8b.

JOINT GREATER MANCHESTER COMBINED AUTHORITY
& AGMA EXECUTIVE BOARD MEETING

Date: 18th December 2015

Subject: Updated Governance Proposals

Report of: Councillor Peter Smith, Portfolio Lead for Health & Social Care and Liz Treacy, Monitoring Officer

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PURPOSE OF REPORT:

This paper builds upon the governance principles that were agreed by Greater Manchester in September 2015 and sets out proposals and recommendations from the governance focus session held with representatives of all stakeholders on 17th November. In particular it sets out a role for primary care providers in the governance structure, it confirms the process for agreement of the Strategic Plan and it sets out progress on GM wide joint commissioning arrangements.

The paper was taken to the Strategic Partnership Board on Friday 27th November, where its contents and recommendations were agreed.

RECOMMENDATIONS:

1. Members are asked to agree the GMCA and AGMA representation on the Strategic Partnership Board Executive. AGMA have four seats, these are currently occupied by members from Cllr Peter Smith (Wigan), Cllr Cliff Morris (Bolton), and Cllr Sue Murphy (Manchester). Members are asked to appoint one further representative.

2. The AGMA Executive Board is also requested to endorse the recommendations agreed by the Strategic Partnership Board on 27th November. As follows:

   i. To agree that primary care providers will receive four seats on the Strategic Partnership Board, and have one seat at the Strategic Partnership Board Executive.

ii. To agree that voting arrangements for the Strategic Partnership Board and Strategic Partnership Board Executive are revised to reflect those set out in the report.

iii. To agree that the Terms of Reference for the Strategic Partnership Board and Strategic Partnership Board Executive are amended to reflect (1) and (2).

iv. To agree that the Governance Sub Group work with Primary Care partners to develop their governance arrangements.

v. To agree the Strategic Plan approval process.

vi. To agree the role of the Strategic Partnership Board in respect of the Transformation Fund, and to instruct the Strategic Partnership Board to develop the criteria by which such funding will be accessed.

vii. To agree the role of the Strategic Partnership Board in shadow form.

viii. To agree the principles of the conflict resolution process for the Strategic Partnership Board, and instruct the Governance Sub Group and Strategic Partnership Board Executive to further develop.

ix. To agree the functions and form of the GM Joint Commissioning Board.

x. To instruct the Governance Sub Group to develop terms of reference for the Joint Commissioning Board.

xi. To agree that a GM Commissioning Strategy is developed aligned with the Strategic Plan.

xii. To instruct the Governance Sub Group to develop the criteria by which NHSE could exercise its ability to request that decisions are not considered at the Joint Commissioning Board.

xiii. To agree that the Joint Commissioning Board be supported by smaller Executive Group.

xiv. To agree that the GMJCB establish a research and innovation board to inform its decisions.

xv. To agree that existing scrutiny arrangements are reviewed, and request that a report be brought to a future meeting.

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1. INTRODUCTION

1.1 Across Greater Manchester, we are working together to reform health and social care services. To support Greater Manchester achieve its ambition of improving heath outcomes for its residents as quickly as is possible, robust and inclusive governance structures need to be developed and put in place.

1.2 This paper builds upon the governance principles that were agreed by Greater Manchester in September 2015 and sets out proposals and recommendations from the governance focus session held with representatives of all stakeholders on 17th November. In particular it sets out a role for primary care providers in the governance structure, it confirms the process for agreement of the Strategic Plan and it sets out progress on GM wide joint commissioning arrangements.

1.3 The principles that were agreed in September 2015 were set within the context of the MoU signed in February. This update is provided within the context of those principles:

- GM NHS will remain within the NHS and subject to the NHS Constitution and Mandate;
- Clinical Commissioning Groups and local authorities will retain their statutory functions and their existing accountabilities for current funding flows;
- Clear agreements will be in place between CCGs and local authorities to underpin the governance arrangements;
- GM commissioners, providers, patients and public will shape the future of GM health and social care together;
- All decisions about GM health and social care to be taken with GM as soon as possible;
- Accountability for resources currently directly held by NHS England during 2015/16 will be as now, but with joint decision making with NHSE in relevant areas to reflect the principle of "all decisions about GM will be taken with GM.

2. FUNCTIONS OF STRATEGIC PARTNERSHIP BOARD (SPB)

2.1 GM has agreed that the SPB will be responsible for setting the overarching strategic vision for the Greater Manchester Health and Social Care economy.

2.2 As it is not a legal body, its decisions are not binding decisions of its members, but it will make recommendations for its members to formally adopt following their own governance procedures.

2.3 Its primary responsibilities were set out in the report of 25th September and include:

- To set the framework within which the Strategic Partnership Executive will operate.
- To agree the GM Health and Social Care Strategic priorities in accordance with the NHS five year forward view.
- To endorse the content of the GM Strategic Plan for financial and clinical sustainability.
- To agree the criteria that determine access to the Transformation fund.
- To ensure that there remains ongoing and significant organisational commitment across the GM health economy to both the devolution agenda and a devolved health system.
- To agree an assurance framework, developed jointly with regulators where required, that reflects the outcomes required by Greater Manchester.
- To provide leadership across the GM health economy to ensure that the key strategic priorities for a GM health system are achieved.

3. SPB MEMBERSHIP AND VOTING

3.1 As previously agreed the membership of the will include:

- Independent Chair
- GMCA (The Chair of the GMCA)
- 10 AGMA authorities (Leaders or Lead Members)
- 12 Clinical Commissioning Groups (Chairs or Chief Officers)
- 15 providers - all acute NHS Trusts and Foundation Trusts, mental health and community providers and NWAS (Chairs or Chief Officers)
- NHS England (as they determine).

3.2 Monitor/TDA (NHS Improvement), CQC, Public Health England, Health Education England, Greater Manchester Fire and Rescue Service (Chair), and Greater Manchester Police and Crime Commissioner will also be invited to attend as non voting members of the Board.

3.3 In shadow form, the voluntary and community sector will be represented by GMCVO. This is an interim solution which recognises further work will be undertaken to ensure that Greater Manchester is able to appropriately engage the VCS within the new governance structures; across both the Strategic Partnership Board and as part of the Provider Forum.

3.4 In shadow form patient voice representation in the governance structures will be through an agreed Greater Manchester Healthwatch representative. Further work is being developed to ensure that the patient voice is appropriately represented within the new governance structures, and as part of the public's engagement on the Strategic Plan

3.5 There is a report elsewhere on this agenda recommending that primary care providers have four representatives on the SPB, one for each of the principal disciplines: General Dental Practice; General Medical Practice; Optometry; and, Pharmacy. This is reliant on primary care providers developing governance structures that will support representation in this way.

3.6 It is proposed that a Greater Manchester Health and Social Care Workforce Engagement Forum is developed as a joint Greater Manchester wide forum for employers and trade unions to discuss at City Region level matters arising from the planning and implementation of devolution in health and social care across Greater Manchester.

3.7 Over the coming weeks discussions with Trade Union Representatives and Employers will take place to identify the role and remit of such a Greater Manchester Health and Social Care Workforce Engagement Forum. The forum would seek to ensure that the principles of meaningful partnership working operate effectively throughout Greater Manchester and will promote good practice in all areas of staff engagement, development and management.

3.8 The SPB will be supported by an SPB Executive. The SPB Executive will have membership that is representative of the key stakeholder groups, and will work within a framework that is set by the SPB. The form and function of the SPB Executive was agreed by the SPB in September 2015 and consists of 4 representatives of CCGs, Providers, and local authorities. It is proposed that primary care have one place on the Executive.

3.9 The SPB and the SPB Executive will have the same independent Chair. The process for recruiting the Chair will begin in January 2015. As interim measure the SPB and SPB Executive will be chaired by the AGMA/GMCA Portfolio Leader with responsibility for Health and Social Care. The Chair of Association of Greater Manchester CCGs will deputise.

VOTING ARRANGEMENTS

3.10 It was previously agreed that the voting arrangements for the SPB would be the with the four principal stakeholder groups: CCGs; Providers; NHSE; and, AGMA/GMCA. For any vote to carry, it was agreed that 75% of the four membership groups eligible to vote must vote in favour of the proposal, with each of the four membership groups holding one vote apiece, and the person with that vote being accountable to their constituent stakeholder group.

3.11 However, due to primary care accounting for approximately 90% of contact across the health and social care system; and having agreed, in principle, to put in place accountable governance arrangements, the voting arrangements will be revised. As such it is proposed that primary care will receive one vote, and therefore become the fifth stakeholder group with voting rights.

3.12 The amendment in voting rights is reliant on primary care partners developing the necessary governance structures to support representational aggregated voting.

3.13 As a result of the amendment to voting rights, it is proposed that for any vote to carry at the partnership Board 80% of those eligible to vote, must vote in favour of a proposal.

3.14 As a result of the amendments to the membership and voting arrangements for the SPB, the voting arrangements for the SPB Executive will also be revised to replicate those set out above. Primary Care will continue to have one place on the Executive. These amendments are conditional on Primary Care developing governance arrangements to support representation in this way.

3.15 Meetings of the SPB will be quorate if each of the vote holding stakeholder groups are represented. Attendees with voting rights will be expected to attend with the authority to vote on behalf of the stakeholder grouping the represent.

4. APPROVAL OF GREATER MANCHESTER STRATEGIC PLAN

4.1 The GM Strategic Plan will be recommended to the Board by the Executive in December.

4.2 The role of the SPB is not to agree the plan, but to provide endorsement at a Greater Manchester level, and recommend that it be taken for approval by CCG governing bodies, Council cabinets, and NHS Trust Boards.

5. DECISION MAKING CAPABILITY – TRANSFORMATION FUND

5.1 It is likely that any transformation funding received by Greater Manchester will be channelled from Treasury to NHSE and, it is anticipated, delegated to the commissioners to allocate in line with recommendations from the SPB Executive which will ensure that GM is able to direct and agree its usage.

5.2 The SPB will determine the criteria for access to the fund, and will receive assurance from both the Chief Officer and SPB Executive on the

application of transformation funding, and delivery of expected outcomes from investments made.

5.3 The SPB Executive will review proposals received against the criteria agreed by the SPB, and will recommend the distribution of transformation fund to commissioners.

5.4 The SPB Executive will receive assurance on the outcomes relating to the activities commissioned by commissioners from the transformation fund.

6. ROLE OF THE SPB IN SHADOW FORM AND NEXT STEPS

6.1 In shadow form, the SPB has the following functions:

- To endorse the Strategic Plan, and recommend it for approval by the 37 organisations in Greater Manchester.
- To endorse the ten locality plans as part of the Strategic Plan
- To agree the criteria that determines access to the transformation fund and request that these be developed by the SPB Executive.
- To agree the criteria for judging whether organisational reform or reconfiguration needs Greater Manchester sign off
- To endorse the Greater Manchester joint commissioning strategy, which will be constructed in line with the Strategic Plan.

6.3 The SPB will also hold a system management function. That is, it will be responsible for ensuring that the Strategic Plan is delivered, and that the component parts of the Greater Manchester health and social care economy i.e. the ten localities; and 38 organisations (including NHS England), continue to work within the parameters set by the Plan, and continue to work toward the aims objectives of the Plan.

6.4 The SPB will have clear regard for Vanguard applications both on a Greater Manchester basis, but also at a locality level. The SPB will also provide assurance of the Greater Manchester health and social care system, ensuring that the Plan is delivered. Work is required to further develop the assurance framework for Greater Manchester.

6.5 It is proposed that the SPB will be informed of any applications by organisations and localities in Greater Manchester for additional funding outwith that already in Greater Manchester. It is proposed that such applications will meet the requirements of the Strategic Plan. Any GM wide applications for additional funding will be agreed by the Board.

7. CONFLICT RESOLUTION

7.1 In the event of dispute at Board or Executive level; or in the event that one or more organisations do not approve the plan, a dispute resolution process will be implemented. The focus of this process will be three fold:

to understand why dispute has occurred; to determine/understand the potential implications of the dispute; and to resolve where possible.

7.2 A key principle of the dispute resolution procedure is that disputes will be resolved at the most appropriate place level, i.e. for organisation with a singular district footprint the issue will be resolved at a locality level following consideration by the Chairs and Leaders of all of the stakeholders in the locality.

7.3 Where disputes cannot be resolved at place level, a group comprised of an agreed number of Chairs and Leaders from each stakeholder group outside of the locality representing each of the stakeholder groups will be formed to arbitrate and make recommendations to the parties in dispute. It is intended that the recommendations made by the dispute resolution group are binding on those parties in dispute, however work is ongoing with regulators to confirm the detail of how this could be made to operate.

7.4 A detailed procedure will be drafted through the Governance Sub Group and SPB Executive based on these principles and referred back to the Board for endorsement.

8. JOINT COMMISSIONING BOARD

8.1 The GM Joint Commissioning Board will be a Joint Committee where each participant makes joint decisions which are binding on each other.

8.2 As Specialised Services Commissioning cannot be dealt with by way of s75 arrangements without a change in the s75 regulations, any joint commissioning of specialised services will need to be undertaken through a joint committee made up of NHSE, CCGs, GMCA, and local authorities.

8.4 The GMJCB will have significant commissioning decision making responsibility as the largest single commissioning vehicle in GM.

8.5 In order to comply with regulatory requirements the GMJCB will function independently of providers.

8.6 The key functions of the GMJCB are as follows:

- To develop a commissioning strategy based upon the agreed Strategic Plan.

- Be responsible for the commissioning of health and social care services on GM footprint
- Have strategic responsibility for commissioning across GM
- Be responsible for the delivery of the pan GM strategy via its commissioning decisions (local commissioning will remain a local responsibility).

- To operate within existing commissioning guidelines following key principles of co-design, transparency, and broad engagement.

8.7 The GMJCB will only take GM wide commissioning decisions; any decision that currently sits with the commissioning responsibilities of LAs and CCGS will stay with these organisations (or at a locality level where new commissioning arrangements are being developed)

8.8 Whilst the core principle of the GMJCB will be that that those commissioning decisions which are currently made in localities will remain in localities, there will be a mechanisms developed to ensure that remit of the GMJCB can be broadened should localities agree that it is in their best interests to do so.

8.9 It is accepted that there are certain specialised services that would be impractical to commission on a Greater Manchester footprint. However, NHSE will work collaboratively with the GMJCB to ensure that these services are not commissioned in isolation of Greater Manchester.

8.10 The GMJCB will be required to produce a clear Commissioning Strategy that is aligned with aims and objectives of the Strategic Plan. The Commissioning Strategy will be reviewed periodically, or at times when the priorities for the Greater Manchester health and social care economy change; thus necessitating a shift in commissioning priorities. Any changes to the Commissioning Strategy would require agreement by the GMJCB in line with voting arrangements set out below (see 9.5).

9. JOINT COMMISSIONING BOARD: MEMBERSHIP AND VOTING

9.1 The membership of the GMJCB will be comprised of the 23 commissioning organisations in Greater Manchester, and the Greater Manchester Combined Authority:

- CA x 1
- NHSE x 1
- The CCGs x 12
- The LAs x 10

Total 24 representatives

9.2 It is anticipated that CCGs will be represented on the GMJCB by their accountable officer, NHSE will be represented by the GM H&SC Chief Officer, the Greater Manchester Combined Authority will be represented by the lead Chief Executive for Health and Wellbeing and local authorities will be represented by their Chief Executive.

9.3 However, organisations may nominate whomever they see fit to represent them. The representative must however attend with a delegated authority

and have an ability to participate fully in the decision making process. The seniority of the membership of the GMJCB should reflect both the size of the budget and the significance of the decisions taken.

9.4 The GMJCB will be supported by specialised officer groups such as the Cancer Board, Specialised Service Commissioning Oversight Group, and in recognition of the need for innovation a health research and innovation group will be formed to support the commissioning process.

9.5 The GMJCB will be jointly chaired by local authorities and CCGs. The GMCA, NHSE, CCGs and LAs will each have one vote (i.e. four votes in total). Decisions will require a 75% majority of the participant organisations.

9.6 NHSE will be represented on the GMJCB by the GM H&SC Chief Officer, however there may be circumstances where NHSE has no present interest in a particular matter e.g. where the matter relates to a function that NHSE has delegated to GMCA and/or CCGs. In such circumstances the Chief Office, who would cast the vote on behalf of NHSE, will pass the NHSE vote to CCGs or align their vote to that of CCGs. This will ensure parity across GM commissioning agencies

9.7 Due to the fact that NHSE commissions many services on a national basis, notably some very specialised services, there will be a proportionate ability for NHSE to notify the GMJCB where an item due for consideration could have significant ramifications for NHSE, eg proposed spending beyond existing budget(s); or potential and significant adverse implications for communities beyond GM.

9.8 The exact circumstances, in which these arrangements apply, have yet to be determined and further is required to develop such criteria. This will be taken forward by the Governance Sub Group. In these instances, any decision will need to be taken with the consent of NHSE.

9.9 NHSE also reserve a right of veto over certain commissioning decisions relating to specialised services. However this right of veto is not absolute, for it to be exercised it would need to satisfy clear and agreed criteria e.g. where the commissioning of services would give rise to a significant financial risk for NHSE. The exact circumstances, in which this would apply, have yet to be determined and further is required to develop such criteria.

10. CRITERIA FOR COMMISSIONING AT A GREATER MANCHESTER LEVEL

10.1 Greater Manchester will need to consider whether it is beneficial for certain services to be commissioned on a Greater Manchester footprint

and therefore by the GMJCB. Work is now underway to identify which services can be more effectively and efficiently commissioned on Greater Manchester footprint and therefore delegated to Greater Manchester. It will be for the GMJCB and local stakeholders to formally approve and agree what services these are.

10.2 It is also proposed that the GMJCB consider the commissioning of primary care at a Greater Manchester level; with the exception of general practice which will be commissioned by CCGs. However, the GMJCB will have a significant role to play in developing and implementing a Greater Manchester wide framework within which general practice is commissioned.

10.3 Greater Manchester has already agreed that those services currently commissioned at a local level, will continue to be done so (albeit under potentially significantly differing commissioning arrangements). However, GM will need to develop a clear mechanism to ensure that it is able to commission at both a cluster and GM level.

10.4 The criteria by which existing activity would be commissioned at Greater Manchester level will focus upon whether decisions taken on a broader footprint achieved a greater benefit for the population, e.g. increased value for money; greater levels of efficiency; or increased clinical sustainability.

10.4 The criteria will be designed by commissioners (the GMJCB), and kept under constant review to ensure that commissioning in Greater Manchester can be as efficient and effective as is possible.

10.5 It is acknowledged and recognised that commissioning organisations cannot be compelled to delegate a commissioning function up to the GMJCB against it wishes, as such each organisation currently responsible for commissioning a service/function will have to approve the proposal that is being identified to potentially fall within the scope of the GMJCB.

10.6 It is proposed that any health and social care commissioning activity currently undertaken on a GM footprint, whether it be by AGMA/GMCA, GM CCGs, or NHSE (subject to the general exclusion set out above) will now be commissioned by the GMJCB.

10.7 The GMJCB will need to agree a clear decision making process to ensure that it is able to take decisions about shifting commissioning activity into the GMJCB from localities.

10.8 Where agreement cannot be reached a dispute resolution process would be enacted, following the principles of that set out in section 7. Where the dispute related to the potential commissioning of services on a GM

footprint, the GMJCB will reserve the right to proceed and commission on a smaller footprint should it be beneficial (and agreed) to do so. However, the GMJCB can also draw upon the dispute resolution process which will broadly replicate that set out for the SPB (see section 7).

10.9 The dispute resolution procedure will be clearly set out in the written agreement that will be required to support the proposed joint commissioning arrangements; this will either be in the form of a s.75 agreement or follow the structure of such an agreement.

11. JOINT COMISSIONING BOARD SPECIALISED SERVICE COMMISSIONING

11.1 The key principle by which specialised services will be commissioned is that GM commissioners, providers, patients and the public will shape the future of health and social care provision in Greater Manchester. This is subject to Greater Manchester, via the GMJCB, formally agreeing to accept responsibility for commissioning those Specialised Services that are best served commissioned by Greater Manchester.

11.2 If it is agreed to commission specialised services the commissioning will be in line with the content and direction of the Strategic Plan. The GMJCB will produce a GM commissioning strategy to complement and deliver the Strategic Plan; this plan will require the endorsement of the SPB.

11.3 As part of the GMJCB commissioning process, the GMJCB will be required to clearly define the process that will be followed to commission a service. This process will need the support and approval of the SPB (including NHS Trusts).The process will be required to give due consideration and ultimately make provision for the co-design of services; the actual commissioning of service will remain the sole domain of the GMJCB which will operate fully independently of providers.

11.4 It is recognised that there is no mechanism that Greater Manchester can develop that will eliminate the risk of decisions being challenged, or subjected to a judicial review. However, the governance that is being developed by Greater Manchester and the process that is being outlined to commission services should reduce significantly the risk of decisions being challenged from within Greater Manchester. Where a commissioning process has been agreed by the Strategic Partnerhsip Board and subsequently followed, the GMJCB would not expect the outcome to be challenged by an organisation with Greater Manchester. As the regulatory bodies are SPB members it is anticipated that the outcome of commissioning decisions would be supported by regulators.

11.5 Greater Manchester has already committed to reviewing the existing scrutiny arrangements for health and social care. Scrutiny is recognised

as playing a vital role in supporting both service delivery and transformation. It is therefore proposed that prior to a decision taken being referred to an Independent Review Panel, that Greater Manchester reviews a decision at the SPB. However, this does not remove or replace the right of scrutiny committee to refer decision taken.

12. JOINT COMISSIONING BOARD – SERVICE RECONFIGURATION

12.1 The premise of the Memorandum of Understanding signed in February 2015 was two fold: that decisions about Greater Manchester will be taken with Greater Manchester; and that decisions on health and social care spend would be taken to benefit the residents of Greater Manchester not necessarily be taken based on the institution that serve them.

12.2 The GMJCB have a key role to play in commissioning services across Greater Manchester, as part of the transformation required this may result in significant organisational change.

12.3 The GMJCB will be required to consult with the public about proposals that could result in service reconfiguration, and work collaboratively with the regulatory bodies.

12.4 Any such activity will need to be delivered within the context of the Strategic Plan. Where a proposed change at a Greater Manchester level could potentially adversely impact the sustainability of a service or organisation; and or, have a material impact at a locality level or on the deliverability of a locality plan, the proposal will be referred to the SPB.

13. JOINT COMMISSIONING BOARD – OTHER SERVICES

13.1 There are a number of services that are currently commissioned at a locality level that may be best commissioned within a Greater Manchester framework of quality and standards. These include General Practice, a significant amount of social care services, and certain Public Health services. The GMJCB will consider the commissioning of such services within its Commissioning Plan.

14. JOINT COMMISSIONING BOARD SUPPORTING STRUCTURE

14.1 The GMJCB will be supported by a smaller executive, which will operate within a framework developed and agreed by the GMJCB.

14.2 The smaller executive will have responsibly for taking forward the next steps set out within this report (see section 15), and will be responsible for receiving clear updates from the commissioning advisory groups (see 8.4), making recommendations to the broader GMJCB as required.

14.3 The membership of the smaller executive will be drawn from the commissioning organisation across Greater Manchester, and be supported by members of the Greater Manchester Health and Social Care Team.

15. JOINT COMMISSIONING BOARD IN SHADOW FORM AND NEXT STEPS

15.1 The GMJCB will meet in shadow form and carry out the following functions:

- To agree the scope of its remit from April 2016, including agreeing line by line which Specialised Services will be commissioned by Greater Manchester.
- To have oversight and be cognisant of those services that will be commissioned on a Greater Manchester footprint from April 2016-17.
- In recognition that commissioning cycle may already be in train, the Joint Commissioning Board will therefore be required to be appraised of those take decisions that need to be taken, and make recommendations to the decision makers.
- To develop the Greater Manchester Commissioning Strategy.

16. RECOMMENDATIONS

16.1 See front cover of the report.