

# **BSW ICB Primary Care Commissioning Committee**

## **Terms of Reference**

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### **1. Introduction**

- 1.1 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 1 to these Terms of Reference to the Bath and North East Somerset, Swindon and Wiltshire (BSW) ICB.
- 1.2 The ICB has established the Bath and North East Somerset, Swindon and Wiltshire (BSW) ICB Primary Care Commissioning Committee (“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.

### **2. Statutory Framework**

- 2.1 NHS England has delegated to the Bath and North East Somerset, Swindon and Wiltshire (BSW) ICB (‘the ICB’) authority to exercise the primary care commissioning functions set out in Schedule 1 to these Terms of Reference in accordance with section 13Z of the NHS Act.
- 2.2 Arrangements made under section 13Z may be on such terms and conditions (including terms as to payment) as may be agreed between NHS England and the ICB. Currently the terms of payment ensure that the ICB does not undertake expenditure before such time as it has received the payment of funds set aside for the ICB’s delivery of the delegated authority to commission primary care services.
- 2.3 Arrangements made under section 13Z do not affect the liability of NHS England for the exercise of any of its functions. However, the ICB 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:
  - i. Management of conflicts of interest (section 14O);
  - ii. Duty to promote the NHS Constitution (section 14P);
  - iii. Duty to exercise its functions effectively, efficiently and economically (section 14Q);
  - iv. Duty as to improvement in quality of services (section 14R);
  - v. Duty in relation to quality of primary medical services (section 14S);

- vi. Duties as to reducing inequalities (section 14T);
  - vii. Duty to promote the involvement of each patient (section 14U);
  - viii. Duty as to patient choice (section 14V);
  - ix. Duty as to promoting integration (section 14Z1);
  - x. Public involvement and consultation (section 14Z2).
- 2.4 The ICB exercises the delegated functions from NHS England in accordance with the relevant provisions of section 13 of the NHS Act.
- 2.5 The Committee is established as a committee of the BSW ICB Board in accordance with Schedule 1A of the NHS Act.
- 2.6 The Committee is subject to any directions made by NHS England or by the Secretary of State.

### **3. Role of the Committee**

- 3.1 This 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 BSW, under delegated authority from NHS England.
- 3.2 In performing its role the Committee will exercise its management of the functions in accordance with the agreement entered into between NHS England and BSW ICB, which will sit alongside the delegation and terms of reference.
- 3.3 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.
- 3.4 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. This includes the following:
- 3.4.1 To oversee 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);
  - 3.4.2 To oversee newly designed enhanced services (“Local Enhanced Services” and “Directed Enhanced Services”);
  - 3.4.3 To design local incentive schemes as an alternative to the Quality Outcomes Framework (QOF);
  - 3.4.4 To make decisions on whether to establish new GP practices in the BSW area;
  - 3.4.5 To approve practice mergers in the area;
  - 3.4.6 To make decisions on ‘discretionary’ payment (e.g., returner/retainer schemes);

3.5 The ICB will also carry out the following activities:

- 3.5.1 To plan, including needs assessment, primary medical care services in BSW;
- 3.5.2 To undertake reviews of primary medical care services in BSW;
- 3.5.3 To co-ordinate a common approach to the commissioning of primary care services generally;
- 3.5.4 To manage the budget for commissioning of primary medical care services in BSW;
- 3.5.5 To develop and deliver a primary medical care strategy for the ICB, including consideration of training, recruitment and retention of primary care practitioners in the BSW area;
- 3.5.6 To maintain and deliver an integrated primary and community care estates strategy across the ICB, liaising with the ICB's Finance Committee to ensure appropriate fit with the ICB's overarching estates strategy;
- 3.5.7 To maintain oversight and continually review the ICB's 'Primary Care Offer';
- 3.5.8 To carry out the functions relating to the commissioning of primary medical services under section 83 of the NHS Act;
- 3.5.9 To assist and support NHS England in discharging its duty under section 13E of the NHS Act 2006 (as amended by the Health and Social Care Act 2012) so far as relating to securing continuous improvement in the quality of primary medical services;
- 3.5.10 To work with NHS England to agree rules for areas such as the collection of data for national data sets, equivalent of what is collected under QOF, and IT intra-operability;
- 3.5.11 To consult with Local Medical Committee on any proposed new incentive schemes, and demonstrate improved outcomes, reduced inequalities and value for money;
- 3.5.12 To approve the arrangements for discharging the group's statutory duties associated with its GP practice commissioning functions, including but not limited to promoting the involvement of each patient, patient choice, reducing inequalities, improvement in the quality of services, obtaining appropriate advice and public engagement and consultation;
- 3.5.13 To vary or renew existing contracts for primary care provision or award new ones, depending on local circumstances.

3.6 The responsibilities remaining with NHS England (Reserved Functions) are:

- 3.6.1 The management of the national performers list;
- 3.6.2 The management of the revalidation and appraisal process;
- 3.6.3 The administration of payments in circumstances where a performer is suspended and related performers list management activities;
- 3.6.4 The Capital Expenditure functions, decision making;
- 3.6.5 Section 7A functions under the NHS Act (public health programmes/services);
- 3.6.6 Functions in relation to complaints management;
- 3.6.7 Such other ancillary activities that are necessary in order to exercise the Reserved Functions.

#### **4. Geographical coverage**

- 4.1 The Committee's geographical coverage is the BSW area, i.e. the area coterminous with the Bath and North East Somerset Council, the Borough of Swindon plus Shrivenham, Wiltshire Council, and Silton Surgery, The Surgery, Gillingham Road, Gillington, Wiltshire, SP8 5DF, and Sixpenny Handley, Dean Lane, Sixpenny Handley, Salisbury Wiltshire, SP5 5PA.

#### **5. Membership (tbc)**

- 5.1 The members of the Committee shall be appointed by the ICB's Board. The following are members of the Committee, i.e. they have the right to receive meeting documents and to vote:
  - i. Two Non-Executive Directors of the ICB Board, excluding the Non-Executive Director Audit;
  - ii. Two Partner Members of the ICB Board;
  - iii. The ICB Chief Financial Officer;
  - iv. The ICB Director of Strategy and Transformation;
  - v. The ICB Director of Primary Care;
  - vi. The ICB Medical Director.
- 5.2 One of the Non-Executive Directors will chair the Committee.
- 5.3 The following receive a standing invitation to attend meetings of the Committee, including, where appropriate, for items where the public is excluded for reasons of confidentiality:
  - i. Members of primary care collaboratives
  - ii. Representatives from HealthWatch Bath and North East Somerset, HealthWatch Swindon, and HealthWatch Wiltshire;
  - iii. Representatives from the Bath and North East Somerset, Swindon, and Wiltshire Health and Wellbeing Boards;
  - iv. A representative from Wessex LMC;
  - v. The Director of Commissioning, NHS England South Central;

- vi. The Head of Primary Care, NHS England South Central;
- vii. Public sector patient representatives.

These attendees may receive meeting papers but cannot participate in the Committee's decision-making and must not vote.

- 5.4 In addition, the Chair, on behalf of the Committee, may invite such individuals to the Committee's meetings as are considered necessary to enable the Committee to conduct its business effectively.

## **6. Quorum**

- 6.1 A quorum shall be 5 members.

- 6.2 If the meeting becomes inquorate, at the discretion of the Chair

- i. the meeting may be suspended and business be transacted at the next quorate meeting;
- ii. a decision may be taken in principle, to be ratified at the next quorate meeting;
- iii. a decision may be taken outside the meeting by email, telephone or any other electronic means, observing the quoracy rule.

## **7. Frequency and conduct of meetings**

- 7.1 Meetings will normally be held in each quarter of the ICB's business year, and otherwise as required.

- 7.2 Committee meetings will be conducted in accordance with the BSW ICB's Constitution and Standing Orders.

- 7.3 Meetings of the Committee shall be held in public, unless the Committee resolves 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.

- 7.4 Members of the Committee 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.

- 7.5 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.

- 7.6 The Committee may call additional experts to attend meetings on an ad hoc basis to inform discussions.
- 7.7 After each of its meetings, the Committee will report, through its Chair to the Board and NHS England (South Central) for information about business transacted and decisions taken. For this purpose, the Committee will submit a report highlighting reporting items as agreed by the Committee, and make the meeting minutes available.
- 7.8 The ICB will also comply with any reporting requirements set out in its Constitution.
- 7.9 In addition, and as agreed with the Committee, the Chair shall report on any matters within the remit of this Committee which in the Chair's view require the ICBs' Board's attention and / or executive decision making.
- 7.10 A meeting is constituted when members attend face-to-face, via telephone or video conferencing, any other electronic means, or through a combination of the above. Quoracy rules apply in any case. For the avoidance of doubt, this provision applies to and facilitates the Committee's decision making by email, should this be required to expedite an urgent decision.
- 7.11 If for any reason the Chair is not present 15 minutes after the scheduled meeting start and no delegate was nominated in advance of the meeting, one of the members shall chair the meeting on this occasion, subject to provision 4. Such arrangements shall be recorded in the meeting minutes. The Committee shall conduct its business as usual, provided the meeting is quorate.
- 7.12 In the event an urgent decision of the Committee is required, the request will be communicated to the Committee Chair. The Committee Chair may share papers by email to the members of the Committee, and request the agreement of the Committee Members within a specified period of time. Quoracy rules as set out in point 6 apply. If agreement is reached within the time period, the Chair will record the decision and report it at the next meeting of the Committee.

## **8. Voting**

- 8.1 The Committee will aim to achieve consensus decision-making wherever possible. Each member of the Committee shall have one vote. Provided the meeting is quorate, the Committee will take decisions through voting and by a simple majority of those present. In the case of equality of votes, the Chair will have a casting vote.

## **9. Authority**

- 9.1 The Committee has authority to commit resources and make financial decisions in line with the ICB's delegated financial limits.
- 9.2 For the avoidance of doubt, in the event of any conflict between the terms of the Delegation, the Terms of Reference of this Committee, the ICB's Standing Orders, or the ICB's Standing Financial Instructions, the Delegation Agreement will prevail for the functions delegated by NHSE.

## **10 Procurement of Agreed Services**

- 10.1 The detailed arrangements regarding procurement are set out in the delegation agreement between NHS England and the ICB.
- 10.2 The committee must comply with public procurement regulations and with statutory guidance on conflicts of interest. If the Committee is found to have breached public procurement regulations and/or statutory guidance on conflicts of interest, NHS Improvement may direct the ICB or NHSE to act. NHS England may, ultimately, revoke the ICB's delegation.
- 10.3 If the committee fails to secure an adequate supply of high quality primary medical care, NHS England may direct the ICB to act.

## **11. Decisions**

- 11.1 The Committee will make decisions within the bounds of its remit.
- 11.2 The decisions of the Committee shall be binding on NHS England and the BaNES, Swindon and Wiltshire ICB.

## **12. Secretary**

- 12.1 The Corporate Office shall provide the secretariat to the Committee, and the secretariat shall:
- Ensure that the Committee receives the resources and support it needs to fulfil its role;
  - Ensure timely provision of meeting papers / materials to Committee members, normally 5 business day before a meeting;
  - Record in formal minutes the business transacted and decisions taken by the Committee;
  - Ensure that appropriate mechanisms are in place to ensure the flow of information to and from the Committee, including the Committee's reporting to the Governing Body;
  - Advise the Committee on matters of good governance practice, in view of relevant guidance.

## **13. Review**

- 13.1 The Committee will review its performance and these terms of reference annually, to ensure the Committee fulfils its functions effectively. The Committee will recommend to the ICB's Governing Body any amendments it considers necessary to ensure it continues to discharge its business effectively.

**Effective date:** 1 July 2022

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