

# Joint committees and committees in common in CCGs: How to keep within the law

Since their inception, it was always intended that CCGs would be slim organisations that focussed on the clinical aspects of commissioning.

The NHS is now facing its toughest financial challenge ever and boards and committees are expensive overheads from which it's essential to secure the very best value. It is not a surprise therefore that a number of CCGs have sought ways in which to share the cost of some of these overheads, including operating joint arrangements with neighbouring organisations to further collective decision making, release the burden on GPs and improve efficiency.

There is a risk however, that CCGs inadvertently take things a step too far, such that their arrangements are open to legal challenge. With our partners at Hill Dickinson and thiNKnow, we have prepared some advice for CCGs to help you implement joint arrangements in a sound way. This paper can serve as general governance advice however CCGs are advised to confirm proposed new arrangements with their Company Secretary and legal or audit advisors.

## What does the law require?

The NHS Act 2006<sup>1</sup> as amended by the Health and Social Care Act 2012<sup>2</sup> requires that each CCG has its own governing body and that the governing body of a CCG must have an audit committee and a remuneration committee. The law does not permit CCGs to have joint arrangements where a single governing body, audit committee or remuneration committee acts for more than one CCG. FAQs published by NHS England in 2012 confirmed that joint audit or remuneration committees are not permitted.

It is necessary for the membership of audit committees and remuneration committees to be drawn from the relevant CCGs' governing body. The National Health Service (Clinical Commissioning Groups) Regulations 2012<sup>3</sup> stipulates separately who may and may not be a member of the governing body, remuneration committee and audit committee and this must be complied with.

## But didn't the legislative reform order (LRO) in 2014 allow for joint committees?

In 2014 the government passed a legislative reform order<sup>4</sup> that enabled CCGs to establish joint committees to undertake their commissioning functions. This permission is not extended to the functions of the governing body, audit committee or remuneration committee in CCGs.

## So is there a way in which we can operate in a more streamlined way?

As membership organisations, CCG governing bodies are accountable to their member practices. People will be most familiar with the default structure for CCGs in which each organisation has its own committees. This structure is likely to give members the greatest assurance that the interests of their local population are at the centre of decision making.

For audit and remuneration committees it is therefore likely that CCGs will conclude that they should have separate arrangements for their own CCG but some may want to consider the committees in common approach described below. This is only likely to be suitable were the CCGs are working extremely closely such that the agendas would be aligned.

CCGs have designed their governance arrangements in a variety of ways and many have established additional committees for finance or quality. In these cases, it's perfectly possible to develop committees in common.

## Options

### Joint committee

Joint committees of CCGs are permitted under the terms of the LRO but only for the purposes of CCGs exercising their commissioning functions. In a joint committee, each CCG would nominate its representative member(s) and the committee

would have delegated authority to make binding decisions on behalf of each of the CCGs. It requires CCGs to amend their constitutions and review their governance arrangements to ensure clarity, consistency and accountability.

### Joint working group

Two or more CCGs could create a joint working group. This group would not have the authority to make decisions directly and so would refer to each of the CCGs represented for ratification of all decisions. The working group would be established in a similar way to the joint committee with each CCG nominating its member(s). The main advantage of a joint working group is as a forum for the exchange of ideas and opportunities for collaboration.

### Delegation to an individual

Paragraph 3(3) of Schedule 1A of the NHS Act 2006 permits a CCG to delegate responsibilities to any member or employee. Therefore, a CCG could delegate to a designated qualifying person the function of approving or agreeing decisions on its behalf. This could include approving or agreeing the decisions or recommendations of a joint working group (as in the example above).

### Committees in common

CCGs are permitted to delegate to a committee or sub-committee of the CCG. If this committee meets at the same time, in the same location as other committees (from other CCGs) it is referred to as committees in common. It is the place and time that meetings are held that is in common rather than the committees themselves. In order for committee meetings in common to operate consistently with the legal framework, several requirements must be met:

- Each committee must have its own agenda, although they may be identical
- Each committee must take its own decisions and these must be recorded in its own minutes
- Note that there is more than one committee. The committees should be referred to as "committees in common" or "committees meeting in common" and not "a committee in common"

1) <http://www.legislation.gov.uk/ukpga/2006/41/contents>

2) <http://www.legislation.gov.uk/ukpga/2012/7/contents/enacted>

3) <http://www.legislation.gov.uk/uksi/2012/1631/contents/made>

4) [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/292808/Legislative\\_Reform\\_\\_Clinical\\_Commissioning\\_Groups\\_\\_Order\\_2014-revised\\_dr...pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/292808/Legislative_Reform__Clinical_Commissioning_Groups__Order_2014-revised_dr...pdf)

- It must be technically possible for each committee in the arrangement to reach a different decision although this will be unlikely
- There must be clear terms of reference for each committee and clear reporting lines back to each CCG
- For audit and remuneration committees the members of each committee must be members of the respective CCG governing body. Where there is a single chair presiding over the business of all the committees meeting in common, he or she must be a member of the governing body of each CCG represented. For audit committees CCGs will also need to consider any impact on the relationship with their auditors

For committees in common to run smoothly, each committee needs to have the same agenda. Only one discussion takes place about each agenda item and then each committee makes its own decision.

Regardless of any arrangements permitting decisions to be made following discussion by committees in common, each CCG retains individual accountability for any decisions taken on behalf of their local populations.

Where the matters under consideration relate to significant service transformations, it is good practice that membership of the 'committees in common' comprises those in senior leadership positions such as CCG chairs or accountable officers, or a nominated clinical leader from each CCG.

## Process for making changes

CCGs may make their own decisions about how they govern themselves so long as they remain within the requirements of the legal framework. However, CCGs will wish to work with NHS England and ensure that changes to their constitutions resulting from any revised collaborative working arrangements have clear terms of reference and are acceptable to NHS England.

## Our committees don't comply with your advice. What should we do?

We are very happy to help you look at revisions to your committees to ensure that you not only comply with the law but are also working to the recognised best standards of governance.

### Please contact:

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### Where could we get further advice?

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	CCG SPECIFIC	JOINT COMMITTEE	JOINT WORKING GROUP	INDIVIDUAL DELEGATION	COMMITTEES IN COMMON
Circumstances for use	Governing body, audit committee and remuneration committee	For commissioning decisions across a wider footprint	Joint discussion forum where there is potential for variation in views	Joint decisions about which there is little variation in views	CCG audit committees and remuneration committees where there is very close alignment of CCG business  CCG non statutory committees such as finance and quality committees
Advantages	CCGs retain control	True joint working No risk of one organisation acting alone	Allows all parties to hear all view points and take account of the bigger picture  CCGs retain control	Allows for quick decisions without each CCG needing to ratify  CCGs retain control	Reduces administrative burden  Efficient  CCGs retain control  Supports collaboration
Disadvantages	Potentially missed opportunities for efficiency and collaboration	One party may be bound by a decision they disagree with	CCGs may make different decisions	Exposes an individual to criticism for making "wrong" or "unpopular" decisions	Only suitable where there is close alignment  Often perceived as cumbersome  May become very complex if CCGs wish to make different decisions
Considerations		Should be underpinned by a collaboration agreement that includes vision, values, process and dispute arrangements	Should be underpinned by a collaboration agreement that includes vision, values, process and dispute arrangements		A single chair and agenda are essential.  It is the place, time and administration of the meetings that is in common, not the membership.

