position
Voting Member	Lay Chair of committee	NHS Sheffield CCG	Lay Member of Governing Body
Voting Member	Lay Deputy Chair of committee	NHS Sheffield CCG	Lay Member of Governing Body
Voting Member	Lay member of committee	NHS Sheffield CCG	Lay Member of Governing Body
Voting Member	Officer member of committee	NHS Sheffield CCG	Accountable Officer
Voting Member	Officer member of committee	NHS Sheffield CCG	Director of Finance
Voting Member	Officer member of committee	NHS Sheffield CCG	Chief Nurse
Voting Member	Officer member of committee	NHS Sheffield CCG	Director of Delivery – Care Outside Hospital

	Non-voting Member	Officer member of committee	NHS Sheffield CCG	Medical Director
	Non-voting Member	Officer member of committee	NHS Sheffield CCG	Programme Director Primary Care

Non-voting Member	Governing Body GP	NHS Sheffield CCG	Governing body GP
Non-voting Member	Governing Body GP	NHS Sheffield CCG	Governing body GP
Non-voting Member	Secondary Care Doctor	NHS Sheffield CCG	Secondary Care Doctor
Non-voting Member	NHS England representative	NHS England	Head of Co-Commissioning Senior Primary Care Manager
Non-voting Member	CCG employed GP	NHS Sheffield CCG	Clinical Director – Care Outside of Hospital

The Chair of the Committee shall be a Lay Member of NHS Sheffield CCG

The Deputy Chair will be a Lay Member of the NHS Sheffield CCG.

In exceptional circumstances, deputies (with comparable qualifications to the respective member of the committee) may be nominated to attend prior to the meeting, with the Chair's approval.

Member of the committee, both voting and non-voting, deputies and those in attendance or with a standing invitation to attend will be required to comply with the CCG's Conflicts of Interest Protocol.

Only Voting Members of the Committee will be allowed to vote. Each Voting Member of the Committee shall have one vote. The Committee shall reach decisions by a simple majority of Voting 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.

5. Attendees

Note: Attendees should be referred to by title not name. Minute taker should be stated

Status	Role	Organisation	Position
In attendance (non-voting)	Committee Administration	NHS Sheffield CCG	Committee Administrator / PA to Director of Finance
Standing Invitation(non-voting)		Sheffield City Council	Representative of the Health and Wellbeing Board
Standing Invitation(non-voting)			Representative of Healthwatch
Standing Invitation(non-voting)			Representative of LMC

A standing invitation will be made to representatives from the following organisations,

although those representatives will not form membership of the committee, be permitted to vote or form part of the quorum of meetings. They will also, where appropriate, be allowed to remain where the public are excluded for reasons of confidentiality, and subject to Section 7 point 5 below. Deputies of such representatives will be allowed.

Representation from Healthwatch
Representation from the Health and of Wellbeing Board
Representation from the Local Medical Committee

Those in attendance or with a standing invitation to attend will be required to comply with the CCG's Conflicts of Interest Protocol.

6. Quorum

Attendance by four (4) members entitled to attend and to vote on the business to be transacted (or a validly appointed deputy for a member) including the Chair or Deputy Chair (thus ensuring a Lay Member present) and two (2) CCG Voting Officer Members.

7. Frequency and Notice of Meetings

1. The Committee will operate in accordance with the CCG's Standing Orders.
2. The Committee shall meet as frequently as necessary to effectively undertake its business and at least six (6) times per year.
3. Agendas will be generated by the Committee Administrator and shared with the Committee Chair for approval. The Committee Administrator will be responsible for giving notice of meetings. This will be accompanied by an agenda and supporting papers and sent to each member representative no later than five days before the date of the meeting. When the Chair of the Committee deems it necessary in light of the urgent circumstances to call a meeting at short notice, the notice period shall be such as s/he shall specify.
4. Meetings of the Committee shall, subject to the application of paragraph 5 below, be held in public. Notice of meetings shall be published via the NHS Sheffield CCG internet.
5. 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.
6. Members of the Committee shall have a collective responsibility for the operation of the 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.

7. 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 parties' relevant governance arrangements, are recorded in a scheme of delegation, are governed by terms of reference as appropriate and reflect appropriate arrangements for the management of conflicts of interest.
8. The Committee may call additional experts to attend meetings on an ad hoc basis to inform discussions.
9. Members of the Committee shall respect confidentiality requirements as set out in the CCG's Standing Orders referred to above.

8. Minutes and Reporting Arrangements

1. The Committee will present its minutes to NHS England – North (Yorkshire and Humber) and the governing body of NHS Sheffield CCG each month for information, including the minutes of any sub-committees to which responsibilities are delegated under Section 7 paragraph 7 above.
2. The CCG will also comply with any reporting requirements set out in its constitution.

9. Meeting Effectiveness Review

As part of the Governing Body's annual performance review process, the committee shall review its collective performance and that of its individual members and will provide an annual report on the work of the committee for the CCG's Annual Report.

10. Review to be conducted by Committee/Group Chair

Date Committee/Group established	
Terms of Reference to be reviewed	It is envisaged that these Terms of Reference will be reviewed from time to time, and at least annually, reflecting experience of the Committee in fulfilling its functions. NHS England may also issue revised model terms of reference from time to time. The terms of reference of the committee shall be reviewed by the Governing Body.
Date of last review	September 2017
Date of next review	November 2018

Delegation Agreement

1. Particulars

- 1.1. This Agreement records the particulars of the agreement made between NHS England and the Clinical Commissioning Group named below.

Area	Sheffield
Clinical Commissioning Group	NHS Sheffield CCG
CCG Representative	Maddy Ruff
CCG Address for Notices	722 Prince of Wales Road, Sheffield, South Yorkshire, S9 4EU
Date of Agreement	1 April 2016
Delegation	means the delegation made by NHS England to the CCG of certain functions relating to primary medical services under section 13Z of the NHS Act and effective from 1 April 2015 2016 (as amended pursuant to the Delegation)
NHS England Representative	Karen Curran
Local NHS England Team	South Yorkshire and Bassetlaw
NHS England Address for Notices	Oak House, Moorhead Way, Bramley, Rotherham, South Yorkshire, S66 1YY



- 1.2. This Agreement comprises:
- 1.2.1. the Particulars (Clause 1);
 - 1.2.2. the Terms and Conditions (Clauses 2 to 24 and Schedule 1 to Schedule 6 and Schedule 8 to this Agreement); and
 - 1.2.3. the Local Terms (Schedule 7).

Signed by

NHS England

Paul Baumann (for and on behalf of NHS England)

A handwritten signature in black ink, appearing to read 'P. Baumann', written over a horizontal line.

Signed by

NHS Sheffield Clinical Commissioning Group

Idris Griffiths (for and on behalf of NHS Sheffield CCG)

A handwritten signature in black ink, appearing to read 'I. Griffiths', written over a horizontal line.

Variation Agreement

Variation Reference:	GDPR
Proposed by:	NHS England
Date of Proposal:	21 August 2018
Date of Variation Agreement:	21 August 2018

Capitalised words and phrases in this Variation Agreement have the meanings given to them in the Agreement referred to above.

1. The Parties have agreed the [National] Variation summarised below:

- 10.2 replace 'govern' with 'describe'
- 10.3 add 'Schedule 4'
- Schedule 1: Definitions and interpretation:
- Replace references to the Data Protection Act (DPA) with GDPR (the General Data Protection Regulation).
 - Replace reference to the DPA, the EU Data Protection Directive 95/46/EC with reference to GDPR, the Data Protection Act 2018
 - Replace 'Sensitive Personal Data' with 'Special Category Personal Data'
- Schedule 4: Further Information Sharing Provisions
- 4.2
 - 6.2 Replace 'Sensitive Personal Data' with 'Special Category Personal Data'
 - 7.1 Replace DPA with GDPR
 - 7.1.2 Amend to: 'amendment of respective privacy notices and policies to reflect the processing of data carried out further to this agreement, including covering the requirements of articles 13 and 14 GDPR and providing these (or making them available to) Data Subjects;'
 - 7.2 Amend to: 'Each Party shall procure that its notification to the Information Commissioner's Office and record of processing maintained for the purposes of Article 30 GDPR reflects the flows of information under this Agreement.'
 - 8.1, 8.3, 9.2, 9.3, 9.4.2, 9.4.3, 9.5.2: Replace 'Sensitive Personal Data' with 'Special Category Personal Data'
 - 8.2 Replace 'DPA' with 'Data Protection Act 2018'
 - 9.3.2 Amend to: 'in respect of the Relevant Information it shall promptly (and within 48 hours) notify the other Party. The Parties shall fully cooperate with one another to remedy the issue as soon as reasonably practicable, and in making information about the incident available to the Information Commissioner and Data Subjects where required by Information Law.'
 - 9.4.1 Amend to: 'process the Personal Data (including Special Category Personal Data) only in accordance with the terms of this Agreement and otherwise (to the extent that it acts as a Data Processor for the purposes of Article 27-28 GDPR) only in accordance with written instructions from the originating Data Controller in respect of its Relevant Information;
 - 9.4.4 Amend to: 'process the Personal Data in accordance with the requirements of Information Law and in particular the principles set out in Article 5(1) and accountability requirements set out in Article 5(2) GDPR.'
 - 9.5 – 9.9 Amend to:
 - 9.5 Each Party shall act generally in accordance with Information Law

requirements, and in particular shall implement, maintain and keep under review appropriate technical and organisational measures to ensure and to be able to demonstrate that the processing of Personal Data is undertaken in accordance with Information Law, and in particular to protect the Personal Data (and Special Category Personal Data) against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall:

9.5.1 Take account of the nature, scope, context and purposes of processing as well as the risks of varying likelihood and severity for the rights and freedoms of Data Subjects; and

9.5.2 Be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the Personal Data (and Special Category Personal Data) and having regard to the nature of the Personal Data (and Special Category Personal Data) which is to be protected.

9.6 In particular, each Party shall:

9.6.1 ensure that only Personnel authorised under this Agreement have access to the Personal Data (and Special Category Personal Data);

9.6.2 ensure that the Relevant Information is kept secure and in an encrypted form, and shall use all reasonable security practices and systems applicable to the use of the Relevant Information to prevent and to take prompt and proper remedial action against, unauthorised access, copying, modification, storage, reproduction, display or distribution, of the Relevant Information;

9.6.3 obtain prior written consent from the originating Party in order to transfer the Relevant Information to any third party;

9.6.4 permit the other Party or their representatives (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the data processing activities carried out further to this Agreement (and/or those of its agents, successors or assigns) and comply with all reasonable requests or directions to enable each Party to verify and/or procure that the other is in full compliance with its obligations under this Agreement; and

9.6.5 if requested, provide a written description of the technical and organisational methods and security measures employed in processing Personal Data.

9.7 Specific requirements as to information security set out in the Personal Data Agreement(s).

9.8 Each Party shall use best endeavours to achieve and adhere to the requirements of the NHS Information Governance Toolkit, particularly in relation to Confidentiality and Data Protection Assurance, Information Security Assurance and Clinical Information Assurance.

9.9 The Parties' Single Points of Contact (“**SPoC**”) set out in paragraph 14 (*Governance: Single Points of Contact*) below will be the persons who, in the first instance, will have oversight of third party security measures.

- 10.4 Add ‘and held’
- 11.1 Add ‘and to comply with the principles set out in Article 5(1)(c) and (d) GDPR.’
- 12.4 Replace ‘the fifth Data Protection Principle’ with ‘requirements of 5 (1) (e) GDPR’
- 12.1 Add ‘as well as any other purported exercise of a Data Subject’s rights under Information Law or complaint to or investigation undertaken by the Information Commissioner.’
- Template Personal Data Agreement – changes to formatting, replace DPA Schedule 2 condition/s with ‘GDPR Article 6 legitimising conditions’ and replace ‘DPA Schedule 3 condition/s’ with GDPR Article 9 legitimising conditions’

2. The National Variation is reflected in the attached Schedule and the Parties agree that the Agreement is varied accordingly.

3. The Variation takes effect on 21 August 2018

IN WITNESS OF WHICH the Parties have signed this Variation Agreement on the date(s) shown below

Signed by **NHS England**
Paul Baumann for and on behalf of NHS England



Signed by **[Clinical Commissioning Group**
] (for and on behalf of [])

Schedule 2 - Delegated functions

The Delegated Functions are the functions set out in Schedule 1 of the Delegation Agreement between the CCG and NHS England, being:

- decisions in relation to the commissioning, procurement and management of Primary Medical Services Contracts, including but not limited to the following activities:
 - decisions in relation to Enhanced Services;
 - decisions in relation to Local Incentive Schemes (including the design of such schemes);
 - decisions in relation to the establishment of new GP practices (including branch surgeries) and closure of GP practices;
 - decisions about 'discretionary' payments;
 - decisions about commissioning urgent care (including home visits as required) for out of area registered patients;
- the approval of practice mergers;
- planning primary medical care services in the Area, including carrying out needs assessments;
- undertaking reviews of primary medical care services in the Area;
- 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 noncompliance with standards (but excluding any decisions in relation to the performers list);
- management of the Delegated Funds in the Area;
- Premises Costs Directions Functions;
- co-ordinating a common approach to the commissioning of primary care services with other commissioners in the Area where appropriate; and
- such other ancillary activities that are necessary in order to exercise the Delegated Functions.