

WOLVERHAMPTON CCG

GOVERNING BODY
10 October 2017

Agenda item 11

TITLE OF REPORT:	Black Country Joint Commissioning Committee – Terms of Reference and approach to managing CCG statutory duties
AUTHOR(s) OF REPORT:	Peter McKenzie, Corporate Operations Manager
MANAGEMENT LEAD:	Peter McKenzie, Corporate Operations Manager
PURPOSE OF REPORT:	To ask the Governing Body to consider the Joint Committee’s emerging approach to managing the CCG’s Statutory Duties in a collaborative commissioning environment and to agree the Joint Committee’s Terms of Reference.
ACTION REQUIRED:	<input checked="" type="checkbox"/> Decision <input checked="" type="checkbox"/> Assurance
PUBLIC OR PRIVATE:	This report is intended for the public domain.
KEY POINTS:	<ul style="list-style-type: none"> • The Joint Committee have tasked their Governance Task and Finish Group with considering the implications of Joint Commissioning arrangements on CCG Statutory duties. • The Group presented a paper to the Joint Committee, the details of which are outlined. • The Joint Committee has also suggested further amendments to it’s Terms of Reference, details of which are attached for approval.
RECOMMENDATION:	<p>That the Governing Body:-</p> <ul style="list-style-type: none"> • Considers the approach to the delivery of CCG Statutory Duties • Approves the changes to the Joint Committee’s Terms of Reference.
LINK TO BOARD ASSURANCE FRAMEWORK AIMS & OBJECTIVES:	
3. System effectiveness delivered within our	<p><u>Continue to meet our Statutory Duties and responsibilities</u> The Joint Committee is inviting the CCG to consider approaches to the delivery of the CCG’s Statutory duties in a</p>



financial envelope	changing commissioning landscape
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1. BACKGROUND AND CURRENT SITUATION

- 1.1. CCGs are statutory bodies, established by the Health and Social Care Act 2012, with a range of powers and duties defined in both primary and secondary legislation. NHS England has produced a list of around 215 powers and duties that apply to CCGs and new approaches to commissioning will need to consider how these duties will be delivered under new arrangements.
- 1.2. The Black Country and West Birmingham Joint Commissioning Committee has been set up to establish a single commissioning view in line with the STP arrangements for key services across the four CCGs. This will work in concert with place based models of commissioning in each of the four localities which may result in the development of Accountable Care Systems (ACSs) and Accountable Care Organisations (ACOs).
- 1.3. As the nature of commissioning changes to a split between place based commissioning within each CCG and strategic Black Country & West Birmingham level commissioning, the delivery of commissioning functions will change but the CCGs as the statutory bodies will retain accountability for statutory duties. This means that Governance structures for both place based and Joint Committee commissioning will need to take account of how CCGs will gain assurance that functions are being delivered in a manner consistent with CCG's Statutory Duties.
- 1.4. The four CCGs in the Black Country and West Birmingham have similar governance structures, through which their commissioning functions and statutory responsibilities are delivered. There are between 18 – 20 voting members on each Governing Body and each CCG has a committee structure for the delegation of its duties which includes Finance, Quality, Commissioning, Primary Care, Remuneration and Audit with some minor variations

2. STATUTORY DUTIES

- 2.1. The Governance Task and Finish group has reviewed the list of statutory duties and sought to summarise them into three categories:-
 - **Explicit Duties** – Things that CCGs must do. Duties in this category include requirements for CCGs to have a Governing Body, publish a constitution and meet accounting duties.



- **‘Behavioural’ Duties** – Provisions setting out how CCGs should act in discharging their functions. Duties in this category include the requirements for CCGs to ensure they enable patient choice and act efficiently, economically and effectively.
 - **Specific Duties** – Provisions relating to specific areas of commissioning or detailed legislation. This includes specific duties for CCGs in relation to areas such as learning disabilities and mental health.
- 2.2. The list of statutory duties (particularly those setting out how the CCG will act) will need to be considered as the Joint Committee’s task and finish groups determining commissioning and contracting arrangements and collaborative working draw up their future proposals. The list starts to give a framework for assurance that the CCGs can build into the delegation agreement.
- 2.3. Currently, the CCGs themselves will have internal arrangements to ensure that these duties are being met and are required to confirm these arrangements in their Annual Governance Statement. As proposals for services and functions that will be delivered through the joint committee (and through the place based models), details of how these duties will be met will need to be considered. Dividing the duties into these categories has allowed the Task and Finish group to begin to consider a range of approaches to responding to these duties.
- 2.4. For the majority of the identified **Explicit Duties**, the CCGs themselves will need to continue to have arrangements to deliver them, as the CCGs will be the only body that is able to do. This particularly applies to those duties which set out the CCG’s structure and governance arrangements, those associated with being a public body and also to those duties which set out requirements for external reporting. There are some of the explicit duties that the CCG will require the support of the Joint Committee (or more specifically its supporting infrastructure) and place based vehicles to deliver - such as responding to Freedom of Information Requests and Emergency Planning obligations.
- 2.5. It is the **Behavioural Duties** that may well see a significant difference in how they are delivered. For example, currently the CCGs will directly commission services from providers, ensuring through service specifications that the requirements to build in patient choice are adequately delivered where appropriate. If services are commissioned through the Joint Committee (or through a place based vehicle) the CCGs will be a step removed from the process and will need a mechanism to gain assurance that these duties are being discharged appropriately.



- 2.6. The consequence of this for CCGs is that they will need to recognise that, in considering the scope of services to be commissioned at a place based and strategic level, explicit choices will need be made about how these behavioural duties will be delivered. For example, if the CCG chose to commission diabetes services on a population basis through an ACO arrangement, rather than the CCG specifying in detail how services will be delivered through a commissioning process consistent with relevant duties (including those relating to patient choice, the NHS constitution etc.), the ACO will have responsibility for managing the population's needs to ensure the outcomes required by the CCG are delivered. The CCG will then need to have arrangements in place to gain assurance that those duties relating to the commissioning process are being delivered.
- 2.7. For the place based vehicles, it is likely that this assurance mechanism will be through the contract with any new entities that are formed to deliver new models of care. Nationally a whole population budget based contract is being developed for accountable care organisations, including within it the scope for some statutory duties to be contracted for by the CCG from its place based providers. This will need to specify how these arrangements will deliver relevant duties with the detail of this being determined locally in each area. For the Joint Committee, the assurance mechanisms will need to be articulated in the delegation agreement that is developed between the CCGs. This will need to spell out how the Joint Committee will provide assurance to the CCGs that is acting in a way that is consistent with the relevant duties, including details of specific reporting requirements and the timescales involved.
- 2.8. The **Specific Duties** associated with individual services and functions will need to be taken into account as proposals for where these areas will be commissioned and delivered are developed. For areas where the Joint Committee will be lead for commissioning services with such duties and powers associated there will need to be assurance arrangements in line with the behavioural duties, either as part of the wider assurance process or a more bespoke arrangement. In addition, where the Joint Committee will be delivering CCG functions under specific legislation, this will need to be reflected in the delegation agreement itself.

3. ASSURANCE ARRANGEMENTS

- 3.1. The Joint Committee will need to consider how it manages risks, either on behalf of or in conjunction with the CCG's overall arrangements and also how it will provide assurance around Conflict of Interest issues.



- 3.2. As part of developing these assurance arrangements, the CCG Audit Committee Chairs have been considering how they might work together in response to the formation of the Joint Committee. The proposal is that a Joint Governance Forum for the respective members of the four CCG's Audit Committees should be formed. This forum will provide an opportunity to exchange information and allow constructive debate on developing proposals to enable the four respective audit committees to be aligned in the approach they take for joint commissioning arrangements that can feed into the Joint Committee's work and complement assurance arrangements within the CCGs themselves. The Audit and Governance Committee will be asked to consider this at its next meeting.

4. NEXT STEPS

- 4.1. The Joint Committee has invited the four CCGs to consider the issues as set out in this paper to support local determination of place based models of care, recognising that it is for the CCGs themselves to decide how they align the delivery of their statutory duties. This recognises that the CCGs themselves will retain both accountability and responsibility for delivery of those statutory duties described as 'Explicit' and that assurance mechanisms will need to be in place for the CCGs to be accountable for 'Behavioural' and 'Specific' duties where delivery sits with either the Joint Committee or Place based models of care.
- 4.2. Further work is being undertaken by all of the Joint Commissioning Committee Task and Finish groups to ensure that all of the relevant CCG statutory duties have been effectively recognised and correctly categorised. This work will continue and will inform the on-going development of proposals for collaborative commissioning.
- 4.3. The Governing Body is also asked to consider the latest draft of the Joint Commissioning Committee's Terms of Reference, which have been amended to provide consistency around the name of the Joint Committee and some further changes following comments from the newly appointed Programme Director.

5. CLINICAL VIEW

- 5.1. Not Applicable.

6. PATIENT AND PUBLIC VIEW

- 6.1. Not Applicable.



7. KEY RISKS AND MITIGATIONS

- 7.1. This paper articulates the need for the CCG to consider how it will gain assurance around the delivery of its statutory duties in circumstances where its commissioning functions are delivered on its behalf. Whilst there are no specific risks associated with this identified at the moment, proposed approaches will need to mitigate against risks that statutory duties will not be met.

8. IMPACT ASSESSMENT

Financial and Resource Implications

- 8.1. There are no specific financial implications associated with this report.

Quality and Safety Implications

- 8.2. There are no specific Quality and Safety implications arising from this report.

Equality Implications

- 8.3. There are no specific Equality implications arising from this report.

Legal and Policy Implications

- 8.4. This report sets out the outline approach to dealing with CCG statutory duties in a joint commissioning arrangement.

Other Implications

- 8.5. There are no other implications associated with this report.

Name	Peter McKenzie
Job Title	Corporate Operations Manager
Date:	September 2017

ATTACHED:

Joint Commissioning Committee Terms of Reference

RELEVANT BACKGROUND PAPERS

CCG Statutory duties (NHS England compiled list)



REPORT SIGN-OFF CHECKLIST

This section must be completed before the report is submitted to the Admin team. If any of these steps are not applicable please indicate, do not leave blank.

	Details/ Name	Date
Clinical View	N/a	
Public/ Patient View	N/a	
Finance Implications discussed with Finance Team	N/a	
Quality Implications discussed with Quality and Risk Team	N/a	
Equality Implications discussed with CSU Equality and Inclusion Service	N/a	
Information Governance implications discussed with IG Support Officer	N/a	
Legal/ Policy implications discussed with Corporate Operations Manager	Report Author	27/09/17
Other Implications (Medicines management, estates, HR, IM&T etc.)	N/a	
Any relevant data requirements discussed with CSU Business Intelligence	N/a	
Signed off by Report Owner (Must be completed)	Peter McKenzie	27/09/17

