

THE FUNCTIONS OF CLINICAL COMMISSIONING GROUPS

(UPDATED TO REFLECT THE FINAL
HEALTH AND SOCIAL CARE ACT 2012)

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Foreword

This document is an update to *The Functions of GP Commissioning Consortia: A working document* first published in March 2011. It reflects the final content of the Health and Social Care Act 2012 and aims to support the discussion that emerging clinical commissioning groups (CCGs) will be having as they continue to develop. The document sets out:

- a) the key statutory duties of CCGs – the “must dos”,
- b) the key statutory powers – the things that CCGs have the freedom to do, if they wish, to help meet these duties.

This is not intended to be a substitute for the Act, or guidance issued by the Department of Health or NHS Commissioning Board Authority, but to act as a helpful summary to which busy GPs and emerging CCGs can refer. GPs and those working with them to develop CCGs have been asking for clarification of the “must dos” so they can continue to think about how CCGs would carry out their responsibilities, what support they might want to put in place, and what this means for organisational development.

It is important to note that the duties and powers (together referred to as functions) set out in the Act – and reflected in this document – do not simply replicate the current duties and powers of PCTs. In some cases, PCT functions will transfer elsewhere, for example to the NHS Commissioning Board (NHS CB) or to local authorities. In other cases, the Act sets out functions for CCGs similar to those of PCTs, but expressed in a different way. Some functions have been removed altogether.

We hope you find this updated document helpful in informing the planning and implementation of CCG responsibilities.

Dame Barbara Hakin

National Managing Director of Commissioning Development

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Introduction

This paper sets out the proposed range of clinical commissioning group (CCG) functions, in relation to:

- commissioning responsibilities
- general duties of CCGs
- planning, agreeing and monitoring services
- financial duties
- governance
- specific duties of cooperation
- general duties applying to public or NHS bodies.

The paper distinguishes between:

- the duties for which CCGs will be legally responsible;
- legal powers available to CCGs to help them carry out their duties.

The duties and powers described in the document are those that will apply to CCGs, subject to any conditions imposed or directions given to individual CCGs by the NHS CB as part of the authorisation process. All the key statutory duties arising from the Health and Social Care Act 2012 are given, but the list of statutory powers is not intended to be exhaustive.

CCGs will have the flexibility within the legislative framework to decide how far to carry out these functions themselves, in groups (e.g. through collaborative commissioning arrangements) or jointly with local authorities, and how far to use external commissioning support. However, a CCG will always retain legal responsibility for the exercise of its functions. This can never be delegated.

Commissioning responsibilities

- CCGs will be responsible for commissioning emergency and urgent care, including ambulance services and out-of-hours services, for anyone present in their geographic area. For some services (e.g. A&E attendances and emergency admissions), the costs for an individual patient will be charged to the CCG where the patient is registered (if different from the commissioning CCG).
- CCGs will be responsible for commissioning healthcare services to meet the reasonable needs of the persons for whom they are responsible (i.e. principally for patients registered with their member practices, together with any unregistered patients living in their area), except for those services that the NHS CB or local authorities are responsible for commissioning. This will include, but will not necessarily be limited to:
 - Community health services
 - Maternity services
 - Elective hospital care
 - Rehabilitation services
 - Urgent and emergency care including A&E, ambulance and out-of-hours services
 - Older people's healthcare services
 - Healthcare services for children
 - Healthcare services for people with mental health conditions
 - Healthcare services for people with learning disabilities
 - Continuing healthcare
 - Abortion services
 - Infertility services
 - Wheelchair services
 - Home oxygen services
 - Treatment of infectious diseases
- These services are to be free of charge, other than in limited cases where charging is permitted by regulations (e.g. secondary care for eligible overseas visitors).
- CCGs will also be responsible for meeting the costs of prescriptions written by their members practices, but not the associated dispensing fees

Services to be commissioned by the NHS CB (subject to secondary legislation)

- The NHS CB will have statutory responsibility for commissioning primary care services, but CCGs will have a statutory duty to assist and support the NHS CB in securing continuous improvement in the quality of primary medical services.
- The NHS CB will be responsible for commissioning:
 - pharmaceutical services provided by community pharmacies, dispensing doctors and appliance contractors
 - all dental services and NHS sight tests

- highly specialised and specialised services (for which the current Specialised Services National Definition Set will form the basis) and high security psychiatric services
- health services for those detained in prison and other custodial settings
- some services for members of the armed forces and their families, where registered with Defence Medical Services
- The NHSCB will commission some services on behalf of Secretary of State
 - public health services for children aged 0-5, including health visiting and family nurse partnerships
 - immunisation and screening programme
 - public health services for those in prison or custody
 - sexual assault referral services
 - Child Health Information Systems (CHIS).

Local authority responsibilities for health improvement services

- Local authorities will be responsible for:
 - the Healthy Child Programme for school-age children (including school nurses)
 - sexual health services (excluding contraceptive services provided under the GP contract and HIV treatment)
 - public mental health services
 - local programmes to promote physical activity, improve diet/nutrition and prevent/address obesity
 - drug misuse and alcohol misuse services
 - tobacco control, including stop smoking services and prevention activity
 - NHS health checks
 - local initiatives to prevent accidental injury, including falls prevention
 - local initiatives to reduce seasonal mortality.

Support for CCGs

- The NHS CB will have a statutory power to provide assistance or support to CCGs in relation to the delivery of their commissioning functions. This assistance may be financial and/or making available the services of the NHS CB's employees or other resources, provided on such terms and conditions including terms as to payment as the NHS CB considers appropriate.
- CCGs may choose to buy in support from external organisations including NHS commissioning support services and private and voluntary sector bodies, although responsibility for commissioning decisions will remain with the CCG.

1. General

Duties

- To commission healthcare to the extent the CCG considers necessary to meet the reasonable requirements of:
 - patients registered with the GP practices who are members of the CCG;
 - people who usually live within the CCG's defined geographic area who are not registered with any GP practice(except where regulations prescribe otherwise).
- To commission healthcare for other groups of patients as defined in regulations. This will include:
 - commissioning emergency care for any person present in the CCG's geographic area
 - commissioning services for people receiving NHS continuing healthcare in out-of-area placements.
- When commissioning services, to act consistently with the duties of the Secretary of State and the NHS CB to promote a comprehensive health service and the objectives and requirements set for the NHS CB by the Secretary of State through the mandate.
- To assist and support the NHS CB in securing continuous improvement in the quality of primary medical services.
- To obtain appropriate advice to enable the CCG to discharge its functions effectively from people who (taken together) have a broad range of professional expertise in the prevention, diagnosis or treatment of illness and in the protection or improvement of public health.
- To make arrangements to secure public involvement in the planning of commissioning arrangements and in developing, considering and making decisions on any proposals for changes in commissioning arrangements that would have an impact on service delivery or the range of health services available.
- To co-operate with relevant local authorities and participate in their Health and Wellbeing Boards.
- To co-operate with other NHS bodies.
- To have regard to the NHS Constitution.
- To have regard to commissioning guidance published by the NHS CB.
- To pay providers (in specified circumstances) for the costs of healthcare commissioned by another CCG but provided to a patient for whom the CCG is responsible (e.g. for A&E attendances or emergency admissions).
- To provide the NHS CB with specified information, if considered necessary by the Secretary of State for the purposes of carrying out his functions in relation to the health service.

In the exercise of its functions, a CCG will have duties to:

- Act with a view to securing that health services are provided in a way which promotes the NHS Constitution, and promote awareness of the NHS Constitution among patients, staff and the public.
- Act with a view to securing continuous improvements in the quality of services for patients and in outcomes, with particular regard to clinical effectiveness, safety and patient experience.
- Have regard to the need to reduce inequalities between patients with respect to their ability to access health services and the outcomes achieved for them.
- Promote the involvement of individual patients, and their carers and representatives where relevant, in decisions relating to the prevention or diagnosis of illness in them or their care and treatment.
- Act with a view to enabling patients to make choices about aspects of health services provided to them.
- Promote innovation in the provision of health services.
- Promote research on matters relevant to the health service, and the use of evidence obtained from research.
- Act with a view to securing that health services are provided in an integrated way, and that provision of health services is integrated with provision of health-related or social care services, where the CCG considers that this would improve quality of services or reduce inequalities.
- Have regard to the need to promote education and training of current or future health service staff.
- Ensure that appropriate facilities are made available to any university which has a medical or dental school in connection with clinical teaching or research.

Powers

- Power to arrange for provision of services or facilities that the CCG considers appropriate for the purposes of the health service (provided that the NHS CB does not have a duty to arrange for the provision of these services) that aim to secure improvements in physical and mental health, or in the prevention, diagnosis and treatment of illness, for the people for whom the CCG is responsible.
- Power to do anything which is calculated to facilitate the discharge of any of the CCG's functions, including a power to enter into agreements, acquire and dispose of property and accept gifts (including property to be held on trust for the purposes of the CCG).
- Power to enter into partnership arrangements (e.g. pooled budgets, lead commissioning) with local authorities, including power, in conjunction with a local authority, to be designated as a Care Trust.
- Power to enter into contracts and to make arrangements for other individuals or bodies (including voluntary organisations and public authorities) to provide services, including the power to enter into NHS contracts with other health service bodies.

- Power to act jointly with another CCG in exercising commissioning functions or for one CCG to exercise such functions on behalf of another, or for the NHS CB (if it agrees) to exercise commissioning and any related functions on behalf of a CCG.
- Power to make grants or loans to voluntary organisations which provide or arrange for the provision of similar services to those in respect of which CCGs have functions.
- Power to conduct or commission or assist the conduct of research, including by providing funding or by making the services of any person or other resources available.
- It is intended that regulations will be made to provide a power for prescribed functions of a CCG to be exercised jointly with a Welsh Local Health Board.

2. Planning, agreeing and monitoring services

Duties

- To contribute to the Joint Strategic Needs Assessment (JSNA) and the Joint Health and Wellbeing Strategy (JHWS) led by the Health and Wellbeing Board(s) on which the CCG has a representative, and to have regard to any JSNA or JHWS to which they have contributed which is relevant to the exercise of any of their functions.
- To prepare and publish a commissioning plan before the start of each financial year, explaining how the CCG intends to exercise its functions. In particular the plan must set out how the CCG proposes to:
 - secure improvement in the quality of services and outcomes for patients,
 - reduce inequalities in access to services and outcomes achieved
 - involve the public in the planning of, and proposed changes to, commissioning arrangements
 - fulfil its financial duties.
- To consult patients and the public in developing, or making significant revisions to, the commissioning plan. To ensure that any published commissioning plans (including revised plans) include a summary of views expressed during consultation and an explanation of how the CCG took account of those views.
- To involve each relevant Health and Wellbeing Board in preparing or making significant revisions to the commissioning plan; consult them on whether the draft plan takes proper account of each relevant JHWS; and ensure that any published commissioning plans (including revised plans) include a statement of their final opinion.
- To comply with the requirements of any 'standing rules' set out in regulations, e.g. to include specific terms and conditions in commissioning contracts.
- To comply with regulations governing best practice in relation to procurement, protecting and promoting patient choice, and anti-competitive conduct.
- To comply with public law requirements in relation to entering into contracts concerning commissioning arrangements and the use of public monies.
- To take appropriate steps to ensure that the CCG is properly prepared to deal with emergencies that might affect it
- To provide information, where required, to the Information Centre, e.g. to support publication of national data on healthcare services.

Powers

- Power to make facilities, which the group arranges for a service provider to provide, available to another service provider or to an eligible voluntary organisation.
- Power to make direct payments to patients (instead of commissioning services for them), subject to regulations.

3. Finance

Duties

- To ensure expenditure in a financial year does not exceed the allocated budget.
- To ensure that revenue resource use and capital resource use do not exceed the separate limits set for each.
- To ensure that the CCG's revenue resource use on prescribed matters relating to administrative costs (i.e. costs not relating to healthcare services) does not exceed an amount specified by the NHS CB (i.e. the 'running costs' allowance).
- To ensure that the CCG adheres to any further limits set by the NHS CB in relation to capital or revenue resource to reflect limits set by the Secretary of State on the NHS CB.
- To provide financial information to the NHS CB as required to allow in-year monitoring against budgetary and Parliamentary controls.
- To keep proper accounts and proper records in relation to the accounts, prepare annual accounts and have these audited, and comply with any directions of the NHS CB as regards accounts.
- To use a specified banking system (i.e. the Government Banking Service).

Powers

- Power to pool commissioning funds with other CCGs where arrangements have been made for lead or joint commissioning.
- Power to pool running costs with other CCGs where these costs relate to any services covered by lead or joint commissioning arrangements made with those CCGs.
- Power to pool funds with the NHS CB, with or without other CCGs, out of which payments may be made, by agreement, towards expenditure incurred in the discharge of any of their commissioning functions.
- Power to pool resources with local authorities where they have entered into arrangements under section 75 of the NHS Act 2006.
- Powers to make payments to local authorities or other bodies towards expenditure on community services.
- Power to undertake specified activities (not including charging for health services) to raise additional income for improving the health service, but only to the extent that the activity does not significantly interfere with the performance of the CCG's functions.
- Power to enter into externally financed development agreements.
- Power to undertake fund-raising to assist the CCG in improving health services or facilities to promote research.
- Powers to form, or participate in forming, a company and to invest in and/or provide loans and guarantees and make other financial provision to the company, but only for the purpose of improving the physical and mental health of, and the prevention, diagnosis and treatment of illness in, the people for whom the CCG has responsibility.

4. Governance

Duties

- To have a governing body to ensure the CCG has made appropriate arrangements for ensuring that it adheres to relevant principles of good governance and carries out its functions effectively, efficiently and economically.
- To have an Accountable Officer, responsible for ensuring, in particular, that the CCG works effectively, efficiently and economically and with a view to securing continuous improvements in quality, meets its financial and accounting obligations, provides the NHS CB with information as required under the 2006 Act, and exercises its functions in a way which provides good value for money.
- To maintain one or more publicly accessible registers of interests of members of the CCG, its employees, members of the governing body, and members of committees or subcommittees of the CCG or its governing body, and to make arrangements to ensure that relevant conflicts or potential conflicts of interest are declared and included in the registers.
- To make arrangements for managing conflicts and potential conflicts of interest in such a way as to ensure that they do not, and do not appear to, affect the integrity of the CCG's decision-making processes, and to have regard to guidance published by the NHS CB on management of conflicts of interest.
- To have a published constitution that sets out the arrangements made by the CCG for the discharge of its functions and:
 - the name of the CCG, meeting requirements set by regulations;
 - the GP practices that are members of the CCG;
 - the area for which the CCG is responsible;
 - arrangements for the discharge of functions of the CCG's governing body, including provision for an audit committee and remuneration committee, the procedure to be followed by the governing body in making decisions, and the arrangements made to secure transparency of its decision-making (including arrangements for holding governing body meetings in public except where the CCG considers that it would not be in the public interest to do so);
 - how the CCG will make decisions, how it will deal with conflicts and potential conflicts of interest of members, employees, governing body members and members of CCG or governing body committees and sub-committees, how it will ensure transparency for its decisions and how it will ensure effective participation of all its members;
 - the arrangements for involving the public in planning commissioning arrangements, and in proposals and decisions concerning changes to those arrangements that would have an impact on services delivered, and a statement of the principles which the CCG will follow in implementing the arrangements.
- To publish an annual report on how the CCG discharged its functions in the previous financial year, with particular reference to how it discharged its duties in relation to quality improvement, reducing inequalities and public involvement and contributed to

the delivery of joint health and wellbeing strategies (on which the relevant health and wellbeing board(s) must be consulted).

- To hold a meeting to present the annual report to the public.
- To provide information, documents, records or other items, or explanation, to the NHS CB, where it has reason to believe that the CCG might have failed, might be failing, or might fail to discharge any of its functions, or that the CCG's area is no longer appropriate
- To comply with any directions given by the NHS CB as a result, including, where appropriate, co-operating with the NHS CB or another CCG or its Accountable Officer where the NHS CB has directed that they perform any of the CCG's functions.
- To offer NHS pension arrangements to staff employed by the CCG.

Powers

- Power to appoint staff and to decide on remuneration and travelling or other allowances (in accordance with determinations made by its governing body), and terms and conditions for employees.
- Power to pay governing body members remuneration and travelling or other allowances.
- Power to make arrangements for providing pensions, allowances or gratuities for employees and governing body members (except where they are members or employees of a GP practice that is a member of the CCG), including the establishment and administration, by the CCG or otherwise, of one or more pension schemes.
- Power to nominate an Accountable Officer, who can be a member or employee of a GP practice in the CCG or an employee of the CCG, to be appointed by the NHS CB
- Power to disclose information obtained by the CCG in the exercise of its functions in certain permitted circumstances.

5. Specific duties of cooperation

Duties

- To co-operate with local authorities and their partners to improve the wellbeing of children in the local authority's area and, where necessary, support local authorities in arranging support for children and families.
- To help plan services for carers.
- To support local authorities, where appropriate,
 - in community care assessments.
 - In supporting local education (e.g. to help the authority in providing support for children with special educational needs)
 - In co-operating with the police, prison services and probation services (e.g. arrangements for assessing risks of violent or sexual offenders).
- To participate in the development and implementation, with other responsible authorities, of crime and disorder strategies and youth justice services.
- To participate, where required by the Secretary of State, in a domestic homicide review.
- To carry out specified duties under the Mental Health Act including:
 - making payments for medical examinations in connection with the Act;
 - providing a court on request with information about availability of hospital places;
 - notifying local authorities of availability of suitable hospital places for emergency admissions and for under 18s;
 - working with local authorities to arrange after-care services for patients after detention under the Act.
- To consult with local authorities on matters to be set out in regulations. The equivalent regulations for PCTs require that they consult where they are planning a substantial variation in service and that they provide relevant information, respond to local authority Overview and Scrutiny Committees (OSCs) reports and attend OSC meetings when requested.

6. General duties applying to NHS or public bodies

- To carry out functions effectively, efficiently and economically.
- To meet safeguarding duties, including:
 - having regard to the need to safeguard and promote the welfare of children;
 - following the requirements around employing members of staff;
 - being a member of the Local Safeguarding Children Board(s)
- To meet the requirements of the Employment Rights Act 1996.
- To act compatibly with the European Convention on Human Rights.
- To meet the requirements of the Equality Act 2010, including:
 - not discriminating, harassing or victimising, either in commissioning of services or in treatment of employees, on grounds of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, or sexual orientation (collectively referred to as the protected characteristics);
 - advancing equality of opportunity;
 - fostering good relations between those who share a relevant protected characteristic and those who do not;
 - setting and publishing equality schemes;
 - publishing a range of equality data relating to their workforce and the services they provide;
 - producing equality analyses.
- To meet the requirements of the Data Protection Act and Freedom of Information Act.
- To meet Health and Safety requirements, including duty of care towards anyone working for the CCG and towards visitors.