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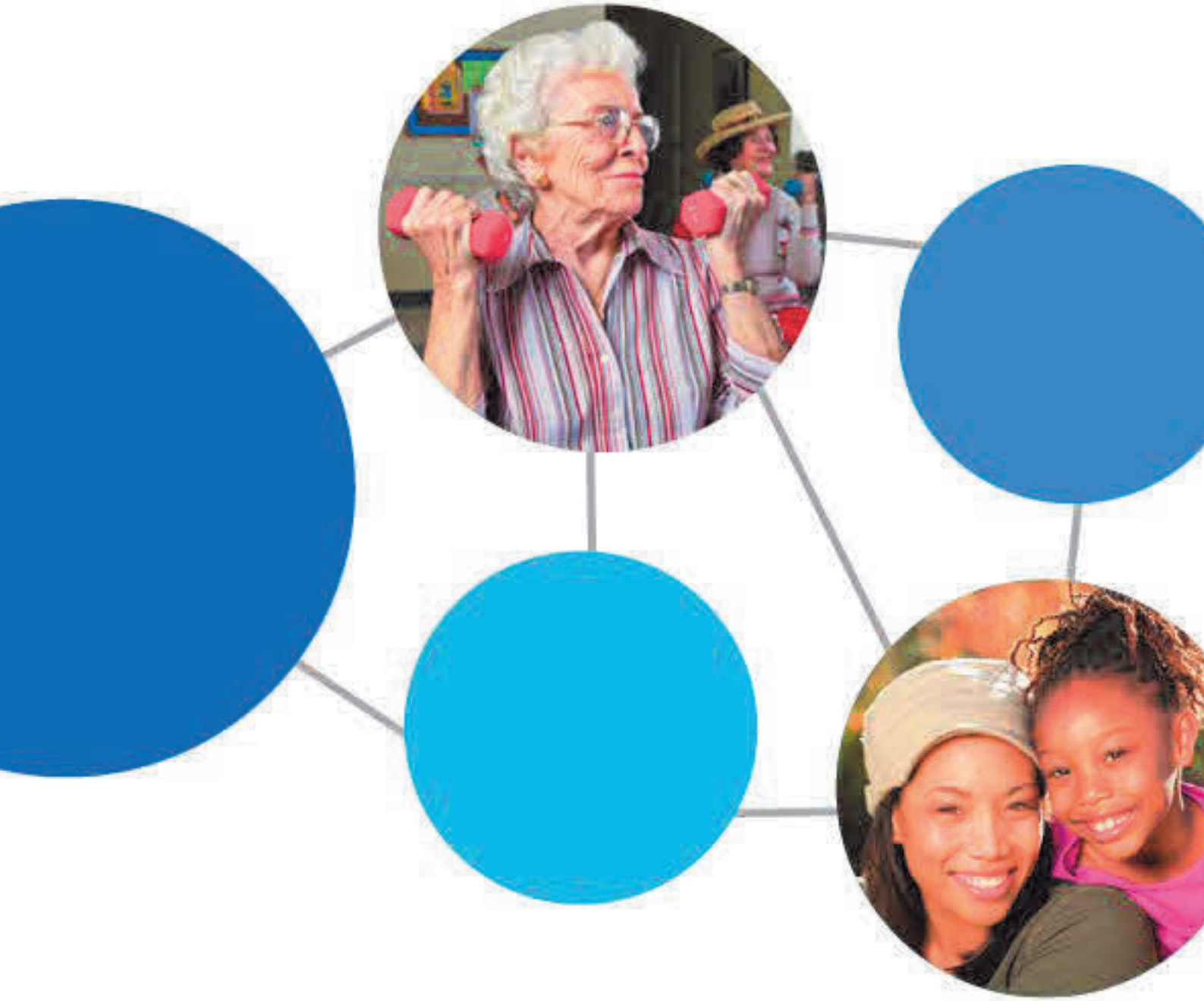

Programme Board and Commissioner Decision Making

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Programme Board and Commissioner Decision-making

Introduction

1. This paper sets out issues and options in relation to the process by which the Programme Board and Shropshire and Telford & Wrekin ("T&W") CCGs ("the CCGs") will make decisions regarding the Future Fit Programme.

Background

2. The FutureFit programme was formally established by the CCGs in December 2013 following a period of informal discussion and development over the preceding year.

3. The programme is led by a Programme Board comprising representatives from five 'Sponsor' organisations and representatives from a number of other 'non-voting' partner organisations. The five sponsor organisations are:

    a. Telford & Wrekin CCG
    b. Shropshire CCG
    c. Powys Local Health Board
    d. Shropshire Community Health Services NHS Trust
    e. Shrewsbury & Telford Hospital NHS Trust

4. A Programme Executive Plan has been approved by the Programme Board. This does not set out how the Programme Board will make decisions. It was agreed at the Programme Board meeting on 20 January that there needs to be greater clarity about how decisions will be made by the Programme Board.

5. A good practice guide for commissioners on the development of proposals for major service change and reconfigurations – *Planning and delivering service changes for patients (gateway 738) ("the guidance")* – was published by NHS England on 20 December 2013.

The guidance

6. The guidance includes a section on clinical commissioner leadership and collaborative decision making (pp19-21). It says that a major service change could be proposed by a number of bodies but that, irrespective of which organisation proposes a service change, commissioners should play a leading role in the planning and development of proposals.

7. The guidance defines the organisation or group of organisations leading the development of the proposal as the 'proposing body'. The proposing body is the body which makes the decision on the option chosen. The guidance states that "the decision on the options chosen rests with commissioners, reflecting their legal responsibility to secure services to meet the reasonable needs of the people for whom they are responsible" (p40).

8. Regarding collaborative commissioning the guidance states:

> *CCGs should be clear in advance what responsibilities they have, individually and together, for ensuring full support for a collective decision … CCG should set up an oversight board (or similar) on which each of the CCGs would be represented and through which decisions are reached. It is also important that all parties should understand what happens when there is a lack of consensus on a proposal. There should be advance agreement regarding how these circumstances will be handled and any conditions that should apply. (p20)*

9. Two or more CCGs can make arrangements to exercise any of the commissioning functions jointly. Although Section 14(Z)(3) [of the NHS Act 2006 as amended by the Health and Social Care Act 2012] does not allow CCGs to exercise functions jointly by way of a joint committee, each CCG can delegate any functions required for developing service reconfiguration proposals to a committee which, for each CCG, has the same membership. This would enable all involved CCGs to have Committees consisting of the same people and those committees could then meet in common for the purposes of decision making. This is informally referred to as the 'committee in common' model.

10. Regarding the involvement of other organisations in an advisory capacity that guidance states:

> It is also good practice that the CCGs consider whether they establish a separate programme (or advisory) board consisting of commissioners, providers, local authorities and other relevant stakeholders to make sure that all relevant information is fed into the reconfiguration process. It is important to note that such a programme board would not be able under the terms of Section 14(Z)(3) to exercise any function on behalf of any CCG, but could be invaluable for the development of shared proposals and in providing recommendations to the 'committee in common' or CCG Governing Bodies. (p21).
>
> The FutureFit Programme Board was established on the basis that it reports to the boards of the Sponsoring organisations. In the terms of the guidance it is an advisory committee (as described above) with no authority to exercise any function on behalf of the CCGs.

<u>Reaching a decision: Options</u>

11. There are two principle questions to be addressed to provide clarity about how the preferred option will be determined when the process of option evaluation has been completed:

    - How will the Programme Board decide what recommendation it will make in the event that there is not a consensus on a preferred option.

    - How will the commissioners decide which option is chosen.

12. There are two ways in which the **Programme Board** could proceed in the event that there is no consensus on a preferred option.

    - Agree voting arrangements which enable a decision to be made in the absence of consensus; or

- Agree a report to the commissioners which sets out the results of the option evaluation and any other relevant information without selecting a preferred option

13. The Programme Board membership identifies separately membership from the five sponsor organisations and from other organisations. These latter are referred to in the Project Executive Plan as “non-voting members”. It is suggested that this should be read to mean that the Programme Board will be able to reach a decision on a preferred option, for recommendation to commissioners, if there is a consensus amongst the sponsor members.

14. If the Programme Board is not able to reach a consensus, at least among its sponsor members, then to make a firm recommendation on a preferred option would require voting arrangements to be agreed. The sponsor members comprise three commissioning organisations and two providers. Individual representation includes both clinical and executive leaders of the organisations.

15. Membership of the Programme Board was determined on the basis of what was required to ensure effective oversight and delivery of the programme rather than with a view to ensure the most appropriate mix of individuals to decide on the preferred option:

    - If it was decided that the Programme Board should have individual voting to determine a preferred option then the membership of the Board would need to be reviewed and, probably, revised to reflect this responsibility.

    - If it was decided that the Programme Board voting should be based on one or more votes for each organisation (rather than nominated individuals) then, for a question of this importance, it is reasonable to assume that individual Boards would want to discuss and mandate the voting. To make a decision they would need the full report from the Programme Board and would probably need, in the interests of transparency and openness, to make the decision at a full public meeting. This would have the potential to compromise the subsequent Commissioner decision-making process, particularly if the two CCGs have mandated their representatives on the Programme Board to support different options.

16. In the light of the issues outlined above it is suggested that the Programme Board should make decisions by consensus between its sponsor members and that any significant issues on which a consensus cannot be reached should be referred to the CCG Boards (or, if established, the Committee-in-Common). Regarding the option appraisal, in the absence of consensus the Programme Board would report to the CCG Boards the outcome of the option development and appraisal process, including the results of public consultation, but without recommending a preferred option.

17. There are two ways in which the **Commissioners** could decide which option is chosen:

    - To hold separate meetings which receive the same report on the outcome of the programme (with or without a recommendation being made on a preferred option)

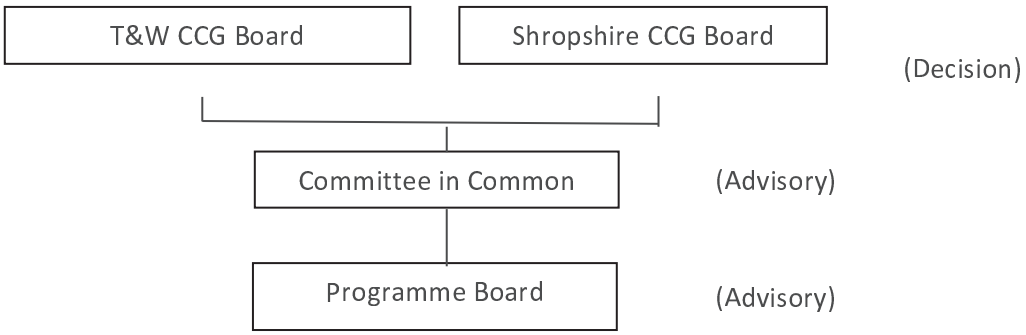
    - To establish a committee in common which would have authority to make the decision on behalf of both CCGs and would have agree voting arrangements which would ensure that the committee was able to make a decision in the absence of a consensus.

18. The CCGs could hold separate meetings at the same time and in the same place, a model that might be termed “separately but together”. However, whilst this would have some advantages over separate meetings held at different times it would, in formal terms, still be two separate decisions with no guarantee that they would reach the same decision.

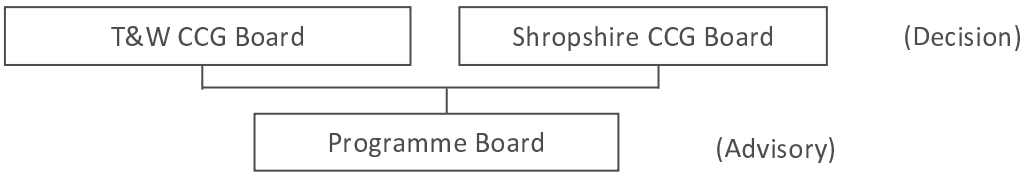
Options for Decision-Making Structures

19. Three options for decision making are set out below:

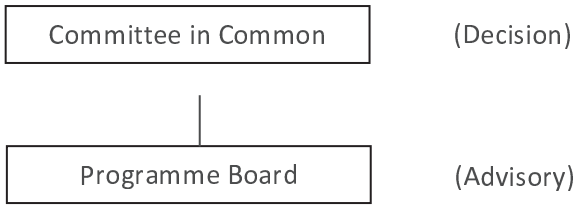
Option 1: three-tier structure



Option 2: two-tier structure – two separate CCG Boards



Option 3: two-tier structure – committee in common



20. The obvious question to address in **option 1** is the purpose of the committee in common if it does not have decision-making authority. The Programme Board should ensure, before it makes a report/recommendation to commissioners, that all points of information and clarification which the CCG Boards will want to consider in making their decision have been addressed. There should, therefore, be no need for an intermediate committee in common to review the report before it is considered by the CCG Boards.

21. However, if the Programme Board has not reached a consensus, then the committee-in-common could, in **option 1**, have a role in determining a preferred option to be recommended to the CCG Boards. Its membership would need to be established with this core responsibility in mind.

22. For **option 2,** there is clearly a risk that the CCGs will reach different decisions if the Programme Board has not been able to reach a consensus decision on a preferred option and thus (noting the recommendation para 16 below) the report from the Programme Board has gone to each CCG Board separately (whether meeting together or otherwise) without a recommended preferred option. The implications of the CCGs not reaching a decision on which they agree are discussed below.

23. In **option 3** the CCGs have delegated responsibility to the make the decision to a committee-in-common. The benefit of this option is that, providing voting arrangements are clear and effective, there is very little risk that the CCGs, through the committee-in-common, will not made a decision. Also, membership of the committee can be constructed with this specific responsibility in mind.

24. The CCGs are currently considering these options and will inform the Programme Board when the decision has been made.

Dispute Resolution

25. It was noted above that either **option 1** or **option 2** could result in a situation where the two CCGs had made different decisions. The national guidance does not cover the eventuality that commissioners are not able to reach a decision.

26. It is reasonable to assume that, in the event that CCGs were agreed that the current service configuration is not clinically or financially sustainable but were not able to agree on the solution, then NHS England would step in and would establish a process through which a decision would be made. Further advice is being sought on this matter.

Wales

27. The guidance issued by NHS England does not consider a circumstance in which service change is proposed which affects a substantial population in Wales or Scotland. Under option three the committee in common could include representatives from Powys Health Board. Options one and two do not include NHS Wales in the decision making process other than through their representation on the Programme Board. Further guidance is being sought on this matter.

Providers

28. The two NHS provider organisations principally affected by the programme (SaTH and SCHT) are not involved in the decision making process outlined in this paper other than through their representation on the Programme Board. This appears to be consistent with the national guidance.

29. It is suggested that it would be not be helpful to the process for providers to determine a preferred option out-with the programme. It would therefore be essential that the programme ensures that relevant provider boards would be willing to implement any of the options subject to evaluation and put forward for decision to CCGs.

Recommendation

30. The Programme Board is asked:

    1. To consider for approval and recommendation to the boards of sponsor organisations the decision-making arrangements set out in paragraph 16.

    2. To identify any other issues raised by this report which require further consideration and decision by the Programme Board and/or the boards of sponsor organisations.

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