NHS
Portsmouth
Clinical Commissioning Group

GOVERNING BOARD			
Date of Meeting	21 November 2018	**Agenda Item No**	5c
Title	**Agreement and Terms of Reference for the Hampshire and Isle of Wight Joint Strategic Commissioning Committee**		
Purpose of Paper	The attached Terms of Reference is the outcome of work undertaken by the STP Strategic Commissioning Task and Finish Group which met over the summer of 2018. The attached Agreement and Terms of Reference was developed by the Governance Leads and shared with the proposed member organisations along with the STP Commissioning Board. <u>Note:</u> There are a number of points within the 'Remit' section of the Terms of Reference which require updating. These are highlighted for ease of identification.		
Recommendations/ Actions requested	The Governing Board is asked to: • Approve the establishment of the Joint Strategic Commissioning Committee to undertake the work (on its behalf) for those commissioning areas as described within the Terms of Reference. • Nominate the CCG representative(s) to become members of the Joint Committee.		
Engagement Activities – Clinical, Stakeholder and Public/Patient	Input from each of the Organisations' Governance Leads has taken place throughout the development of this Agreement and Terms of Reference		
Item previously considered at	The Agreement and Terms of Reference have been shared with each named organisation and discussed at the STP Commissioning Board meeting on 6 November 2018.		
Potential Conflicts of Interests for Board Members	There are no conflicts of interest for Governing Board members.		
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Sponsoring member	Innes Richens, Chief of Health & Care Portsmouth		
Date of Paper	8 November 2018		

Agreement and Terms of Reference:

Joint Strategic Commissioning Committee of Clinical Commissioning Groups

November 2018

Introduction

1 Purpose and Interpretation

1.1 This Agreement and the Terms of Reference set out the arrangements that apply in relation to the exercise of the Joint Functions of the Joint Committee ("Joint Committee") of the CCGs that are signatories to it.

1.2 If there is any conflict between the provisions of the Agreement and the provisions of the Terms of Reference, the provisions of the Terms of Reference will prevail.

1.3 This Agreement is to be interpreted in accordance with Schedule 1 (*Definitions and Interpretation).*

2 Term

2.1 This Agreement has effect from the date all CCG Members sign the Agreement and will remain in force unless terminated in accordance with Clause 22 (*Termination*).

2.2 Individual Member CCG(s) may terminate their membership of the Joint Committee in accordance with Clause 21 (*Leaving the Joint Committee*).

3 Services

3.1 This Agreement and the Terms of Reference relate solely to the commissioning of services detailed within the remit of the Committee (as stated in the Terms of Reference) "the Services".

4 Overview

4.1 This Agreement sets out in practical terms how the local health commissioners will work together in the commissioning the Services across Hampshire and the Isle of Wight (HIoW).

4.2 The local health commissioners have decided to create a Joint Committee, through which they can both consider and undertake joint commissioning decisions on behalf of their organisations. The CCGs who are Members of the Joint Committee are:

- NHS Fareham & Gosport Clinical Commissioning Group[1]
- NHS Isle of Wight Clinical Commissioning Group[1]
- NHS North East Hampshire and Farnham Clinical Commissioning Group[1]
- NHS North Hampshire Clinical Commissioning Group[1]
- NHS Portsmouth Clinical Commissioning Group

[1] This group is collectively known as Hampshire Partnership CCGs

- NHS Southampton City Clinical Commissioning Group
- NHS South Eastern Hampshire Clinical Commissioning Group[1]
- NHS West Hampshire Clinical Commissioning Group

4.3 The majority of CCGs have a history of working together under various memorandum of understanding and collaborative commissioning arrangements. Member CCGs now wish to formalise those arrangements to show the strength of their commitment to working together in the commissioning of the Services pertaining to this Agreement.

Legal Basis

4.4 The legal basis on which the CCGs have agreed to jointly exercise some of their functions is through delegating them to the Joint Committee, by using their powers under section 14Z3 of the NHS Act 2006 (as amended) ("the Act"), which provides:

"(1) Any two or more clinical commissioning groups may make arrangements under this section.

(2) The arrangements may provide for—

(a) one of the clinical commissioning groups to exercise any of the commissioning functions of another on its behalf, or

(b) all the clinical commissioning groups to exercise any of their commissioning functions jointly.

(2A) Where any functions are, by virtue of subsection (2)(b), exercisable jointly by two or more clinical commissioning groups, they may be exercised by a joint committee of the groups….

(7) In this section, "commissioning functions" means the functions of clinical commissioning groups in arranging for the provision of services as part of the health service (including the function of making a request to the Board for the purposes of section 14Z9)."

4.5 As a result, the Joint Committee has been created to exercise both commissioning functions and functions related to commissioning, as has been set out in each CCGs delegation to it.

5 Purpose of the Joint Committee

5.1 The Joint Committee has the primary purpose of enabling the CCG members to work effectively together, to collaborate and take joint decisions relating to the Services relating to this Agreement, by exercising the Joint Functions.

5.2 The Joint Functions are those set out in the Delegation Document at **Appendix 1** ("the Delegation Document"). The Terms of Reference of the Joint Committee ("the Terms of Reference") are set out in **Appendix 2**.

5.3 The role of the Joint Committee, as set out in the Terms of Reference for the Services pertaining to this Agreement, is:

5.3.1 To determine the future configuration of acute physical health services in Hampshire and the Isle of Wight (connecting the North and Mid Hampshire Transforming Community Services programme with the Isle of Wight Acute Services Review)

5.3.2 To determine the future configuration of mental health crisis and acute services for Hampshire and the Isle of Wight

5.3.3 Agree aligned Commissioning strategic priorities for Hampshire and the Isle of Wight

5.3.4 Agree and retain oversight of the medium term planning approach and process to ensure delivery of these priorities

5.3.5 Provide leadership of the plans to improve urgent care for Hampshire and the Isle of Wight including oversight of delivery of the Integrated Urgent Care Plan and winter resilience and preparedness

5.3.6 Sign off commissioner/Strategic Transformation Partnership support for Hampshire and the Isle of Wight wave 4 capital allocations

5.3.7 Determine model and arrangements for the provision of Hampshire's Community Services

5.4 Generally, it is envisaged that the Joint Committee will work across the area to develop a strategic approach to commissioning sustainable services that are patient centred. Further, it will enable the development of integrated service delivery with other partners so that the patients receive a high quality seamless service.

Statutory Duties and Delegation

6 Complying with the Statutory Duties of CCGs

6.1 In exercising its functions, the Joint Committee must meet the statutory obligations of the CCGs which are its members. A failure to do so could lead to challenge to decisions made and an inability to assure CCG Governing Bodies that their delegated functions are being properly exercised.

6.2 The statutory duties which need to be taken into account are summarised in the Checklist in Appendix 3.

6.3 Under Section14Z3(6) of the Act "*any delegation of functions to a joint committee of CCGs do not affect the liability of a clinical commissioning group for the exercise of any of its functions.*"

6.4 For clarity, this means:

a) Member CCGs need to ensure that the Joint Committee is complying with the CCGs' statutory duties, as the Member CCGs continue to be responsible if

there are any failings in decision making; and

b) Member CCGs need to ensure that an appropriate reporting mechanism from the Joint Committee to them is in place. This will allow the Member CCGs to maintain effective oversight of the Joint Committee's processes and decision making.

6.5 In effect, the Joint Committee will operate with multiple CCGs who are its members for decision making, but those individual CCGs will continue to have liability for those decisions.

7 Delegation

7.1 Member CCGs have agreed to delegate functions to the Joint Committee in order to enable the Member CCGs to work effectively together, to collaborate and to take joint decisions in those areas of work delegated.

7.2 The delegation of functions from each CCG to the Joint Committee is set out in the delegation document at Appendix 1 (*Delegation*).

8 Reserved Functions

8.1 Unless where otherwise agreed, all functions are reserved for statutory organisations, that are not specifically stated in the Delegation Document.

8.2 It will be important for the Joint Committee to be cognisant of the Reserved Functions and to engage with member CCGs if any of those arise in the context of the functions which the Joint Committee are to exercise.

9 Exercise of the Joint Functions

9.1 The Joint Committee must exercise the Joint Functions in accordance with:

9.1.1 the Terms of Reference;
9.1.2 the terms of this Agreement;
9.1.3 the Law;
9.1.4 all applicable guidance issued by health system regulators; and
9.1.5 good practice.

Governance

10 Joint Committee Governance

10.1 The CCGs have established the Joint Committee in accordance with the Terms of Reference at Appendix 2 and this Agreement. The Joint Committee and each member will act at all times in accordance with the Terms of Reference. The decisions of the Joint Committee, as delegated to them, shall be binding on all Member CCGs.

10.2 It is important that CCGs maintain effective oversight of the activities of the Joint Committee. The Joint Committee will circulate minutes of their meetings to each Member CCG Governing Body. It is expected that CCG representatives on the Joint Committee will feedback any material discussion and all decisions made by the Joint Committee to their respective organisation.

10.3 Members of the Joint Committee will be nominated and attend Joint Committee meetings based on an understanding of their organisation's standpoint on related matters. However, Members will have the delegated authority to consider information presented and discussed by the Joint Committee and vote accordingly.

10.4 The Joint Committee will operate in accordance with the Terms of Reference which will be approved by each Member CCG delegating functions to it. Amendments to the Terms of Reference shall only be valid when agreed by all Member CCG Governing Bodies.

10.5 Reports from any Joint Committee sub-committee will be shared with CCGs by agreement or request of the Joint Committee or member CCGs.

10.6 The Joint Committee may at any time agree to make a decision or decisions through a common process with a CCG that is not a member of the Joint Committee. No organisation, whether it is a member of the Joint Committee or not shall be able to veto any decision voted on by the Joint Committee.

Working Groups of the Joint Committee

10.7 The Joint Committee shall be able to appoint working groups to enable it to discharge its functions, although working groups will not have delegated authority to make any decision delegated by Member CCGs to the Joint Committee.

11 Finances/ Pooled Funding

11.1 Member CCGs may, for the purposes of exercising the Joint Functions under this Agreement, establish and maintain a pooled fund in accordance with section 14Z3 of the NHS Act 2006.

12 Secretariat

12.1 The secretariat support will be provided by the organisation or organisations who has the Chair as per the Terms of Reference

13 Conflicts of Interest

13.1 Member CCGs must comply with their statutory duties set out in Chapter A2 of the NHS Act 2006, including those relating to the management of conflicts of interest as set out in section 14O of the Act.

13.2 Each member of the Joint Committee must abide by NHS England's guidance Managing conflicts of interest – statutory guidance for CCGs as updated

from time to time (https://www.england.nhs.uk/commissioning/pc-co-comms/coi/) and all relevant guidance and policies of their appointing body in relation to conflicts of interest.

13.3 The Joint Committee will adhere to the above guidance on managing conflicts of interest and will operate a register of interests. Where there is any doubt or where there is a divergence between the terms of the conflicts of interest policy of a member's appointing CCG and that of the Joint Committee, the member should always err on the side of disclosure of any potential conflict.

13.4 Where any member of the Joint Committee has an actual or potential conflict of interest in relation to any matter under consideration by the Joint Committee, that member must inform the Chair of the Joint Committee who will determine the action to be taken in keeping with the statutory guidance. However, the relevant appointing body may send an alternative representative to take the place of the conflicted member in relation to that matter who shall have the same delegated authority as the original member of the Joint Committee.

13.5 Any breaches of the NHS England guidance on managing conflicts of interest shall be reported to the Member CCGs promptly, via the Joint Committee Chair and in any event within 5 business days of the breach having come to light.

14 Information Sharing and Data Protection protocols

14.1 Member CCGs shall all comply with the General Data Protection Regulation (2018) and the Data Protection Ac (2018) and any other statutory regulations relating to information sharing and data protection.

14.2 Member CCGs will enter into a Data Sharing Agreement ("DSA") that governs the processing of information and data pursuant to this Agreement. The DSA shall:

14.2.1 Identify the information that may be processed;

14.2.2 Identify the purposes for which the information may be processed and state the legal basis for the processing in each case;

14.2.3 Confirm the Data Controller and, if appropriate, the Data Processor of any personal data, although it is not expected that personal data will be processed by the Joint Committee or any of its sub-groups;

14.2.4 Set out what will happen to the data on the termination of this Agreement;

14.2.5 Explain how Member CCGs shall deal with subject access requests and other requests made under the DPA; and

14.2.6 Set out such other provisions as are necessary for the sharing of information to be fair and lawful.

14.3 Member CCGs will share all non-Personal Data in accordance with Information

Law and their statutory powers as set out in section 14Z23 of the Act.

14.4 Member CCGs agree that, in relation to information sharing and the processing of information for the purposes of the Joint Functions, they must comply with:

14.4.1 All relevant Information Law requirements including the common law duty of confidence and other legal obligations in relation to information sharing including those set out in the NHS Act 2006 and the Human Rights Act 1998;

14.4.2 Good Practice; and

14.4.3 Any relevant guidance (including guidance given by the Information commissioner)

15 Confidentiality

15.1 Where information is shared with the Joint Committee of a confidential or commercially sensitive nature it will be treated under the principles of the General Data Protection Regulation (2018) and Data Protection Act (2018) and those of good governance.

16 Freedom of Information

16.1 Each Member CCG acknowledges that the other Member CCGs are a public authority for the purposes of the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR").

16.2 Each Member CCG may be statutorily required to disclose information about the Agreement and the information shared or generated by the Member CCGs pursuant to this Agreement and the Terms of Reference, in response to a specific request under FOIA or EIR, in which case:

16.2.1 each Member CCG shall provide the others with all reasonable assistance and co-operation to enable them to comply with their obligations under FOIA or EIR;

16.2.2 each Member CCG acknowledges that the final decision as to the form or content of the response to any request is a matter for the Member CCG to whom the request is addressed.

16.2.3 each Member CCG shall act in accordance with the Freedom of Information Act and will share responses in relation to the information requested.

17 Liability and indemnities

17.1 In accordance with section 14Z3 of the NHS Act 2006, the Member CCGs retain liability in relation to the exercise of the Joint Functions.

18 Publicity

18.1 Member CCGs shall use all reasonable endeavours to consult one another before making any press announcements concerning the Services or the discharge of Member CCGs Functions under this Agreement.

19 Breach of this Agreement and Remedies

19.1 Any breach of this Agreement or the Terms of Reference will be raised with the Chair of the Joint Committee who will determine the action to be taken. Disputes will be dealt with under Clause 20 below.

20 Dispute Resolution

20.1 Where any dispute arises within the Joint Committee in connection with this Agreement or the Terms or Reference, the relevant Member CCGs must use their best endeavours to resolve that dispute on an informal basis within the Joint Committee.

20.2 Where any dispute is not resolved under clause 20.1 on an informal basis, any CCG Representative (as set out in Column 2 of Schedule 2 (*Member CCGs*) may convene a special meeting of the Joint Committee to attempt to resolve the dispute, with the agreement of the Joint Committee Chair.

20.3 If any dispute is not resolved under clause 20.2, it will be referred by the Chair of the Joint Committee to the Accountable Officers of the relevant Member CCGs, who will co-operate in good faith to resolve the dispute within ten (10) days of the referral.

20.4 Where any dispute is not resolved under clauses 20.1 to 20.3 any Member CCG Accountable Officer may refer the matter for mediation arranged by an independent third party to be appointed by the Chair of the Joint Committee and any agreement reached through mediation must be set out in writing and signed by the relevant Member CCGs.

20.5 Where mediation under clause 20.4 does not result in resolution of the dispute any Member CCG Accountable Officer may refer the matter to the Centre for Effective Dispute Resolution or, where agreed by all relevant parties, any other independent adjudicator, for adjudication and binding resolution, which will be final and not subject to appeal.

21 Leaving the Joint Committee

21.1 The Governing Body of any Member CCG can decide to withdraw from this Agreement by giving a minimum of three months' written notice to all other Member CCGs.

21.2 The Member CCG who wishes to withdraw from the Joint Committee will work together with the other Member CCGs to seek to ensure there are suitable alternative arrangements in place in relation to the exercise of the Joint Functions.

21.3 The CCG leaving the Joint Committee shall continue to be a member of the Joint Committee and shall be bound by the decisions made by the Joint Committee and any associated liabilities up to the date of leaving the Joint Committee.

21.4 The CCG leaving the Joint Committee CCG shall no longer be a Member CCG from the day of leaving the Joint Committee, but shall continue to be bound by the decisions made prior to leaving the Joint Committee and shall be bound by the following Clauses of this Agreement after leaving the Joint Committee:

21.4.1 Clause 13: Conflicts of Interest
21.4.2 Clause 14: Information Sharing and Data Protection protocols
21.4.3 Clause 15: Confidentiality
21.4.4 Clause 16: Freedom of Information
21.4.5 Clause 18: Publicity
21.4.6 Clause 21: Leaving the Joint Committee
21.4.7 Clause 26: Waiver

22 Termination of this Agreement

22.1 This Agreement and the Terms of Reference of the joint Committee shall no longer apply if the Joint Committee is terminated.

22.2 Such termination shall be effective if:

22.2.1 all Member CCGs agree in writing that the Joint Committee shall end and withdraw the delegation of their functions to the Joint Committee; or

22.2.2 no more than two [2] Member CCGs remain party to this Agreement.

22.3 The provisions of the following clauses shall survive termination of this Agreement however caused and shall continue in full force and effect:

22.3.1 Clause 13: Conflicts of Interest
22.3.2 Clause 14: Information Sharing and Data Protection protocols
22.3.3 Clause 15: Confidentiality
22.3.4 Clause 16: Freedom of Information
22.3.5 Clause 18: Publicity
22.3.6 Clause 21: Leaving the Joint Committee
22.3.7 Clause 26: Waiver

23 Notices

23.1 Any notices given under this Agreement must be in writing, must be marked for the
[CCG Representative noted in Column 2 to Schedule 2 (*Member CCGs")].*

23.2 Notices sent:

23.2.1 by hand will be effective upon delivery;

23.2.2 by post will be effective upon the earlier of actual receipt or five (5) working days after mailing;

23.2.3 by email will be effective when sent (subject to no automated response being received).

24 Variations

24.1 Any variation to this Agreement, or any of the Schedules or Appendices to the Agreement, will only be effective if it is made in writing and signed by each of the Member CCGs, or is required by Law.

24.2 All agreed variations to this Agreement, or any of the Schedules or Appendices to the Agreement, will be appended as a Schedule to this Agreement.

25 Severability

25.1 If any term, condition or provision contained in this Agreement shall be held to be invalid, illegal, unlawful or unenforceable, to any extent and for any reason by any court or competent jurisdiction; such term, condition or provision shall be severed and shall not affect the validity, legality or enforceability of the remaining provisions of this Agreement, which shall continue in full force and effect as if this Agreement had been executed with the invalid provisions eliminated.

25.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Agreement, the Parties shall immediately commence good faith negotiations to remedy such invalidity.

26 Waiver

26.1 The failure of any Member CCG to abide by any of the provisions of this Agreement at any time shall not be construed to be a waiver of any such provision and shall in no matter affect the right of that CCG thereafter to abide by such provision.

27 Counterparts

27.1 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same Agreement.

28 Applicable Law

28.1 This Agreement shall be interpreted in accordance with the laws of England and Wales and each party to this Agreement submits to the exclusive jurisdiction of the courts of England and Wales.

29 Review

29.1 This Agreement will be reviewed annually by the Member CCGs.

Dated: [INSERT DATE]

SIGNED by:

Accountable Officer for and on behalf of the NHS CCGs Comprising Hampshire Partnership CCGs	Signature …….. Print name ……...
Accountable Officer for NHS Portsmouth CCG	Signature ……. Print name ……
Accountable Officer for NHS Southampton City CCG	Signature …….. Print name ……
Accountable Officer for NHS West Hampshire CCG	Signature ……. Print name ……..

Schedule 1

of the Agreement and Terms of Reference of the Joint Strategic Commissioning Committee

Definitions and Interpretation

The following words and phrases will bear the following meanings in this Agreement:

Agreement	means this agreement between the Member CCGs comprising the body of the Agreement, its Schedules and Appendices
Data Controller	shall have the same meaning as set out in the DPA (2018)
Data Subject	shall have the same meaning as set out in the DPA (2018)
Delegation	means the delegation of functions set out in Appendix 1 to this Agreement
DPA	means the Data Protection Act 1998 (as amended 2018)
Good Practice	means using standards, practices, methods and procedures conforming to the law, reflecting up-to-date published evidence and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, efficient and experienced individual
Guidance	means any applicable health and social care guidance, guidelines, direction or determination, framework, standard or requirement issued by NHS England or any other regulatory or supervisory body, including the Information Commissioner, to the extent that the same are published and publicly available
Information Law	the General Data Protection Regulation (GDPR 2018), the DPA (2018), the EU Data Protection Directive 95/46/EC; regulations and guidance made under section 13S and section 251 of the NHS Act; guidance made or given under sections 263 and 265 of the Health and Social Care Act 2012; the Freedom of Information Act 2000; the common law duty of confidentiality; the Human Rights Act 1998 and all other applicable laws and regulations relating to processing Personal Data and privacy
Joint Committee	means the joint committee of the Member CCGs established on the terms set out in the Terms of Reference
Joint Functions	means the functions jointly exercised by the Member CCGs through the decisions of the Joint Committee in accordance with the Terms of Reference and as set out in detail in the Delegation Document
Law	means: (i) any applicable statute or proclamation or any delegated or subordinate legislation or regulation; (ii) any enforceable EU right within the meaning of section 2(1) European Communities Act 1972; or (iii) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales, in each case in force in England and Wales

Member CCG	means the CCGs which are signatories of this Agreement
NHS Act 2006	means the National Health Service Act 2006 (as amended by the Health and Social Care Act 2012 or other legislation from time to time)
NHS England	means the National Health Service Commissioning Board established by section 1H of the NHS Act, also known as NHS England
Non-member CCG	means a CCG which is not a signatory to this Agreement
Non-Personal Data	means data which is not relating to an individual
Personal Data	shall have the same meaning as set out in the GDPR (2018) and shall include references to Sensitive Personal Data where appropriate
Terms of Reference	means the terms of reference for the Joint Committee agreed between the Member CCGs

Schedule 2

of the Agreement and Terms of Reference of the Joint Strategic Commissioning Committee

Member CCGs, voting members and non-voting members

Organisation	**Proposed Membership**
CCGs Comprising Hampshire Partnership CCGs	It is proposed that a minimum of one representative and a maximum of three representatives be appointed from each CCG (Hampshire Partnership CCGs operating as a single entity) Each organization will have a single vote
NHS Portsmouth CCG	
NHS Southampton City CCG	
NHS West Hampshire CCG	
	Proposed Membership Non-Voting
STP/System	Finance Representative (non-voting)
STP/System	Quality representative (non-voting)
NHSE	Regional Representation

Invitations to attend will be issued to Portsmouth City Council, Southampton City Council and Hampshire County Council representatives.

Appendix 1

Delegation by CCGs to Joint Committees

This document is an appendix to the Agreement and Terms of Reference of the Joint Strategic Commissioning Committee.

A. The CCG Functions at clause B below will be delegated to the Joint Committee by the member CCGs in accordance with their statutory powers under s.14Z3 of the NHS Act 2006 (as amended) (**"**the NHS Act").Section 14Z3 allows CCGs to make arrangements in respect of the exercise of their commissioning functions and includes the ability for two or more CCGs to create a Joint Committee to exercise functions.

B. The delegated functions relate to the health services provided to the member CCGs by all providers they commission services from in the exercise of their functions. The CCGs delegate their commissioning functions so far as such functions are required for the Joint Committee to carry out its role, as set out in the Terms of Reference (Appendix 2 to this Agreement).

   The CCGs delegate the above functions to enable the Joint Committee to take decisions around the commissioning and delivery of the Services as detailed within this Agreement and Terms of Reference.

C. Each member CCG shall also delegate the following functions to the Joint Committee only insofar that it can achieve the purpose set out in (B) above:

   1. Acting with a view to securing continuous improvement to the quality of commissioned services to improve outcomes for patients with regard to clinical effectiveness, safety and patient experience.
   2. Promoting innovation, seeking out and adopting best practice, by supporting research and adopting and diffusing transformative, innovative ideas, products, services and clinical practice within its commissioned services, which add value in relation to quality and productivity.
   3. Developing strong working relationships with clear aims and a shared vision putting the needs of people served over and above organizational interests.
   4. Avoiding unnecessary cost through better co-ordinated and proactive services which keep people well enough to need less acute and long term care.

D. In delegating these functions, each member CCG shall require the Joint Committee to adhere to the following requirements and obligations:

   1. The requirement to comply with various statutory obligations, including making arrangements for public involvement and consultation throughout the process, including but not limited to the Gunning/Sedley Principles, and taking into account updated guidance on patient and public participation in commissioning health and care.

That includes any determination on the viability of models of care pre-consultation and during formal consultation processes, as set out in s.13Q, s.14Z2 and s.242 of the NHS Act.

2. The requirement to ensure process and decisions comply with the four key tests for service change introduced by the last Secretary of State for Health, which are:

    - Support from GP commissioners;
    - Strengthened public and patient engagement;
    - Clarity on the clinical evidence base; and
    - Consistency with current and prospective patient choice.

3. The requirement to comply with the statutory duty under s.149 of the Equality Act 2010 i.e. the public sector equality duty.

4. The requirement to have regard to the other statutory obligations set out in the new sections 13 and 14 of the NHS Act. The following are relevant but this is not an exhaustive list:

    - ss.13C and 14P - Duty to promote the NHS Constitution
    - ss.13D and 14Q - Duty to exercise functions effectively, efficiently and economically ss.13E and 14R – Duty as to improvement in quality of services
    - ss.13G and 14T - Duty as to reducing inequalities
    - ss.13H and 14U – Duty to promote involvement of each patient ss.13I and 14V - Duty as to patient choice
    - ss.13J and 14W – Duty to obtain appropriate advice ss.13K and 14X – Duty to promote innovation
    - ss.13L and 14Y – Duty in respect of research
    - ss.13M and 14Z - Duty as to promoting education and training ss.13N and 14Z1- Duty as to promoting integration
    - ss.13Q and 14Z2 - Public involvement and consultation by NHS England/CCGs s.13O - Duty to have regard to impact in certain areas
    - s.13P - Duty as respects variations in provision of health services s.14O – Registers of Interests and management of conflicts of interest s.14S – Duty in relation to quality of primary medical services

5. The Joint Committee must also have regard to the financial duties imposed on CCGs under the NHS Act and as set out in:

    - s.223G - Means of meeting expenditure of CCGs out of public funds s.223H - Financial duties of CCGs: expenditure
    - s.223I - Financial duties of CCGs: use of resources
    - s.223J - Financial duties of CCGs: additional controls of resource use

6. Further, the Joint Committee must have regard to the Information Standards as set out in ss.250, 251, 251A, 251B and 251C of the Health & Social Care Act 2012 (as amended).

7. The expectation is that Member CCGs will ensure that clear governance arrangements are put in place so that they can assure themselves that the exercise by the Joint Committees of their functions is compliant with statute.

8. The Joint Committee will meet the requirement for CCGs to comply with the obligation to consult the relevant local authorities under s.244 of the NHS Act and the associated Regulations where these are applicable.

9. The Joint Committee will be delegated the capacity to propose, consult on and agree future service configurations that will shape the medium and long terms financial plans of the constituent organisations. The Joint Committee will have no contract negotiation powers meaning that it will not be the body for formal annual contract negotiation between commissioners and providers. These processes will continue to be the responsibility of individual Clinical Commissioning Groups (and NHS England) under national guidance, tariffs and contracts.

Appendix 2

Terms of Reference

of the Agreement and Terms of Reference of the Joint Strategic Commissioning Committee

Principles of the Committee

1. The Joint Committee will be guided by the following principles:
   - Securing continuous improvement to the quality of commissioned services to improve outcomes for patients with regard to clinical effectiveness, safety and patient experience
   - Promoting innovation and seeking out and adopting best practice, by supporting research and adopting and diffusing transformative, innovative ideas, products, services and clinical practice within its commissioned services, which add value in relation to quality and productivity.
   - Developing strong working relationships with clear aims and a shared vision putting the needs of the people we serve over and above organisational interests
   - Avoiding unnecessary costs through better coordinated and proactive services which keep people well enough to need less acute and long term care.

Membership

2. Membership of the Hampshire and Isle of Wight Joint Strategic Commissioning Committee (hereafter referred to as "the Joint Committee") will be open to the organisations listed below:

   - NHS Fareham & Gosport Clinical Commissioning Group[1]
   - NHS Isle of Wight Clinical Commissioning Group[1]
   - NHS North East Hampshire and Farnham Clinical Commissioning Group[1]
   - NHS North Hampshire Clinical Commissioning Group[1]
     NHS Portsmouth Clinical Commissioning Group
   - NHS Southampton City Clinical Commissioning Group
   - NHS South Eastern Hampshire Clinical Commissioning Group[1]
   - NHS West Hampshire Clinical Commissioning Group

3. The Committee will comprise representatives from each organisation as determined by their governing body. These representatives must be of significant seniority to take decisions for the organisations they represent. It is proposed that there is a minimum of one and a maximum of three representatives from each organization who may include the Clinical Chair, Accountable Officer and a Lay Member from the Governing Board.

4. The Chair and Vice-Chair will be elected by the members of the Joint Committee and must be from the membership organisations. The roles of Chair and Vice Chair cannot be held by representatives of the same organisation. The term of office will be one year.

5. Non-voting members may be co-opted on to the Committee to provide Finance, Quality, Performance or Business Intelligence input to discussions and decisions.

6. The Committee may call any 'experts' in support of the business within the Committee remit.

Voting

7. Each CCG will be entitled to exercise one vote when called (Hampshire Partnership CCGs will count as one vote). Therefore it is the duty of the individual organisations to delegate authority to individuals to exercise their vote. This delegation should be reflected in the individual organisations' governance framework.

8. It is anticipated that decision-making will be by consensus however should a vote be required, the decision of the Joint Committee will be by majority vote and will be binding on all member organisations.

Quorum

9. The quorum of a meeting of the Joint Committee shall be a representative from each member organization either in attendance or participation through virtual means (conference calls/skype/ telephone etc).

Remit

10. The Joint Committee will be limited to make decisions on the following:

- Decisions about the future configuration of acute physical health services in Hampshire & the Isle of Wight (connecting the North & Mid Hampshire TCS programme with the Isle of Wight Acute Services Review).
- Decisions about the future configuration of mental health crisis and acute services for Hampshire & the Isle of Wight
- Agreement of aligned commissioning strategic priorities for Hampshire & Isle of Wight
- Agreement and oversight of the medium term planning approach and process to ensure delivery of these priorities
- Leadership of the plans to improve urgent care for Hampshire & Isle of Wight, including oversight of delivery of the Integrated Urgent Care Plan and oversight of Hampshire & Isle of Wight winter resilience and preparedness
- Sign off commissioner/STP support for Hampshire & Isle of Wight wave 4 capital allocations
- Decisions about the model & arrangements for provision of Hampshire's community services

11. Expansion of this scope to accommodate decisions outside of this remit will only follow from unanimous agreement of member organisations.

Meeting arrangements

12. The meetings of the Joint Commissioning Committee will be held in public.

13. Committee business may be conducted outside of Committee meetings however any decisions made or agreements reached will be highlighted by the Chair at the subsequent meeting for openness and transparency and in keeping with good governance.

14. Secretarial and administrative supported to the Joint Commissioning Committee will be provided by the employing organisation of the Chair.

15. The Joint Committee will meet monthly, however additional meetings can be called by agreement of members.

16. The Joint Committee will adopt the standing orders of the employing organisation of the Chair insofar as they relate to the:
    - Notice of meetings
    - Recording and minuting of meetings
    - Agendas
    - Circulation of papers
    - Management of conflicts of interest

17. The secretariat to the Joint Committee will:
    - Circulate agenda and associated documents at least five working days prior to the meeting
    - Circulate the minutes and action notes of the Joint Committee within five working days of the meeting to all members
    - Support the Chair/Vice Chair in agenda setting and determining any work programme of the Joint Committee.

18. These Terms of Reference will be reviewed at intervals determined by the Joint Committee and may be amended at any time to reflect a change in circumstance – subject to paragraph 11.

Appendix 3

Checklist of Statutory Duties

This document is an appendix to the Agreement and Terms of Reference of the Joint Strategic Commissioning Committee

The following is a non-exhaustive checklist of statutory duties and protocols that Clinical Commissioning Groups should abide by and is included for guidance purposes only.

Public Law Issues (including for service change)

1. Case For Change

   The starting point is to have established a clear Case for Change that both commissioners and providers agree is clinically and financially sound.

2. Engagement with Public and Patients

   CCGs must comply with various statutory obligations to engage with and consult the public and patients throughout the process. That includes any determination on the viability of models of care pre-consultation and during formal consultation processes. – see s.13Q, s.14Z2 and s.242 of the NHS Act 2006 (as amended) ('the Act')

3. Four Key Tests

   It is important throughout the reconfiguration process to be mindful of the four key tests introduced by the last Secretary of State for Health, which are:

   (i) strong public and patient engagement;

   (ii) consistency with current and prospective need for patient choice;

   (iii) a clear clinical evidence base; and

   (iv) support for proposals from clinical commissioners.

   Decision makers will need to show compliance when making a final decision on service change.

4. Equality

   All NHS statutory bodies must also ensure compliance with their duty under s.149 of the Equality Act 2010 that is their public sector equality duty.

5. Statutory obligations

   Commissioners must also have regard to the other statutory obligations set out in sections 13 and 14 of the Act. In looking at CCG duties the following, amongst others, are relevant:

   - 14P – Duty to promote NHS Constitution
   - 14Q – Duty as to effectiveness, efficiency etc.
   - 14R – Duty as to improvement in quality of services
   - 14T – Duty as to reducing inequalities
   - 14V – Duty as to patient choice

- 14X - Duty to promote innovation
- 14Z1 – Duty as to promoting integration
- 14Z2 – Public involvement and consultation by CCGs (see above)

6. Cabinet Office

   All consulting NHS bodies should consider and comply with Cabinet Office Guidance on Consultation. This sets out what the CO recommends needs to be done to undertake a lawful public consultation exercise.

7. Governance

   As to decision making it is important that clear governance arrangements are put in place that are compliant with statute.

8. Local authorities

   CCGs must comply with their obligation to consult the relevant local authorities under s.244 of the Act and the associated Regulations.

9. Clear plan

   CCGs should have a clear plan in place which ensures they give the public sufficient information for them to provide informed responses.