

Review of NHS Sheffield CCG Constitution and supporting documents

Governing Body meeting

6 October 2016

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Author(s)	Jill Dentith, Management Consultant
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Is your report for Approval / Consideration / Noting	
<p>Governing Body is asked to APPROVE the proposed changes to NHS Sheffield CCG's Constitution and supporting documents and RECOMMEND to Member Practices that they accept the proposed changes for final APPROVAL by NHS England.</p>	
Are there any Resource Implications (including Financial, Staffing etc)?	
<p>Staff time and resources will be required to consult with Member practices regarding the proposed changes and subsequently liaising with NHS England.</p>	
Audit Requirement	
<p><u>CCG Objectives</u></p> <p><i>Which of the CCG's objectives does this paper support?</i> This paper supports delivery of the CCG's Strategic Objective 5 - Organisational development to ensure CCG meets organisational health and capability requirements.</p> <p>It also gives assurances against Risk 5.4 - Inadequate adherence to principles of good governance and legal framework leading to breach of regulations and consequent reputational or financial damage.</p>	
<u>Equality impact assessment</u>	
<p><i>Have you carried out an Equality Impact Assessment and is it attached?</i> An Equality Impact Assessment will be completed prior to the paper being shared with Member practices.</p>	
<u>PPE Activity</u>	
<p><i>How does your paper support involving patients, carers and the public?</i> The proposed changes to the Constitution have been discussed with the Governing Body Chair, Accountable Officer, Director of Finance and other key officers. It was presented at the Audit and Integrated Governance Committee in September 2016, shared with Governing Body and will then presented to the Membership for approval prior to it going to NHS England for final sign off.</p>	

Recommendations

The Governing Body is asked to:

- APPROVE the proposed changes to NHS Sheffield CCG's Constitution and supporting documents
- AGREE that any further minor changes are agreed by the Governing Body Chair, Accountable Officer and Director of Finance
- RECOMMEND to Member practices that they accept the proposed changes for final APPROVAL by NHS England.

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1. Introduction

This paper is designed to provide Governing Body with an update of proposed changes to the NHS Sheffield CCG Constitution and supporting documents.

The Governing Body should note that the Constitution has already been reviewed in 2016/17 and those amendments approved by Governing Body (GB), the Members of the CCG and NHS England. These changes are detailed in the Constitution, Version: 4.3 - Effective Date: May 2016.

A further review this year (Version 5.1) coincides with a detailed piece of work linked to the changes to the executive director functions, other legal requirements and good practice guidance. An initial review paper was shared with Audit and Integrated Governance Committee (AIGC) at the meeting in September 2016. AIGC noted the proposed changes and agreed to recommend them to Governing Body. If approved by Governing Body the proposed changes will be shared with Members and finally NHS England. It is hoped that the changes will have final agreement by NHS England no later than 31 December 2016.

2. Key Changes Proposed

Details of the key changes proposed to the Constitution and supporting documents can be found at Appendix A to this paper. For brevity, the fully amended Constitution and supporting papers have not been attached to Governing Body papers, however, if copies of the “clean” or “track changed” documents are required they can be obtained by contacting the Committee Administrator / PA to Director of Finance.

Below is a summary of the key changes which include:

- A review of the Terms of Reference (ToFR) for the Governing Body (GB) committees and sub-committees. It is also proposed that the ToFR are removed from this, and future versions of the Constitution, to facilitate an easier process for updating, noting that any future changes would still have to go through a rigorous governance process and that they would be publically available.
- Changes to titles and job purpose of some directors / officers to reflect the new executive portfolios and organisational structures.
- Changes detailed above have also been reflected in the membership of the Governing Body.
- Changes to reflect the new guidance issued in relation to the management of conflicts of interest, including the appointment of a Conflicts of Interest Guardian.
- Clarification regarding periods of office for GB members and the maximum number of years of office an individual can serve.

- Changes to quorum of the Governing Body as current arrangements are not robust if a number of apologies are received from clinicians. Changes have also been proposed to ensure that at least four GP members, one lay member and either the Accountable Officer or Director of Finance are present for a meeting to be quorate. References to “clinical majority” have been removed from this section.
- Update ToFR for the Primary Care Commissioning Committee following the review by the CCG’s internal auditors.
- Changes to the Constitution and supporting documents in relation to Joint Committees.
- Finally, the review will address issues of consistency and points of clarification.

3. Timing of Proposed Changes

Governing Body members should note that until final approval is received from NHS England the current Constitution (Version 4.3) will have to be used. In practice this will mean that current quoracy arrangements will have to be used, as will current membership. This situation will continue until the proposed changes have been agreed by the Member practices and finally approved by NHS England. A target date for completion is estimated to be 31 December 2016.

It should be noted that, due to timing of papers, the proposed changes to the Constitution and supporting documents will be shared with solicitors for review prior to sharing with Member practices. It should also be noted that some further minor changes may be required prior to consultation with Member practices. To ensure the target date of 31 December 2016 is not compromised, it is proposed that any further minor changes are agreed by the Governing Body Chair, Accountable Officer and Director of Finance.

4. Recommendations

The Governing Body is asked to:

- APPROVE the proposed changes to NHS Sheffield CCG’s Constitution and supporting documents
- AGREE that any further minor changes are agreed by the Governing Body Chair, Accountable Officer and Director of Finance
- RECOMMEND to Member practices that they accept the proposed changes for final APPROVAL by NHS England.

Paper prepared by Jill Dentith, Management Consultant

On behalf of Julia Newton, Director of Finance

26 September 2016

Proposed changes to NHS Sheffield Clinical Commissioning Group Constitution to be submitted to NHS England for consideration: October 2016

Current Page No	Reference	Summary of Proposed Changes	To read
All pages		Changes to footer throughout	Version [5.1] NHS Commissioning Board Effective Date October2016
Various pages		Ensure reference to NHS Commissioning Board are cross reference with NHS England or "the Board"	
Various pages		Small grammatical changes and numbering of sections	e.g. "it" changed to "is" etc. e.g. "7.14" to "7.15" etc.
Various pages	Constitution section 7 and others	Change titles of Executive Directors to reflect new management structure and ensure consistency as follows: <ul style="list-style-type: none"> • Chief Accountable Officer to Accountable Officer • Chief Finance Officer to Director of Finance • Chief Operating Officer to Director of Delivery – Care Outside Hospital • Add Director of Strategy and Integration • Add Director of Commissioning and Performance • Remove Chief of Business Planning and Partnerships 	
2	Contents	Remove Appendix J – Terms of Reference (TofR) <ul style="list-style-type: none"> • Audit and Integrated Governance • Remuneration Committee • Quality Assurance Committee 	

Current Page No	Reference	Summary of Proposed Changes	To read
		<ul style="list-style-type: none"> • Primary Care Commissioning Committee • Governance Sub-committee <p>In future, TofR will be referenced in the Constitution but will not be appended to the Constitution. This will enable them to be updated and amended quickly and effectively to reflect current circumstances. All changes will be subject to rigorous governance process, will be reviewed by the relevant committee / sub-committee and taken to governing body for approval. All TofR will be published on the CCG's website.</p>	
2	Content	Change page numbers to ensure they reflect the detail in the document	
5	1.3.1	Replace "Head of Governance and Planning" with "Director of Finance"	" – please mark for the attention of the Director of Finance"
12	4.6 (b)	Replace "Head of Governance and Planning" with "Director of Finance"	" --- send in writing to Director of Finance"
17 and at various other pages	5.2.10 bullet 4 and at various other sections	Replace Planning and Delivery Group with Clinical Commissioning Committee (CCC)	"---- through Clinical Commissioning Committee, having responsibility for ensuring that appropriate innovation proposals are translated into business cases----"
18 and at various other pages	5.3.1 and at various other sections	Replace Commissioning Executive Team (CET) with Clinical Commissioning Committee (CCC)	

21	6.4.1	Change the order of the committees /sub-committees listed, add that Primary Care Commissioning Committee is accountable to Governing Body and change reference to Terms of Reference	<p>The following committees have been established by the CCG:</p> <ul style="list-style-type: none"> a) Audit and Integrated Governance Committee accountable to the Governing Body; b) Remuneration Committee accountable to the Governing Body; c) Quality Assurance Committee accountable to the Governing Body; d) Primary Care Commissioning Committee accountable to the Governing Body; and e) Governance sub-committee accountable to the Audit and Integrated Governance Committee. <p>Terms of Reference for the above Committees and Sub-committees are available on the CCG's website</p>
26	6.5D 1	Updated to include reference to the Commissioners Working Together Joint Committee	<p>The CCG has entered into collaborative arrangements with the Clinical Commissioning Groups from South Yorkshire and Bassetlaw, Hardwick and North Derbyshire, for the CCG Collaborative Commissioning Arrangements (known as "CCGCOM").</p> <p>The CCG has entered into a Memorandum of Understanding to support this arrangement. NHS Sheffield CCG will formally establish a Joint Committee with other CCGs under section 6.5A of this Constitution. The Joint Committee will have Terms of Reference and a Scheme of Delegation which will be approved by the Governing Bodies of those CCGs who will be members of the Joint Committee. The Terms of Reference for the Joint Committee will be available on the CCGs website.</p>
27	6.6.1 (o)	Add details re business continuity and emergency planning	Approve the CCG's arrangements for business continuity and emergency planning

27	6.6.2	Ensuring that the Governing Body has Locality nominated and Elected GPs collectively as the biggest group	Composition of the Governing Body - the Governing Body shall not have less than 15 voting Members, of which the biggest group will be GPs made up of Locality nominated GPs and Elected GPs.
28	6.6.2(d)(i)	Add Conflicts of Interest Guardian, whistleblowing and Lay Member to oversee NHS Security Management Services (as per PFP 4.5)	one to lead on audit, governance, strategy and act as Conflicts of Interest and Whistleblowing Guardian and the Lay Member to oversee NHS Security Management services (as per PFP 4.5);
28	6.6.2 (d)(iv) and all other references	Change this and all other reference from Vice Chair to Deputy Chair	All references to now read "Deputy Chair"
28	6.6.2 (i) and all other references	Take out any reference to Chief Operating Officer and Chief of Business Planning and Partnership and replace with: <ul style="list-style-type: none"> the Director of Delivery – Care Outside of Hospital the Director of Strategy and Integration the Director of Commissioning and Performance 	<ul style="list-style-type: none"> other individuals: <ul style="list-style-type: none"> the Director of Delivery – Care Outside of Hospital; the Director of Strategy and Integration; the Director of Commissioning and Performance; and the Medical Director¹
28	6.6.2 (d) (iii)	Clarify that the Chair of the PCCC should not also be the Audit Chair	"one to lead on primary care commissioning (who should not be the Audit Chair)"
31	7.1.3 and 7.1.4	Take out Head of Governance and Planning and replace with Director of Finance	<p>7.1.3 Each Member shall nominate one practice representative who is either a GP partner / salaried GP / healthcare professional of that Member practice. The name of the practice representative must be submitted in writing to the Director of Finance of the CCG by an authorised representative of the relevant practice.</p> <p>7.1.4 Each Member may remove and replace their practice representative at any time, by notice in writing to the Director of Finance of the CCG signed</p>

¹ See Appendix C section 2.2.10 of the Standing Orders.

			by an authorised representative of the relevant practice.
38-39	7.13	Replace the role of the Chief of Business Planning and Partnerships with Director of Strategy and Integration	To be completed following the review of the job description
39		Additional paragraph 7.14 to be added for the role of the Director of Commissioning and Performance	To be completed following the review of the job description
39	7.14.1 (which will now be new paragraph 7.15.1)	Change paragraph to improve the flow	The Lay Members are members of the Governing Body. They bring a strategic, but impartial external view to the work of the CCG that is removed from the day-to-day running of the organisation. There are four Lay Members, each with lead roles as well as sharing responsibility with the other members for all aspects of Governing Body business. One Lay Member will have a lead role in overseeing key elements of finance, governance and strategy, two Lay Members will have a lead roles in championing patient and public involvement, one of these will Chair the Quality Assurance Committee. Finally, one Lay Member will be identified to support and oversee key arrangements in respect of primary care commissioning, Chair the Remuneration Committee and act as Deputy Chair.
39	7.14.2 which will now be new paragraph 7.15.2)	Changes to Lay Member of Audit and Governance roles and responsibilities to reflect new guidance on Conflicts of Interest	c) Overseeing key elements of governance including audit and managing conflicts of interest and act as Conflicts of Interest Guardian

40	7.14.4 which will now be new paragraph 7.15.4)	Change to membership of PCCC taking out reference to two members to ensure that Terms of Reference can be updated as necessary to reflect good practice and ensure quoracy	As well as sharing responsibility with the other members for all aspects of Governing Body business, Lay Members will be identified to support and oversee key arrangements in respect of primary care commissioning. Their focus will be strategic and impartial, providing an external view of the work of the CCG that is removed from the day-to-day running of the organisation.
42	8.3.3	Change reference from Head of Governance and Planning to Director of Finance	The Director of Finance will ensure that the registers of Interest are reviewed regularly and updated as necessary.
45-48	Appendix A Definitions	Change any reference to Chief Finance Officer to Director of Finance	Director of Finance - The qualified accountant employed by the CCG with responsibility for financial strategy, financial management and financial governance. The Director of Finance will also act as Board Secretary
49-52	Appendix B	Take out reference to Bents Green Surgery and change number of practices from 86 to 85. Note that there are no changes to the locality configurations	
53-77	Appendix C contents and other references	Change titles of Executive Directors to reflect new management structure and ensure consistency as follows: <ul style="list-style-type: none"> • Chief Accountable Officer to Accountable Officer • Chief Finance Officer to Director of Finance • Chief Operating Officer to Director of Delivery – Care Outside Hospital • Add Director of Strategy and Integration • Add Director of Commissioning and Performance • Remove Chief of Business Planning and Partnerships 	

61	Appendix C 2.2.2	Appointment process moved from 2.2.2 (a) to 2.2.2 (c) and (f)	<p>2.2.2 (c) c) Appointment process</p> <p>Where there is more than one nomination, appointment would be by private ballot with a candidate having over 50% of the votes from the Governing Body Members present and voting at a meeting called in accordance with Paragraph 3.7 below. Each member eligible to vote may only vote for one candidate. If there is an equal vote between candidates, the voting will be re-opened. The returning officer for all election results is the Accountable Officer only. The Remuneration Committee will oversee the process</p> <p>2.2.2(f) (v) Where they are no longer a GP on the Governing Body as described in 2.2.3 below</p>
63	Appendix C 2.2.3 (c)	Changes to appointment process	<p>c) Appointment process</p> <ul style="list-style-type: none"> i) Request for nominations from the relevant locality by the Governing Body ii) Completion of application documentation iii) Candidates will be formally assessed by an Assessment Panel, against a list of essential and desirable competencies drawn from relevant national guidance. iv) If more than one candidate in the relevant locality meets the specified competencies an election will take place. v) Election by a simple majority of votes cast with one vote per member practice within each locality. Members will only be able to vote for a GP in their locality.

			<p>vi) Should only one candidate in the relevant locality meet the specified competencies apply, an election will not take place.</p> <p>v) Localities to confirm nomination to Governing Body</p>
63	Appendix C 2.2.3 (g)	Change notice period to be consistent with other sections	<p>g) Notice Period</p> <p>The Locality GP representative must give at least 3 months' notice in writing to the Chair of the Governing Body, but immediately if the GP is removed from office on any of the grounds set out above.</p> <p>Suspension from the Performers List or GMC register will result in an immediate review of the post holder's position on the Governing Body.</p>
65	Appendix C 2.2.4 (e)	Add maximum period of office	<p>e) Eligibility for reappointment</p> <p>GPs may put themselves forward for re-election as long as the eligibility criteria continue to be met and they have not served more than 9 consecutive years on the Governing Body.</p>
66	Appendix C 2.2.5 (e)	Add maximum period of office	<p>e) Eligibility for reappointment</p> <p>Lay Members may put themselves forward for re-appointment as long as eligibility criteria continue to be met and they have not served more than 9 consecutive years on the Governing Body. The process will be overseen by the Remuneration Committee.</p>
66	Appendix C 2.2.5 (f)	Consistency with other sections	<p>f) Grounds for removal from office</p> <p>i) If a receiving order is made against them or they make any arrangement with their creditors.</p> <p>ii) If in the opinion of the Governing Board (having taken</p>

			<p>appropriate professional advice in cases where it is deemed necessary) they become or are deemed to have developed mental or physical illness which prohibits or inhibits their ability to undertake their role.</p> <p>iii) Where level of competence and performance is below agreed levels</p> <p>iv) Disqualification from membership of a CCG Governing Body under the 2012 Regulations.</p> <p>v) Breach of the Nolan principles (as determined by majority vote of Governing Body members).</p> <p>vi) Gross misconduct as defined in the CCG's disciplinary procedures</p> <p>vii) Non attendance at Governing Body meetings (six in any 12 month period)</p>
67	Appendix C 2.2.6 (v) (now replaced by 2.2.6(e))	Change notice period to be consistent with others	As set out within the Terms and Conditions of employment for this post
69	Appendix C 2.2.9 (e) and(f)	To make consistent with other Governing Body members	<p>e) Eligibility for reappointment</p> <p>Post to be advertised before end of term of office. The post holder is eligible for reappointment as long as the eligibility criteria continue to be met and they have not served more than 9 consecutive years on the Governing Body.</p> <p>f) Grounds for removal from office</p> <p>i) If a receiving order is made against them or they make</p>

			<p>any arrangement with their creditors.</p> <p>ii) If in the opinion of the Governing Board (having taken appropriate professional advice in cases where it is deemed necessary) they become or are deemed to have developed mental or physical illness which prohibits or inhibits their ability to undertake their role.</p> <p>iii) Where level of competence and performance is below agreed levels</p> <p>iv) No longer eligible to be a secondary care specialist member of a CCG Governing Body under the 2012 Regulations and disqualified from membership of a CCG Governing Body under the 2012 Regulations</p> <p>v) Breach of the Nolan principles (as determined by majority vote of Governing Body members).</p> <p>vi) Gross misconduct as defined in the CCG's disciplinary procedures</p> <p>vii) Non attendance at Governing Body meetings (six in any 12 month period)</p>
70	Appendix C 2.2.10 (f)	To make consistent with other Governing Body members	As set out within the Terms and Conditions of Employment
70	Appendix C 2.2.11	To make consistent with other Governing Body members and update with new titles	<p>2.2.11 Director of Strategy and Integration, Director of Commissioning and Performance and Director of Delivery – Care Outside Hospital</p> <p>a) Nomination</p> <p>Not applicable</p>

			<p>b) Eligibility</p> <p>Must meet the required competencies and experience as set out in the relevant job descriptions.</p> <p>c) Appointment process</p> <p>Selection against job description and person specification. The Remuneration Committee will determine the detail of the process.</p> <p>d) Term of Office</p> <p>Substantive appointments</p> <p>e) Grounds for removal</p> <p>As set out within the Terms and Conditions of Employment for the posts</p> <p>f) Notice Period and Grounds for Removal from Office</p> <p>As set out within the Terms and Conditions of Employment</p>
72	Appendix C 3.6 (1 – 2)	Changes to quorum of the Governing Body as current arrangements are not robust if a number of apologies are received from clinicians	<p>(1) No meeting of the Governing Body shall be held unless at least one-third of the whole number of voting members is present (Paragraph 6.6.2 of the Constitution sets out the voting members of the Governing Body), which must include at least four GPs from the Locality GP representatives or Elected GP representatives, one Lay Member and either the Accountable Officer or Director of Finance.</p> <p>(2) If neither the Chair or Deputy Chair is present, the meeting can proceed if a temporary Chair is elected from the remaining Governing Body Members</p>

73	Appendix C 3.8	New paragraph 3.8.2 Add in requirements re emergency powers	The powers which the Governing Body has retained to itself within these Standing Orders may in emergency be exercised by the Accountable Officer and the Chair after having consulted at least one Lay Member and either one Locality GP representative or one Elected GP representative. The exercise of such powers by the Accountable Officer and Chair shall be reported to the next formal meeting of the Governing Body for ratification.
75	Appendix C 4.2	Remove Appendix J for ease of update (see notes in other sections)	Terms of Reference shall have the effect as if incorporated into the Constitution and shall be available on the CCG's website
76	Appendix C 4.4	Duplicate text now removed	The Governing Body shall approve the appointments to each of its Committees and Sub-committees and will decide on any travelling or other allowances as considered appropriate
76	Appendix C 5.1	Clarify the difference between Members of the CCG and Members of the Governing Body	If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Governing Body for action or ratification. All Members of the CCG, Members of the Governing Body and employees have a duty to disclose any non-compliance with these Standing Orders to the Accountable Officer as soon as possible
76	Appendix C 6.2	Change Chief Operating Officer to Director of Delivery – Care Outside Hospital	Signature of documents Where any document will be a necessary step in legal proceedings on behalf of the CCG it shall, unless any enactment otherwise requires, be signed by the Accountable Officer or the Director of Finance or as detailed by the operational scheme of delegation.

76	Appendix C 7.1	Add point regarding delegation of powers to committees / sub-committees	Policy statements: general principles The Governing Body will from time to time agree and approve policy statements/ procedures which will apply to all or specific groups of staff employed by the CCG. The decisions to approve such policies and procedures will be recorded in an appropriate Governing Body minute and will be deemed where appropriate to be an integral part of the CCG's Standing Orders and Prime Financial Policies. However, the Governing Body may delegate this responsibility to one or more of its committees / sub-committees as detailed in the Scheme of Reservation and Delegation.
77	Appendix C 8.2	Add in details of the Conflict of Interest Guardian	The Chair of the Audit and Integrated Governance Committee will act as Conflicts of Interest Guardian and will perform the functions as detailed in Appendix I "Conflicts of Interest Protocol".
78-90	Appendix D General	Update text, take out drafting notes, changes to titles and update numbering and reference	Various and including: "Delegated to Chair of Governing Body" "Delegated to Accountable Officer" "Delegated to Director of Finance"
83	Appendix D	New paragraph 6.6.1(b) add re pensions and delegation to Remuneration Committee	The Governing body has responsibility for determining the remuneration, fees and other allowances payable to employees or other persons providing services to the CCG and the allowances payable under any pension scheme it may establish under para 11 (4) Schedule 1A of the 2006 Act
94	Appendix E 3.1	Update for changes to appointment process for External Auditors	The Head of Internal Audit from the internal audit service appointed by the Audit and Integrated Governance Committee (AIGC) and the Audit Panel appointed external auditor will have direct and unrestricted access to AIGC members, the Chair of the Governing Body, Accountable Officer and Director of Finance for any significant issues arising from audit work that management cannot resolve, and for all cases of fraud or serious irregularity

108	Appendix H	Map to be updated to take out the reference to Bents Green Surgery and include details of neighbourhoods	
109-119	Appendix I	Has been updated to reflect the good practice guidance included in "Managing Conflicts of Interest Revised Statutory Guide for CCGs" issued by NHS England in June 2016.	See updated Appendix I for details
120-149	Appendix J	To be removed. In future TofR will be referenced in the Constitution but will not be appended to the Constitution. This will enable them to be updated and amended quickly and effectively to reflect current circumstances. All changes will be subject to rigorous governance process, will be reviewed by the relevant committee / sub-committee and taken to governing body for approval. All TofR will be published on the CCG's website.	

Further small changes required to:

Constitution 7.11, 7.13 and 7.14 relating to roles of Director of Delivery – Care Outside Hospital, Director of Strategy and Integration and Director of Commissioning and Performance
 PFP 15.3 to confirm Director who will act as SIRO
 PFP 22 to confirm section on CSU and other support

For information the Appendices referred to above are:

- A Definitions of Key Descriptions used in the Constitution
- B List of Member Practices
- C Standing Orders
- D Scheme of Reservation and Delegation
- E Prime Financial Policies
- F The Nolan Principles

- G The Seven Key Principles of the NHS Constitution
- H Map of the Area and the Localities of the CCG
- I Conflicts of Interest Protocol
- J Terms of Reference for Governing Body Committees and Sub-Committees