NHS England Board meeting

Paper Title:	Next steps on the delegation of specialised services commissioning
Agenda item:	7 (Public session)
Report by:	John Stewart, Director of Specialised Commissioning Julian Kelly, Chief Financial Officer
Paper type:	For approval

Organisation Objective:

NHS Mandate from Government	☒	Statutory item	☒
NHS Long Term Plan	☒	Governance	☒
NHS People Plan	☐		

Executive summary:

Since 2013 NHS England has been the accountable commissioner for a diverse portfolio of 154 specialised services, with an overall budget of ~£23bn in 2022/23. These services are prescribed in regulations by the Secretary of State for Health and Social Care. There are no changes planned to the list of specialised services.

The establishment of Integrated Care Boards (ICBs), combined with new powers allowing NHS England to delegate commissioning responsibility (but not accountability) for these services to ICBs, presents important opportunities for supporting a focus on population health management; delivering better and more integrated care for patients; and, improving quality and tackling health inequalities in terms of demand for, access to, and outcomes from specialised services.

Subject to Board approval, the plan in 2023/24 is to establish statutory joint committees between NHS England and multi-ICB collaborations from 1 April - covering nine geographical footprints - that will oversee and take commissioning decisions on 59 specialised services within the portfolio. This will coincide with the introduction of population-based budgets for these services from April 2023, with the gradual and cautious application of a new needs weighted allocation formula from April 2024. Throughout 2023/24 the money and financial liability will remain fully with NHS England.

Commissioning responsibility for all other specialised services will be retained by NHS England - for some services, this will be on a permanent basis and for others this will be temporary and until the point that they are considered ready for delegation.

The arrangements in 2023/24 represent a stepping-stone to delegating full commissioning responsibility for suitable services, including budgets and financial liability, to multi-ICB collaborations from April 2024 - this will be subject to further

Board consideration and decision. At this point, NHS England's role as the accountable commissioner will focus on i) continuing to set consistent national standards, service specifications and clinical access policies which will apply to all specialised services, regardless of whether commissioning responsibility has been delegated; ii) assurance of and support to ICBs for all delegated services; iii) the continued commissioning of 'retained' (non-delegated) specialised services.

These plans, which were first set out in our *Roadmap for Integrating Specialised Services within Integrated Care Systems*, have been developed in close collaboration with NHS England's regional teams, ICBs and specialised service providers; represent the outcome of a thorough pre-delegation assessment process of ICB system readiness and the recommendations of a National Moderation Panel chaired by the Chief Financial Officer; and, have received extensive clinical input and scrutiny from our Clinical Reference Group infrastructure that ensures we have, and will continue to have, access to expert clinical advice across the full portfolio of specialised services.

Action required:

The Board is asked to:

- Note how the commissioning of specialised services has evolved since 2013; the strengths of the current approach and how these will be maintained into the future; and, the opportunities that greater ICB leadership of appropriate specialised services can achieve for patients and whole populations.
- Endorse the list of services that are appropriate for greater ICB leadership from April 2023, those that are likely to be appropriate at a future point in time, and those services where commissioning responsibility will be retained by NHS England.
- Accept the recommendations of the National Moderation Panel to delegate commissioning responsibility for 59 services to nine statutory joint committees formed between NHS England and ICBs from April 2023.
- Approve the joint working model for the commissioning of specialised services in 2023/24 and delegate authority to Regional Directors to sign the Joint Working Agreements on behalf of NHS England to enable new commissioning arrangements to 'go live' from April 2023.
- Note the move to population-based budgets to support delegated commissioning arrangements and the importance of this shift in terms of supporting integrated care systems to address inequalities in access to and outcomes from specialised services.

Background and context

1. NHS England is the accountable commissioner for 154 specialised services which are prescribed in legislation. The combined annual budget for these services is ~£23bn in 2022/23. The number of patients needing specialised services and the cost of providing these services is rising every year due to people living longer and advances in medicine and medical technology.

2. The portfolio of specialised services is highly diverse and supports patients with a range of conditions from the relatively common through to those that are rare or extremely rare and where only a small number of providers are commissioned to

provide highly complex treatments. For example, NHS England directly commissions all chemotherapy and kidney dialysis services at one end of this spectrum through to gene therapies for conditions like spinal muscular atrophy and surgical procedures, such as hand transplants, at the other end.

3. Prior to 2013, over 150 Primary Care Trusts (PCTs) were responsible for commissioning all services for their populations, including those that we now define as specialised services. Recognising the complexity of specialised commissioning, PCTs joined together through Specialised Commissioning Groups to discharge their responsibilities on larger geographical footprints. However, these groups were able to adopt different approaches to setting service standards and had different policies determining whether particular treatments would or wouldn't be funded or 'routinely commissioned'.

4. Ultimately, this meant that there was no consistency in standards or clinical access policies across the country and this resulted in regional variation in access to and provision of specialised services – essentially a postcode lottery. There was also no mechanism under these arrangements for the NHS to hold a single commercial negotiation with pharmaceutical companies to support patient access to the latest treatment and technologies.

5. Since NHS England became the accountable commissioner for specialised services in 2013 it has been able to play a key role in raising standards and tackling variation in service provision, as well as supporting equitable, and fast access for patients to an ever-expanding catalogue of cutting-edge technologies. The following core functions, all of which will remain at the heart of specialised commissioning under delegated commissioning arrangements, have been central to our approach:

    - **National Standards / Service Specifications:** over the last 10 years over 200 evidence-based service specifications, which underpin contracts with providers, have been developed spanning the entire portfolio of specialised services. These service specifications aim to ensure that patients receive consistent standards of care across the country and are a key tool in driving service improvement, guiding provider selection and supporting the introduction of new services. Notable examples include service specifications for congenital heart disease services (adults and children); Principal Treatment Centres for paediatric oncology services; perinatal mental health services; intestinal failure services; services for women who have experienced complications of mesh inserted for urinary incontinence and vaginal prolapse; new CAR-T therapy services; and standards which have underpinned the establishment of the NHS Genomic Medicine Service. NHS England will continue to develop and update service specifications across the entire portfolio, including for any services where commissioning responsibility has been delegated to ICBs, and will expect, assure and support implementation. It is important to appreciate the very high levels of stakeholder interest and scrutiny these services specifications appropriately attract. All service specifications will continue to be subject to national stakeholder engagement and, where appropriate, formal public consultation

consistent with our statutory duties to involve the public under Section 13Q of the NHS Act 2006.

- **Clinical Access Policies:** an essential part of commissioning is determining which new treatments and technologies should be routinely commissioned (funded) by the NHS. Although NICE conducts technology appraisals (where positive recommendations carry a statutory requirement on commissioners to fund) for the majority of newly licensed drugs, significant licence extensions and some other procedures and medical devices, it does not look at everything. This has meant NHS England has had to develop and consult upon robust processes for reviewing evidence and considering affordability in order to make decisions on whether other new treatments, technologies or procedures should be 'routinely commissioned' or not. Since 2013, we have published over 281 evidence based clinical commissioning policies of which 195 have been supported for 'routine commissioning', with 86 'not routinely commissioned' following a careful review of the evidence and prioritisation of funding. Examples of 'routinely commissioned' policies include stem cell (blood and marrow) transplantation; inhaled treatments for individuals with cystic fibrosis; and multi-grip prosthetic hands. NHS England will continue to oversee the national clinical policy development process for all prescribed specialised services, including for those services that are jointly commissioned or delegated to ICBs.

- **High Cost Drugs and Devices:** in recent years, our commercial approach has transformed the way in which high cost drugs and devices are managed in the NHS, using single nationally led commercial negotiations and smart procurement strategies to drive access and uptake across a range of new treatments, whilst delivering significant value for taxpayers through greater centralisation and oversight of this spend within the NHS. This has allowed us to make significant progress in transforming outcomes for hundreds of thousands of patients accessing specialised services, including supporting over 7,000 people living with cystic fibrosis to access the latest CFTR modulator therapies; 87,000 people living with HIV to access the latest treatments; and, enabling nearly 100,000 people to gain faster access to more than 100 cancer treatments via the reformed Cancer Drugs Fund. We have also centralised the procurement and management of over £800m of high cost devices used within specialised services, driving real value by using the purchasing power of the whole NHS to make savings. Our commercial and funding approaches for both high cost drugs and devices will remain in place across all specialised services going forward.

- **National Clinical Leadership:** we have an established national clinical leadership infrastructure that supports specialised commissioning through 52 Clinical Reference Groups (CRGs) aligned to six national programmes of care, providing access to expert clinical advice across the full portfolio of specialised services. The CRGs will, in addition to supporting the development of national standards, service specifications and clinical policies, increasingly support ICBs to drive improvement and transformational change in delegated services.

6. Despite these strengths, there have also been some weaknesses of the current system. The current fragmentation of commissioning between NHS England and ICBs (previously CCGs) has created misaligned incentives and bureaucratic barriers to joining up the specialised elements of the pathway of care and the primary, community and secondary elements. These barriers have made it harder for commissioners to invest in upstream interventions and has not maximised the population health focus that local systems are increasingly assuming, leading to missed opportunities for allocative efficiencies in some areas.

7. The proposed changes to the commissioning arrangements for specialised services, described in the *Roadmap for Integrating Specialised Services within Integrated Care Systems*, aim to strike the right balance between national consistency and universal access, whilst at the same time giving local systems greater responsibility for making decisions about their population across whole pathways of care. Supported by a move from provider based to population-based budgets, so that the funding approach for specialised services are aligned with those for other NHS services, ICBs will have a say on the whole pathway of care that their population is accessing, within a framework of nationally set standards and access to technology.

The Board is asked to:

- ***Note how the commissioning of specialised services has evolved since 2013; the strengths of the current approach and how these will be maintained into the future; and, the opportunities that greater ICB leadership of appropriate specialised services can achieve for patients and whole populations.***

8. The Roadmap set out that NHS England would take a measured approach to integrating commissioning of specialised services, carefully considering the appropriateness of each service in the portfolio, and then the readiness of each ICB in taking on more responsibility. The conclusions of these assessments are set out here for the Board to consider.

Assessing service suitability and readiness for delegation

9. An analysis of the entire specialised services portfolio was conducted to determine which services were suitable and ready for greater ICB leadership, using methodology co-developed by regional and national commissioning teams, with input from finance and clinical colleagues. Patient and public voice representatives had the opportunity to input via the Clinical Reference Groups. Following the completion of an initial internal analysis, three categories of services were identified for 23/24: services that were suitable and ready for greater ICB leadership, services that were suitable but not yet ready for greater ICB leadership, and services that should remain nationally commissioned.

10. The initial service list was published as part of the Roadmap in May 2022 and stakeholders were invited to provide feedback. Since September 2022 - in a process underpinned by a service appropriateness panel and a clinical panel - national, regional and clinical leaders have reviewed this feedback and considered where the position of any services needed to be adjusted, or

whether the original decision remained appropriate based on the evidence provided. Some changes were made as a result of this feedback.

11. The final service list (see **Annex A**) has indicated that there are:
    a) ***59 services (£13bn)***[1] that are suitable and ready for ICB leadership in April 2023;
    b) ***29 services (£1.5bn)*** that are suitable but not yet ready for greater ICB leadership (including all services in scope of Mental Health Learning Disability and Autism Provider Collaboratives); and
    c) ***89 services (£1.3bn)*** that will remain nationally commissioned, including all 78 Highly Specialised Services.

12. These figures exclude budgets for high-cost drugs, devices, and other national programmes which will continue to be held centrally.

13. The list has been approved by the Future Commissioning Model Programme Oversight Group and endorsed by a National Moderation Panel (chaired by the Chief Financial Officer) and NHS England Executive group.

The Board is asked to:

- ***Endorse the list of services that are appropriate for greater ICB leadership from April 23, those that are likely to be appropriate at a future point in time, and those services where commissioning responsibility will be retained by NHS England.***

Assessing system readiness for delegation

14. To support assurance of ICB readiness for taking on greater responsibility for in-scope specialised services[1], a pre-delegation assessment framework was developed (building on the primary care pharmaceutical, general ophthalmic and dental commissioning functions framework) which set out the criteria that ICBs should meet prior to assuming responsibility for the functions.

15. ICBs, with the support of their regional team, undertook a self-assessment against the pre-delegation assessment framework for specialised commissioning which was then assessed regionally before being shared with a National Moderation Panel.

16. As a result of several factors – including ICBs being new organisations and still establishing themselves in their own right; capacity and capability to take on new commissioning responsibilities; and other system-wide challenges and resulting prioritisation of resource – the regionally-led assessment indicated that 40 ICBs across the country are planning to establish formal joint working arrangements with NHS England from April 2023. Two ICBs in South London identified that they were ready to take on more responsibility for specialised services.

17. Given the majority of ICBs are ready for joint commissioning rather than full

[1] The financial values used in this section are taken from the 2022/23 baseline.

1 'In-scope' specialised services refers to those services determined by the Service Portfolio Analysis to be suitable and ready for greater ICB leadership from April 2023.

delegation, a ‘stepping together’ approach has been proposed - whereby all ICBs across the country will establish formal joint working arrangements with NHS England via nine statutory joint committees in 2023/24, with a view to moving to delegated commissioning arrangements from 24/25, subject to a further assessment of system readiness ahead of April 24.

18. The Panel tested the robustness of each submission, and considered any issues or risks, before agreeing to recommend that the proposals could go forward to the NHS England Executive Group and then the Board for final approval. Further detail on the assessment of system readiness and a map of the nine proposed joint committee footprints can be found at **Annex B.**

The Board is asked to:

- ***Accept the recommendations of the National Moderation Panel to delegate commissioning responsibility for 59 services to nine statutory joint committees formed between NHS England and ICBs from April 23.***

Joint working model for 23/24

19. A Joint Working Agreement has been developed to legally underpin the joint working model in 2023/24 for statutory joint committees between multi-ICBs and NHS England for the 59 services that are appropriate for more integrated commissioning. These arrangements will be implemented using NHS England’s powers under section 65Z5 of the NHS Act 2006. This model will support the transition to fully delegated commissioning arrangements for appropriate services in future.

20. The joint working model will be implemented to ‘go live’ from April 2023 and will:

    a) Introduce joint decision-making between NHS England and ICBs for specialised services that are suitable and ready for greater ICB involvement;
    b) Require the establishment of a joint committee of NHS England and ICBs to facilitate collaboration and decision-making in relation to the services;
    c) Confirm that, to support a managed transition towards full delegation, for 2023/24 finances, liability and contracting will remain with NHS England, albeit overseen by the joint committee;
    d) Confirm that commissioning teams will remain within NHS England in 2023/24 to support the transitional arrangements;
    e) Provide decision-making safeguards for NHS England, recognising that this is a transitional year and liability remains with NHS England;
    f) Allow the committees to be consulted on specialised services that are being retained by NHS England, although they will not have any decision-making powers relating to these services.

21. In accordance with the NHS England Scheme of Delegation, the decisions to introduce arrangements under section 65Z5 and 65Z6 of the NHS Act 2006 are matters reserved to the NHS England Board. To ensure the agreements are in place for 1 April 2023, it is recommended that the Board authorises Regional Directors to sign the Joint Working Agreements with ICBs. The Joint Working

Agreement has been approved by the Future Commissioning Model Programme and the Executive Group. It can be made available to Board members upon request.

The Board is asked to:

- ***Approve the joint working model for the commissioning of specialised services in 23/24 and authorise Regional Directors to sign the Joint Working Agreements on behalf of NHS England to enable new commissioning arrangements to 'go live' from April 2023.***

Moving to population-based budgets

22. Changing the way specialised services are funded will bring benefits. The current financial model allocates funding according to where a service is provided, rather than on the basis of population health need. Since 2013, NHS England has allocated funding for specialised services at a regional level on the basis of the services that are provided in that area. NHS England then contracts with providers on an activity basis for specialised services, agreed through a single annual contract at a regional level between NHS England and each provider. While creating minimal transactional burden, it has meant that resources are not always allocated according to the needs of the population in a particular area.

23. In order to support the move to delegated commissioning arrangements for specialised services, allocations will be changing from a host provider basis in 2022/23 to a population basis from 2023/24. The allocations will still be set at a regional level in 2023/24, prior to moving to an ICB level from 2024/25 to support full delegation.

24. The methodology being used to set population-based budgets in 2023/24 is historic actual usage of services uplifted with inflation and growth. Over time, from 2024/25, allocations will gradually move to a needs-weighted population methodology which should help to address health inequalities.

25. The convergence policy setting out how allocations will move from an historic actual to a needs weighted basis is being developed based on principles and data analysis set out during 2022/23. There are some exclusions from the move in allocations from a host basis, in particular services not suitable for delegation (which will remain hosted at a regional level) and high cost drugs (which will remain nationally-commissioned).

26. Through population-based allocations and ICBs being party to contracts that serve their populations, local commissioners will have much greater line of sight and influence over the services that their patients may be receiving out of area, making it easier to join up their local services with those specialist elements of pathways. Specialist providers will have the opportunity to work with their host and other ICBs to develop services that meet the needs of those populations, working through networks where relevant.

27. It is important that the integration of commissioning enables Joint Committees in 2023/24 and ICBs from 2024/25 to make changes to how services are commissioned to improve patient care. It is also important that commissioning

changes are appropriately governed and managed to guard against destabilising providers or services becoming fragmented and/or clinically unviable. There are a number of safeguards that will be put in place to support this:

- Commissioning change management business rules have been agreed that set out an agreed approach to identifying the impact of change in service and finance terms on providers and across commissioners, the timing, risk identification and management, stakeholder involvement and governance rules to be followed, sitting within the existing NHS England guidance on Business Cases and the wider Standing Financial Instructions.

- ICB statutory duties (e.g. for engaging patients and the public on service change proposals) and existing guidance for managing commissioning change, as well as other guidance supporting the delegation of the commissioning of specialised services (including NHS England's statutory duties to engage patients and the public), will continue to apply. National service standards will continue to be nationally-led by NHS England. The clinically-led case for change will continue to need to be made before the specialised commissioning change management business rules apply.

The Board is asked to:

- ***Note the move to population-based budgets to support delegated commissioning arrangements which should help to address health inequalities and improve access to services for patients.***

Next steps

28. Subject to the Board's approval, we will be working closely with ICBs across the country to support the establishment of the nine statutory joint committees so that they are ready to take on formal joint commissioning responsibility for the 59 services from 1 April 2023.

29. We will be working closely with the two ICBs in South London who expressed an interest to take on more responsibility for appropriate services to test key elements of delegation in a safe and managed way within a joint working arrangement as part of a 'pathfinder'. The learning from this pathfinder will support the development of the delegation model and key products to support implementation across the country from April 2024.

30. We will be maintaining commissioning expertise, whilst increasingly facing towards ICBs, to maintain a protected concentration of specialised commissioning capacity and capability to support the transition arrangements and delegation. Further work will be undertaken to ensure the most appropriate workforce model is in place to support delegated commissioning arrangements from 2024/25 as part of the Creating the new NHS England programme.

31. We intend to come back to the Board next year following a further assessment of system readiness to consider delegated commissioning arrangements from April 2024.