

<b>REPORT TO:</b>	<b>NHS SOMERSET INTEGRATED CARE BOARD ICB Board Part A</b>	<b>ENCLOSURE:</b> <b>K</b>
<b>DATE OF MEETING:</b>	<b>27 March 2025</b>	
<b>REPORT TITLE:</b>	<b>Delegation of Specialised Commissioning from 1 April 2025</b>	
<b>REPORT AUTHOR:</b>	<b>Carmen Chadwick-Cox, Deputy Director of Strategic Commissioning</b>	
<b>EXECUTIVE SPONSOR:</b>	<b>David McClay, Chief Officer for Strategy, Digital &amp; Integration</b>	
<b>PRESENTED BY:</b>	<b>Carmen Chadwick-Cox, Deputy Director of Strategic Commissioning</b>	

<b>PURPOSE</b>	<b>DESCRIPTION</b>	<b>SELECT</b>
<b>Approve</b>	To formally receive a report and approve its recommendations, (authorising body/committee for the final decision)	<input checked="" type="checkbox"/>
<b>Endorse</b>	To support the recommendation (not the authorising body/committee for the final decision)	<input type="checkbox"/>
<b>Discuss</b>	To discuss, in depth, a report noting its implications	<input type="checkbox"/>
<b>Note</b>	To note, without the need for discussion	<input checked="" type="checkbox"/>
<b>Assurance</b>	To assure the Board/Committee that systems and processes are in place, or to advise of a gap along with mitigations	<input type="checkbox"/>

<b>LINKS TO STRATEGIC OBJECTIVES</b> (Please select any which are impacted on / relevant to this paper)
<input checked="" type="checkbox"/> Objective 1: Improve the health and wellbeing of the population <input checked="" type="checkbox"/> Objective 2: Reduce inequalities <input checked="" type="checkbox"/> Objective 3: Provide the best care and support to children and adults <input checked="" type="checkbox"/> Objective 4: Strengthen care and support in local communities <input checked="" type="checkbox"/> Objective 5: Respond well to complex needs <input type="checkbox"/> Objective 6: Enable broader social and economic development <input checked="" type="checkbox"/> Objective 7: Enhance productivity and value for money

<b>PREVIOUS CONSIDERATION / ENGAGEMENT</b>
ICB Board development session 24 October 2024 ICB Board 28 November 2024

<b>REPORT TO COMMITTEE / BOARD</b>
<p>The purpose of this paper is to ask Board to formally approve the documentation relating to the delegation of Specialised Commissioning (Green Services) from 1 April 2025.</p> <p style="text-align: center;"><b>Delegation of Specialised Commissioning from 1 April 2025</b></p> <p><b>1. Introduction</b></p> <p>1.1 There are 175 specialised services. These are set out in the Prescribed Specialised Services Manual<sup>1</sup>. (Note that there are less than 175 service specifications in the manual as</p>

<sup>1</sup> <https://www.england.nhs.uk/wp-content/uploads/2017/10/PRN00115-prescribed-specialised-services-manual-v6.pdf>

some cover multiple service lines). These cover a large range of services including specialised cancer and cardiac services, Neonatal services, and Adult Critical Care.

- 1.2 NHSE set out its intentions to delegate specialised services to Integrated Care Systems in the Roadmap for Integrating Specialised Services within Integrated Care Systems in May 2022.<sup>2</sup>
- 1.3 The initial intention was for all ICBs to take on delegation of fifty-nine services from 1/4/24 and work was undertaken to prepare for that transfer of responsibility.
- 1.4 Subsequently the seven ICBs in the South West collectively agreed to request that the transfer date was deferred to 1/4/25. This was agreed by the NHSE Board in December 23. Three regions did undertake the transfer on 14/24 with the remaining four regions agreed to be a second wave.
- 1.5 The South West Region has continued with the Joint Committee arrangement of ICBs working with the NHSE regional team in relation to specialised commissioning throughout 2024.
- 1.6 The details and decisions contained within this report relate to the delegation of commissioning responsibilities from NSHE to the ICB for the relevant services. This report does not discuss risks and issues related to the hosting of the Collaborative Commissioning Hub by Somerset ICB, or any bid by Somerset ICB to become the Principal Commissioner for Specialised Services.
- 1.7 This is the final report, formally asking NHS Somerset ICB Board to agree to the signing of relevant delegation paperwork, noting the significant due diligence that has taken place through the Safer Delegation Checklist.
- 1.8 NHS Somerset ICB Board has previously agreed to the Principal Commissioner Model and the proposed delegation conditions.

## **2. Safe Delegation Checklist**

- 2.1 A national delegation checklist has been produced, and the full version is available in the reading room. The checklist includes over 250 items of separate assurance required via the NHSE process to ensure the delegation can take place safely. ICBs have been working with NHSE to ensure that all items are completed.
- 2.2 The ICB Commissioning, Finance and Quality representatives met with NHSE on 14<sup>th</sup> February 2025 to review the safer delegation checklist and to discuss any outstanding concerns relating to delegation. No concerns were raised at this stage.
- 2.3 There remain five outstanding actions for ICBs which are not critical to the delegation agreement. These can be dealt with post delegation and mostly relate to the updating of ICB governance and other processes to include Specialised Services. Outstanding actions for ICBs and status are outlined below:

Outstanding Action required	Status
Internal and external audit are aware of the plans to take on delegated functions and are in agreement of the approach going forward	Internal Audit are aware and are currently waiting approval on a terms of reference for the audit which will test NHS Somerset governance and other plans for delegation services.

<sup>2</sup> <https://www.england.nhs.uk/wp-content/uploads/2022/05/PAR1440-specialised-commissioning-roadmap-addendum-may-2022.pdf>

	NHSE have informed their auditors.
ICB Governance and documents are reviewed to ensure that they reflect ICB's responsibilities for delegation of specialised commissioning functions, including: - ICB Constitution and Standing Orders - ICB Scheme of reservation and delegation (SoRD) - ICB Governance Handbook - ICB Standing Financial Instructions (SFIs)	Required changes are being reviewed and will need to come into effect once the Delegation Agreement and Collaboration Agreement are signed.
ICB key policies, frameworks and processes are identified (e.g. conflict of interest, contracting, safeguarding, working with people and communities), dependent on the operating model, and changed if required to reflect delegated functions	This is an action for the Principal Commissioner to be completed as part of post-delegation mobilisation. It is not a delegation pre-requisite.
Delegated services are included in any relevant internal and external (e.g. website) communications around the responsibilities of the ICB.	NHSE has been working with ICB communications teams to ensure this work takes place.
Day one communications with key stakeholders planned.	This is being co-ordinated via NHSE to ensure one consistent message is sent to the public.

### 3. Specialised Commissioning Delegation Pack

- 3.1 The Delegation pack includes the national Delegation Agreement, a South West Collaboration Agreement setting out the arrangements specific to the co-designed ways of working in the region and the agreed Principal Commissioner model. Supporting documentation includes:
- Operational Arrangements document
  - Legal and Compliance handover report
  - Finance Standard Operating Procedure
  - Quality Framework
  - Risk Framework
  - Joint Committee Terms of Reference
  - Safe Delegation Checklist Plus
  - Transition Plan (collated actions ongoing from SDC+ for both 1st of April and 1st July 2025)
- 3.2 The supporting documentation is not brought in detail to Board as it represents all aspects of assurance that have taken place over almost three years of the delegation process.
- 3.3 Board are specifically asked to agree to the signing of the following documents and a summary of these documents and key risks and considerations for Board is available at appendix 1. Full copies of the documentation can be found in the reading room.
- Delegation agreement
  - Collaboration agreement
  - Joint controller agreement
- 3.4 Each of these documents are in line with how Somerset ICB has been working with NHSE and the other systems in the South West in shadow form for 24/25 and have been through the South West Joint Directors Group and Joint NHSE and ICB Specialised Services Committee.

- 3.5 The recommendation of this paper is that Somerset ICB agrees to the signing of these documents.
- 3.6 As previously discussed at Board, a sub committee of the Board (the Strategic Commissioning Committee) is in the process of being constituted. This Committee will ensure Somerset ICB complies with the requirements upon it under these agreements, and as the delegated responsible commissioner for Specialised Services.

#### **4. Next steps**

- 4.1 Final signed copies of the delegation agreement, collaboration agreement and controller agreement to be sent to NHSE.
- 4.2 Strategic Commissioning Committee terms of reference to be approved to ensure oversight of delegated services for Somerset.

#### **5. Recommendations**

- 5.1 The Board is asked to agree to the signing of the following documents:-

- Delegation agreement (summary appendix 1)
- Collaboration agreement (summary appendix 1)
- Joint controller agreement (summary appendix 1)

The Board is also asked to note the following documents: -

- The appendices relating to the delegation process (reading room)
- The remaining ICB actions detailed in the Safer Delegation Checklist (full checklist in reading room)

#### **IMPACT ASSESSMENTS – KEY ISSUES IDENTIFIED** (please enter 'N/A' where not applicable)

<b>Reducing Inequalities/Equality &amp; Diversity</b>	Delegation of Specialised Commissioned services will help to improve access to these services for the population of Somerset, which in turn will help to reduce health inequalities.  No EQIA has been completed as this paper relates to a change in commissioning responsibilities and not services.
<b>Quality</b>	Quality assurance is part of the Safer Delegation Checklist completed by NHSE.
<b>Safeguarding</b>	There are no safeguarding impacts associated with the change in Commissioner responsibility.
<b>Financial/Resource/ Value for Money</b>	Specialised Commissioning allocation is to be ringfenced initially however, the financial allocation at ICB level is not finalised and will be subject to change after delegation has occurred.
<b>Sustainability</b>	This paper relates to a change in commissioning responsibility and not a change in service delivery.
<b>Governance/Legal/ Privacy</b>	The NHS Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 sets out NHS England's responsibility to arrange all reasonable requirements for the provision of specialised services. This was amended by the 2022 Health and Care Act, Section 2, which details NHSE requirement to commission specialised services.

	<p>NHS Somerset will become the responsible commissioner for all quality, constitutional and other aspects of the service.</p> <p>Potential conflicts of interest arise from Somerset ICB hosting of the Collaborative Commissioning Hub (CCH) which will host the staff formerly from NHS England who provide administration and other support to the commissioning of specialised services.</p> <p>Somerset ICB will be the Principal Commissioner on behalf of the seven South West ICBs and any conflicts relating to this will need to be managed.</p>
<b>Confidentiality</b>	This report is public
<b>Risk Description</b>	There are currently no Corporate risks links to this report on the risk register. There is a risk rated at 9 that is being monitored by Management Board.

## Appendix 1 – Summary of the South West Delegation Agreement for Specialised Services 2025

**Purpose of the Agreement:** This Delegation Agreement sets out the terms under which NHS England delegates certain specialised commissioning functions to the [Integrated Care Boards (ICB)]. The agreement enables the ICB to take responsibility for planning, commissioning, and managing a range of specialised healthcare services within its region. NHS England retains oversight and accountability for ensuring statutory compliance and performance of these functions.

The agreement aims to:

- Improve efficiency and effectiveness in the commissioning of specialised services.
- Align specialised commissioning with local healthcare priorities.
- Foster collaboration between ICBs to ensure consistency and quality of care.
- Maintain financial control and accountability for specialised service funding.

The document details the ICB's responsibilities, the scope of delegated functions, retained functions by NHS England, governance structures, financial arrangements, and risk management processes.

### Key Risks for the ICB:

1. **Financial Risks:** The ICB is responsible for managing the delegated funds effectively. NHS England can adjust funding levels, and the ICB may be required to cover any financial shortfalls, including claims and liabilities related to delegated services.
2. **Legal and Compliance Risks:** The ICB must ensure compliance with national standards, NHS England's mandated guidance, and legal obligations, including data protection laws and patient involvement duties.
3. **Accountability and Performance Risks:** Although functions are delegated, NHS England retains accountability. The ICB must ensure robust reporting, performance monitoring, and adherence to NHS England's oversight framework to avoid escalations or interventions.
4. **Collaboration and Governance Risks:** The ICB must establish and maintain effective collaboration with other ICBs to ensure consistency in commissioning decisions and service delivery. Failure to align with regional or national policies may result in inefficiencies or conflicts.
5. **Contractual and Service Delivery Risks:** The ICB assumes responsibility for managing provider contracts and ensuring service continuity. Poor contract management or provider performance could negatively impact patient care and financial stability.
6. **Claims and Litigation Risks:** While NHS England remains liable for claims relating to pre-delegation activities, the ICB is responsible for post-delegation claims. NHS England may step in to manage legal disputes, but the ICB could still be financially impacted.

7. **Data and Information Governance Risks:** The ICB must handle personal data in compliance with GDPR and NHS data protection policies. Failures in data management could lead to breaches and reputational damage.

The Delegation Agreement offers the ICB greater control over specialised services but comes with significant financial, legal, and operational responsibilities. Strong governance, financial oversight, and compliance mechanisms are required to discharge these responsibilities.

### **Risk Mitigation for the ICB Through the ICB Collaboration Agreement and Joint Controller Agreement**

To mitigate risks associated with financial, legal, operational, and data management aspects, two key agreements provide a structured framework: the ICB Collaboration Agreement and the Joint Controller Agreement. These agreements set out how ICBs will work together to manage and mitigate risks.

These agreements define governance structures, financial management, and data handling responsibilities, reducing potential liabilities for ICBs. Somerset ICB will oversee these responsibilities through its Strategic Commissioning Committee.

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### **Summary of the ICB Collaboration Agreement**

This agreement establishes a Joint Committee among ICBs to oversee commissioning and financial management of specialised services. The following measures mitigate risks:

#### **Governance and Decision-Making Risk Mitigation:**

- A Joint Committee ensures that no single ICB is solely responsible for decision-making, distributing accountability.
- The Principal Commissioner (Somerset ICB) is responsible for implementing agreed commissioning decisions, ensuring a structured and coordinated approach.

#### **Financial Risk Mitigation:**

- The agreement establishes a Consolidated Budget, transferring financial risk to the Principal Commissioner, reducing exposure for individual ICBs.
- A Financial Standard Operating Procedure (SOP) ensures transparency in fund transfers and financial reporting.
- The Joint Committee cannot approve financial decisions that would result in overspending, protecting ICBs from unexpected financial liabilities.

### **Operational and Quality Risk Mitigation:**

- A Specialised Commissioning Team is established to manage day-to-day operations, ensuring consistent service delivery and oversight.
- Mechanisms for reporting quality and safety concerns to NHS England and individual ICBs prevent service failures and regulatory breaches.

### **Legal and Compliance Risk Mitigation:**

- The agreement aligns with NHS England's Delegation Agreement, ensuring that all actions comply with national health regulations.
  - A dispute resolution process is in place to address disagreements without escalating to costly legal conflicts.
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## **Summary of the Joint Controller Agreement**

This agreement clarifies the responsibilities of NHS England and ICBs regarding Personal Data Processing in line with UK GDPR.

### **Data Protection and Legal Risk Mitigation:**

- The agreement defines both parties as Joint Controllers, ensuring shared responsibility and reducing the risk of non-compliance penalties.
- NHS England acts as Lead Controller, meaning it holds primary responsibility for compliance with GDPR and data governance.

### **Data Security and Breach Management:**

- NHS England is required to promptly report data breaches (within 24 hours), ensuring rapid containment of security risks.
- A clear Data Protection Impact Assessment process is in place to evaluate potential risks before data processing occurs.

### **Minimising ICB Liability:**

- NHS England retains responsibility for Commissioning Support Data, reducing the legal burden on ICBs.
- The agreement requires compliance with UK GDPR Articles 6(1)(e) and 9(2)(h), ensuring all data processing is legally justified.



- Any third-party processing is subject to NHS England's oversight, further protecting ICBs from liability.

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## **Conclusion**

The ICB Collaboration Agreement and the Joint Controller agreement provide a robust framework to mitigate risks associated with financial exposure, legal compliance, operational efficiency, and data protection. By ensuring shared decision-making, financial oversight, quality assurance, and legal clarity, these agreements enable ICBs to focus on delivering specialised services while reducing their risk exposure.

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