

NHS Rotherham Clinical Commissioning Group

Primary Medical Care Commissioning and Contracting - Mandated Review of Governance Arrangements

Final Report



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Distribution

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Introduction and Background

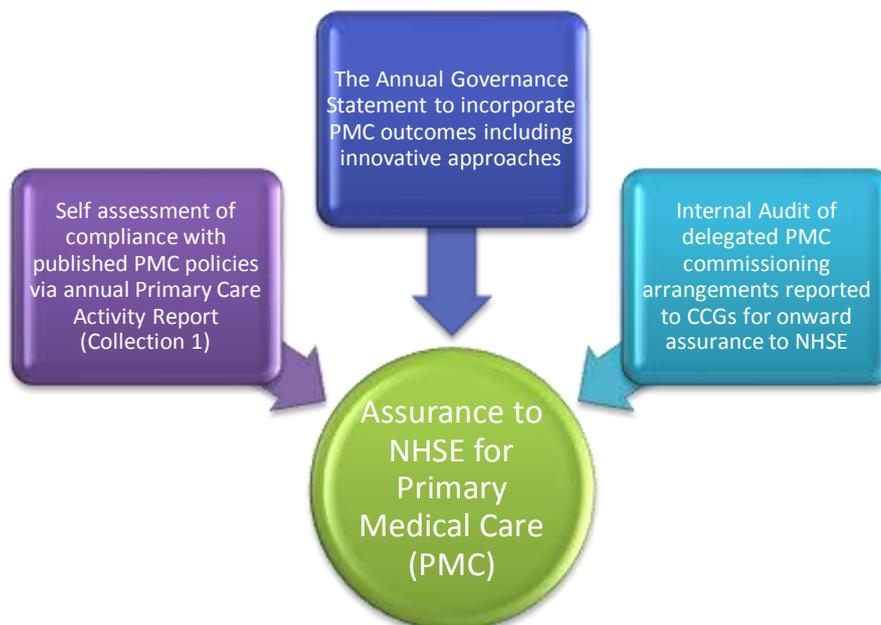
NHS England became responsible for the direct commissioning of primary medical care services on 1 April 2013. Since then, following changes set out in the NHS Five Year Forward View, primary care co-commissioning has seen CCGs invited to take on greater responsibility for general practice commissioning, including full responsibility under delegated commissioning arrangements. In 2018/19, 96% of the 178 CCGs have full delegated responsibility for the primary care budget.

NHS Rotherham CCG assumed full delegated responsibility under these arrangements as of 1st April 2015.

Although NHS England (NHSE) has delegated functions to CCGs, it retains overall accountability and is, therefore, responsible for obtaining assurances that its functions are being discharged effectively.

In order to facilitate the provision of these assurances, correspondence was sent to CCG Chairs, by NHSE, on 27th February 2018, which included a detailed, and now mandatory, Internal Audit Framework, designed to provide independent assurance to NHSE that delegated functions are being appropriately discharged. The Framework requires the independent completion of assessments across four domains, on a cyclical basis, over the next three to four years.

While NHS England's CCG Improvement and Assessment Framework reports CCG performance in key areas, including primary care, it does not provide specific assurance on the management of delegated primary medical care commissioning arrangements. In agreement with NHS England's Audit and Risk Assurance Committee, NHS England requires the following from 2018/19:



The Delegation Agreement entered into between NHS England and CCGs sets out the terms and conditions for how delegated primary medical care functions are to be exercised. The scope of the Internal Audit Framework is designed around this by mirroring these functions through the natural commissioning cycle:

- Commissioning and procurement of services;
- Contract oversight and management functions;
- Primary Care finance;
- Governance (common to each of the above areas).

The Internal Audit Framework is to be delivered as a 3-4 year programme of work to ensure this scope is subject to annual audit in a managed way and within existing internal audit budgets. Follow up audits for areas of no assurance, should there be any, also need to be incorporated into internal audit plans.

Our 2018/19 Internal Audit Plan included an allocation of time to undertake a review of primary medical care commissioning and contracting. Our work has been undertaken in accordance with the Public Sector Internal Audit Standards.

CCGs are required to tailor their approach to take account of the findings from any previous or related audit work, and make use of local assessment of risk to determine appropriate focus within the scope of work detailed. Where there has been an independent audit of primary medical care commissioning arrangements in 2017/18 this may count towards the implementation of this framework providing the audit and its objectives are clearly in the scope of this framework and the outcome is [retrospectively] reported in line with this framework. Earlier audits may be considered if they can reasonable be assessed as timely and appropriate in ensuring that our audit work under this framework is effectively targeted.

In terms of NHS Rotherham no relevant audits were undertaken in 2017/18 but we will review the results of the Primary Care Quality Monitoring work conducted in 2016/17 and the review of Primary Care Co-Commissioning Management in 2015/16.

NHS England expects that the Framework will provide a comprehensive baseline for assurance of delegated CCGs' primary medical care commissioning and provide the basis for moving to a more risk-based approach in future years.

The CCG's Primary Care Commissioning Committee (PCCC) has a lead role in discussing and agreeing the report, with the outcome of the Internal Audit being reported in the CCG's annual report and annual governance statement. The report and management actions agreed will also need to be discussed with NHS England's local team, as appropriate.

The internal audit review for 2018/19 focussed on governance, as this underpins all aspects of primary medical care commissioning.

Audit Objectives and Scope

The objective of our audit was to determine whether a robust, efficient and effective control environment is in place in relation to governance arrangements, around the provision of primary medical care commissioning and contracting.

- We documented and assessed the arrangements in place for the operation and oversight of the PCCC, including, but not limited to:
 - Membership of the Committees, attendance and recording of decision making;
 - Terms of reference;
 - Scope of responsibilities and how these are discharged; and
 - Reporting arrangements between other committees and teams within the CCG and NHSE.
- We assessed the arrangements in place within the PCCC which ensure that:
 - The planning of Primary Care Medical Services provision has been undertaken in accordance with the Delegation Agreement (i.e. assessment of need, risks, appropriate consultation and communication);
 - Oversight of contract management functions is appropriately detailed as a responsibility of the Committees; and
 - Responsibilities include the receipt and review of financial monitoring information/reports.
- We confirmed that appropriate policies and procedures and guidance have been authorised and have been communicated to relevant personnel and any local processes established by the CCG are aligned to the NHSE Primary Medical Care Services Policy and Guidance Manual issued in November 2017.
- We reviewed cover sheets for papers to the PCCC to establish that there is evidence to show that decisions are exercised in accordance with NHSE statutory duties documented in the Internal Audit Framework on page 9 at paragraph 24.
- We will undertake separate benchmarking work from information provided by the CCG as part of the terms of reference.

Limitations of scope: The scope of our work has been limited to the systems and controls identified in the agreed Terms of Reference.

Excluded from scope is the management of conflicts of interest which is subject to a separate mandated internal audit framework.

Audit Opinion

Substantial Assurance

The controls in place do not adequately address one or more risks to the successful achievement of objectives; and/ or one or more of the controls tested are not operating effectively, resulting in unnecessary exposure to risk.

Summary Findings

The CCG Constitution and Governance chart both refer to the Primary Care Commissioning Committee (PCCC) and its delegated responsibilities which reflect the Delegation Agreement with NHSE signed in April 2015. For the period we reviewed, between January and October 2018, we could confirm that Lay and Executive members

had voting rights and that the three GP members could contribute to discussions but were excluded from voting. We confirmed that there were standard agenda items for all meetings of the PCCC.

The CCG have adopted the NHSE Primary Medical Care Services Policy and Guidance Manual which was issued in November 2017 and all staff in the Primary care team is aware of this policy.

We have made three low risk recommendations to enable the CCG to further enhance controls with regards to transparency that all decisions made by the PCCC are made in accordance with the statutory duties of NHSE, as delegated to the CCG.

Summary of Recommendations

	High	Medium	Low	Advisory	Total
Agreed Actions	-	-	3	-	3

Follow-Up

The follow-up of all actions identified within this review will be undertaken via the CCG’s “live follow-up” of recommendations, as each individual implementation date is due, we will work with the CCG to evaluate progress made in respect of the issues raised.

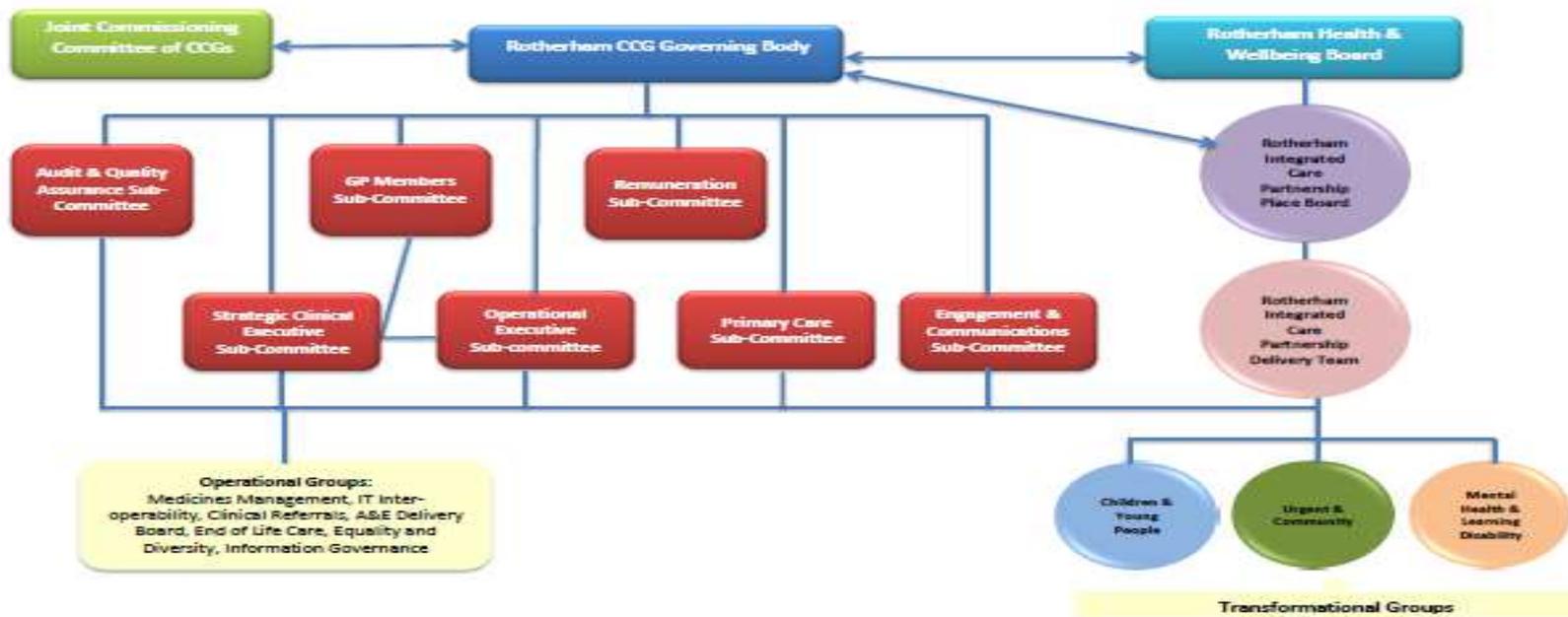
The following sections of the report summarise the findings of our review. Each section highlights areas of good practice identified. Where relevant, any control weaknesses identified are outlined, including actions that have been agreed in order to address the associated risks. The matrix used for scoring risks is compliant with the ISO 31000 principles and generic guidelines on risk management. This risk matrix, along with definitions of different opinion levels, is provided at **Appendix A**. These opinion levels have been set by NHSE within the mandated framework on page 14.

1. Arrangements for the operation and oversight of the Primary Care Commissioning Committee

CCG Constitution and Governance Structure

The CCG Constitution was approved by NHSE in May 2018. Section 6.7.3(e) of the Constitution depicts responsibilities delegated to the Primary Care Commissioning Committee (PCCC) and membership of the Committee. Responsibilities are recorded in the Scheme of Reservation and Delegation (SOR) on page 69. The governance structure in place is provided below:

NHS Rotherham Clinical Commissioning Group – Meeting Governance Structure

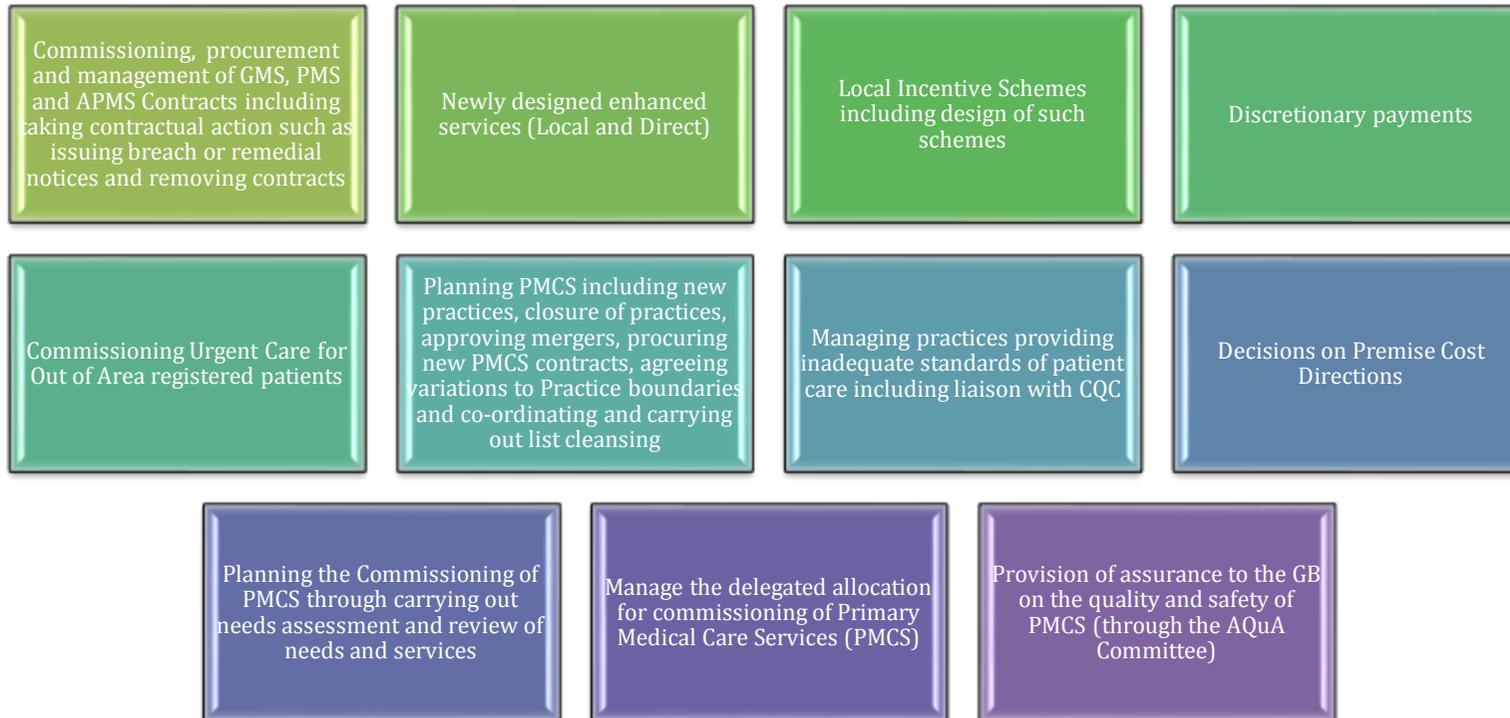


The above structure indicates that the PCCC is a sub-committee of the Governing Body but this is not the case. The Terms of reference and the Delegation Agreement indicate that it will report to both the Governing Body and NHSE. See finding 1.1 below.

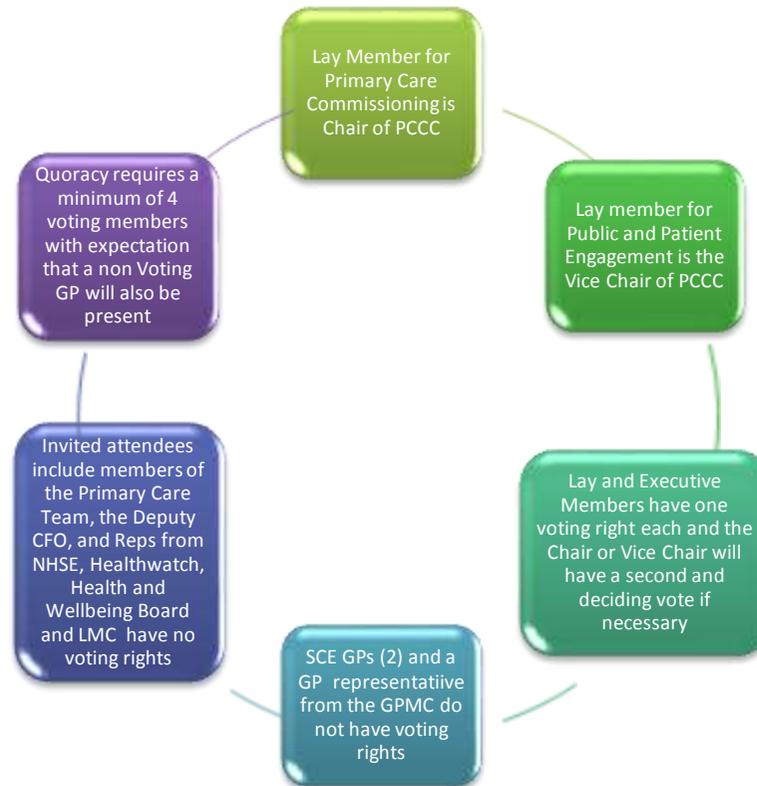
Terms of Reference for the Primary Care Commissioning Committee

The Terms of Reference for the Primary Care Commissioning Committee (PCCC) were last reviewed by the Committee in January 2018 and are due to be presented to PCCC at its meeting in January 2019. We could not confirm that they were approved by the Governing Body in 2018 from our review of the Governing Body minutes and papers. The Committee has delegated authority to review, plan and procure primary care services in Rotherham. This is specified within the PCCC Terms of Reference and also within the Scheme of Reservation and Delegation (SORD) on page 69 of the CCG Constitution. This responsibility is consistent with the Delegation Agreement between the CCG and NHSE at Section 6 and Schedule 2 which was signed in April 2015.

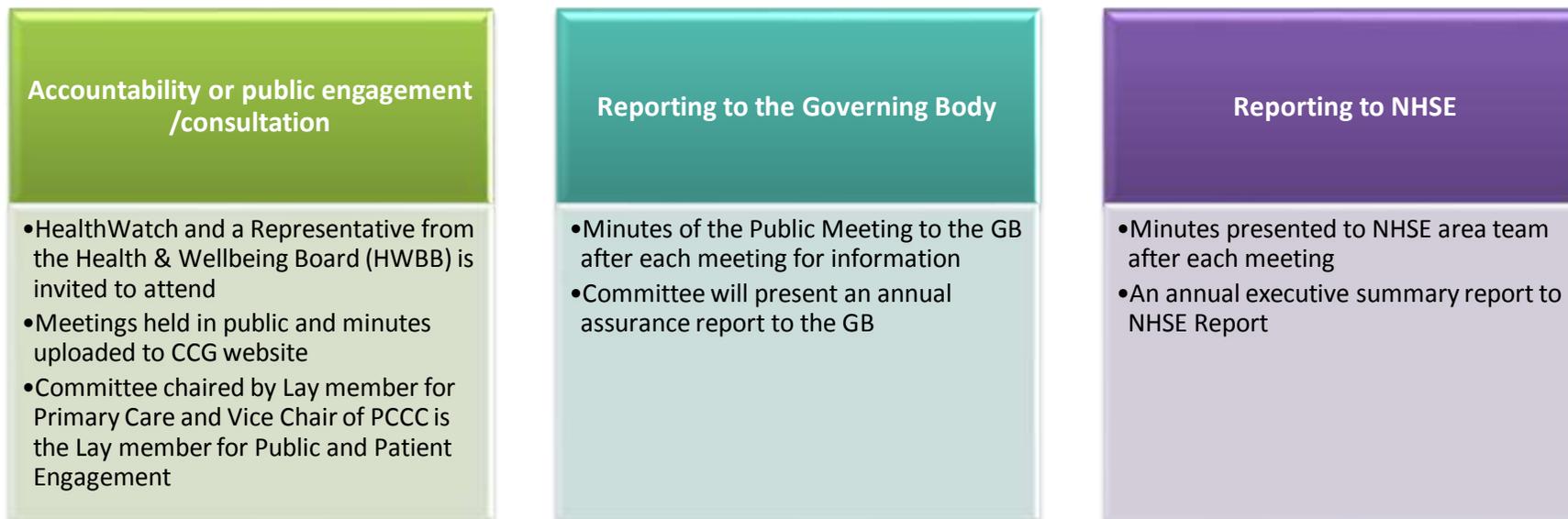
The PCCC is responsible for the following areas within its Terms of Reference; each one has been agreed back to the Delegation Agreement.



The PCCC Terms of Reference (ToR) refers to membership of the Committee and decision making is as follows:



Accountability of PCCC to ensure appropriate public engagement and reporting arrangements is recorded in the PCCC ToR. Specifically:



We have confirmed through our review of minutes of the PCCC that the representative from HealthWatch, the HWBB and LMC attended some of the meetings in the period reviewed. As the CCG is limited in terms of its ability to address attendance levels we have not made any recommendation. We confirmed that NHSE attended all meetings.

We confirmed from our review of a sample of agendas that the Governing Body receives minutes of the PCCC meetings for information and also a summary report of any key issues from the Chair of PCCC, if required. We could also confirm that the Governing Body received updates on committee activity within the Corporate Assurance report presented to the Governing Body by the Assistant Chief Officer. Governing Body also received the annual report for 2017/18 at its meeting in June 2018 and the draft annual report for 2018/19 will be presented to the PCCC at its meeting in May 2019 prior to onward reporting to the Governing Body.

The TOR for PCCC indicates that minutes of the PCCC will be provided to the GPMC and we could confirm that this takes place.

With regards to decision making we have reviewed a sample of agendas for the PCCC between January and October 2018 and traced all items for decision or approval back to minutes of the PCCC meetings. We could confirm that all decisions made were clearly recorded in the minutes for the PCCC meetings.

No.	Findings	Risk and Score (Consequence x Likelihood)	Agreed Action
1.1	<p>Accuracy of the CCG Constitution and the Governance Chart</p> <p>The CCG Constitution indicates that the PCCC is a Committee of the Governing Body. The Governance Chart provided to us shows the PCCC is a sub-committee of the Governing Body. This is not consistent with the Delegation Agreement and the PCCC Terms of Reference which record that NHSE has delegated authority to the Committee to make decisions on primary medical care services and that these will be binding on the CCG and NHSE.</p>	<p>Governance Chart could present misleading information as the role and delegated authority of the PCCC and those decisions cannot be overturned by the Governing Body who may be conflicted.</p> <p style="text-align: center;">Low 2 x 3</p>	<p>The Governance Chart will be updated to record delegated authority of the PCCC and links to the Governing Body and NHSE.</p> <p>This should also be clarified within the revision to the CCG Constitution which is currently taking place.</p> <p>Responsible Officer: Jacqui Tuffnell, Head of Commissioning and Ruth Nutbrown, Assistant Chief Officer</p> <p>Implementation Date: 31 July 2019 for the Governance Chart changes</p>
		<p>Management Response: This is being actioned as part of the full constitution change which is currently ongoing and the CCG awaits further guidance from NHSE regarding the recent GP Contract and implications this has on the changes to the CCG Constitution.</p>	

2. Arrangements within the Primary Care Commissioning Committee for Planning Primary Medical Care Services, Oversight of Contract Management Functions and Financial Monitoring

We confirmed from a review of the agendas for the Primary Care Commissioning Committee that there are standing agendas items. We have summarised this within the diagram below from our review of PCCC meetings from January to October 2018:



No.	Findings	Risk and Score (Impact x Likelihood)	Agreed Action
2.1	<p>Transparency that all items from the Delegation Agreement are addressed at PCCC Meetings</p> <p>The PCCC Terms of Reference is aligned to the Delegation Agreement which was signed by NHSE and the CCG in April 2015. We sought to confirm that all areas delegated have been addressed at PCCC meetings through our review of the standing agenda items.</p> <p>We were unable to confirm that the following key responsibilities of the PCCC have been addressed:</p> <ul style="list-style-type: none"> • Decisions on discretionary payments and Premises costs Directions; and • Planning of Primary Medical Care Services including needs assessment. 	<p>CCG has not addressed all responsibilities delegated to it for Primary Care as recorded within the Delegation Agreement.</p> <p style="text-align: center;">Low 2 x 3</p> <p>Management Response: Agreed this will commence through an amendment to the standing agenda items from the March 2019 PCCC meeting.</p>	<p>The CCG will review the standing agenda items for the PCCC meetings and ensure that all areas delegated are addressed in the meetings and that this is transparent in the standing agenda items used.</p> <p>Responsible Officer: Jacqui Tuffnell, Head of Commissioning</p> <p>Implementation Date: 30th April 2019</p>

3. Appropriate Policies and procedures and guidance have been authorised and communicated to relevant personnel and any local processes are aligned to NHSE Primary Medical Care Services Policy and Guidance Manual

We have confirmed through our discussions with the Head of Commissioning at the CCG that the CCG use the NHSE Primary Medical Care Services Policy and Guidance Manual (issued in November 2017) and that all relevant staff in the Primary Care Team is aware of this and comply with it. The Policy and Guidance Manual runs to 379 pages and in summary:

Part A

- Introduction
- Commissioning
- General Duties of NHSE including addressing health inequalities
- Working Together - commissioning and Regulating

Part B

- General Contract Management
- Contract reviews including setting and monitoring KPIs
- Practice Visits
- Managing patient lists including temporary suspension of patient registration
- Practice Close Down
- Discretionary payments

Part C

- When things go wrong including contract breaches, sanctions and terminations
- Unplanned or unscheduled practice close downs
- Death of a contractor
- Managing disputes
- Adverse events eg Flood or Fire

Part D

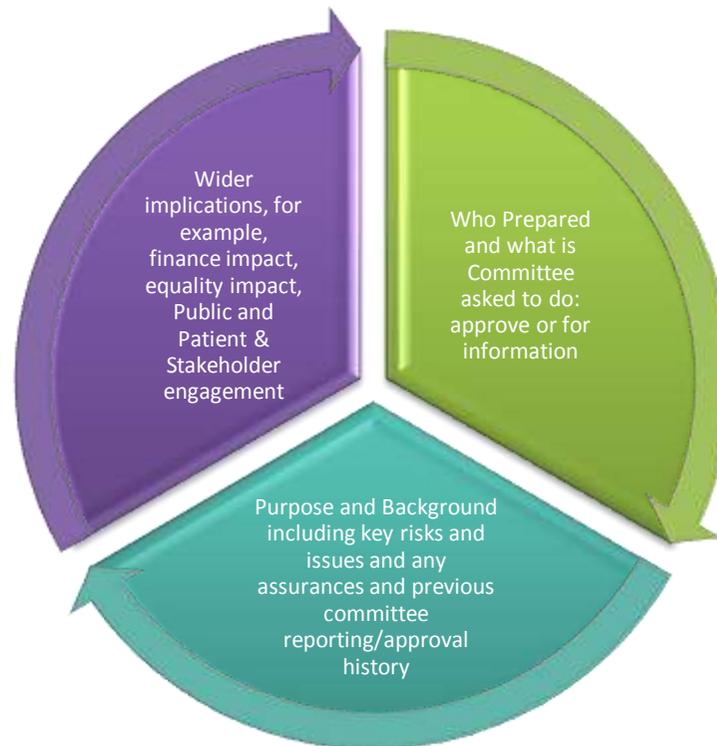
- GP IT
- Locum cover or Gp performer payments for parental leave and sickness leave

No areas for further improvement were identified.

4. NHSE Statutory Duties have been applied by the Primary Care Commissioning Committee

The CCG have introduced a standard cover sheet to support all papers to the Governing Body and its sub-committees including the PCCC.

We reviewed sample cover sheets for a selection of papers presented to the PCCC from January to October 2018. We have identified that the following key themes are recorded on cover sheets:



No.	Findings	Risk and Score (Impact x Likelihood)	Agreed Action
4.1	<p>Ensuring all NHSE Statutory Duties has been addressed in decisions taken by the PCCC</p> <p>Statutory duties of NHSE which are recorded within the PCCC Terms of Reference and also those recorded within the Internal Audit Framework at paragraph 24 have been delegated to the CCG. We identified that the cover sheet used by the CCG was comprehensive and incorporated communication and engagement.</p> <p>We could not confirm that all statutory requirements assigned to NHSE (and hence delegated to the CCG) have been applied when the PCCC have made decisions based on our review of the cover sheets because each statutory duty is not recorded on the cover sheet or within the detailed paper presented to PCCC.</p>	<p>Where statutory duties are not recorded on papers to the PCCC (or on the cover sheets that support papers) then it is possible that decisions could be made without complying with the statutory duties delegated to the CCG from NHSE.</p> <p>Potential reputational damage.</p> <p>Low 2 x 3</p>	<p>The CCG will consider whether there is sufficient evidence that all statutory duties have been considered in making decisions. Where necessary the CCG will consider updating the cover sheet for the PCCC papers to record that the statutory duties have been applied where relevant.</p> <p>Responsible Officer: Jacqui Tuffnell, Head of Commissioning Implementation Date: 30th April 2019</p>
		<p>Management Response:</p> <p>A new cover sheet will be developed for PCCC meetings to record that statutory duties have been applied.</p>	

Risks contained within this report have been assessed using the standard 5x5 risk matrix below. The score has been determined by consideration of the impact the risk may have, and its likelihood of occurrence, in relation to the system’s objectives. The two scores have then been multiplied in order to identify the risk classification of low, medium, high or extreme.

Table 3 Risk scoring = consequence x likelihood (C x L)

Calculate the risk score by multiplying the consequence score by the likelihood score.

Risk Matrix		Likelihood				
		(1) Rare	(2) Unlikely	(3) Possible	(4) Likely	(5) Almost certain
Consequence	(1) Negligible	1	2	3	4	5
	(2) Minor	2	4	6	8	10
	(3) Moderate	3	6	9	12	15
	(4) Major	4	8	12	16	20
	(5) Extreme	5	10	15	20	25

1-5	Low
6-11	Medium
12-15	High
16-20	Very High
25	Extreme

The audit opinion has been determined in relation to the objectives of the system being reviewed. It takes into consideration the volume and classification of the risks identified during the review.

Assurance level	Evaluation and testing conclusion
Full	The controls in place adequately address the risks to the successful achievement of objectives; and the controls tested operate effectively
Substantial	The controls in place do not adequately address one or more risks to the successful achievement of objectives; and/ or one or more of the controls tested are not operating effectively, resulting in unnecessary exposure to risk.
Limited	The controls in place do not adequately address multiple significant risks to the successful achievement of objectives; and /or a number of controls are not operating effectively, resulting in exposure to a high level of risk.
No Assurance	The controls in place do not adequately address several significant risks leaving the system open to significant error or abuse; and/or the controls tested are wholly ineffective, resulting in an unacceptably high level of risk to the successful achievement of objectives.