

NHS Sheffield CCG Constitution - Review

Governing Body meeting

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1 November 2018

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Purpose of Paper	
<p>NHS England has recently published a suggested new model Constitution for CCGs. It is not mandatory for CCGs to adopt but each CCG is being asked to consider whether it would be appropriate to recommend to their Member practices to update their CCG Constitution and if so, which of effectively two approaches to follow.</p> <p>The purpose of this paper is to highlight the key issues and ask Governing Body to approve work to commence on a new Constitution and related documents for the CCG based on the national model and national guidance.</p>	
Key Issues	
<p>CCGs are statutory bodies established under the NHS Act 2006 (the 2006 Act) as amended by the Health and Social Care Act 2012. Legislation requires that each CCG maintains and publishes a Constitution which contains specific information. NHS Sheffield CCG adopted the initial model Constitution as recommended by NHS England as part of its authorisation back in January 2013 and has continued to maintain and update this document.</p> <p>In September 2018, NHS England issued a suggested revised model Constitution which takes account of changes to legislation, CCG accountability frameworks and wider developments such as creation of Integrated Care Systems which have taken place over the last few years. The revised model also looks to the future in an attempt to facilitate a greater degree of flexibility for CCGs whilst maintaining high levels of transparency and accountability.</p> <p>Governing Body have approved over the summer a number of small changes to the CCG's existing Constitution which would need to be recommended to Member practices and then approved by NHS England for formal approval. We have highlighted that none of these changes impact on the CCG continuing to carry out its business but are more "tidying up" in nature and hence, as we were aware of the publication of a new model, we have held these pending a decision by Governing Body on whether to adopt the new version. It is clear, however, from the guidance that accompanies the new model Constitution that CCGs will be required to include some Committee Terms of Reference as a minimum within the Constitution again. We have previously removed these.</p> <p>It appears timely to do a full review of our current Constitution and supporting governance documents against the new model and adopt a revised Constitution.</p>	

Is your report for Approval / Consideration / Noting
Approval
Recommendations / Action Required by Governing Body
<p>Governing Body is asked to:</p> <p>a) Approve in principle that the CCG should move to adopt a new Constitution based on the new national model which the CCG would recommend to our Member practices and then to NHS England for approval.</p> <p>b) Approve that work is undertaken to prepare documents which can be considered by Governing Body in January 2019, having first been considered by the Audit and Integrated Governance Committee (AIGC) in December 2018.</p>
Governing Body Assurance Framework
<p><i>Which of the CCG's objectives does this paper support?</i></p> <p>5. Organisational development to ensure CCG meets organisational health and capability requirement</p> <p>Principal 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>
Are there any Resource Implications (including Financial, Staffing etc)?
None
Have you carried out an Equality Impact Assessment and is it attached?
<p><i>Have you carried out an Equality Impact Assessment and is it attached?</i> No</p> <p><i>If not, why not?</i> No specific issues associated with this report</p>
Have you involved patients, carers and the public in the preparation of the report?
Not applicable

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1 Introduction / Background

Every Clinical Commissioning Group (CCG) must have a Constitution approved by NHS England. It is a key document underpinning the governance and operation of the CCG. It sets out various matters including the arrangements to allow the CCG including its Governing Body to discharge its functions. It includes details on the CCG's Member practices, its Governing Body and relevant committees and includes the CCG's Standing Orders, Prime Financial Policies and Scheme of Reservation and Delegation.

NHS Sheffield CCG adopted the original model Constitution as part of its authorisation in January 2013 and has continued to maintain and update this document, making recommendations for changes to first its Member practices and then seeking formal approval from NHS England as required by the national arrangements.

The 2012 version of the Constitution was prepared at the time of CCG's being established. Since then a number of changes to the health and social care landscape have taken place including:

- A Legislative Reform Order has been passed, introducing amendments to the 2006 Act to permit CCG's to establish joint committees
- Development of new models of care, particularly integrated care systems
- Refined guidance issued by NHS England with regard to a number of key issues
- Maturity of CCGs as commissioning bodies has informed the way governance structures have developed

The new model Constitution looks to the future and facilitates a greater degree of flexibility, whilst maintaining high levels of transparency and accountability. It has been prepared by NHS England nationally in conjunction with legal advice from Browne Jacobson who have recently delivered webinars to highlight key changes and issues for consideration by CCGs.

2 New Model Constitution

In September 2018 NHS England published a new model Constitution for CCGs, together with a comprehensive set of Frequently Asked Questions (FAQs) and supporting notes. The aim is to provide more flexibility, supporting collaboration and commissioning across larger footprints and different types of organisations and new models of care, particularly integrated care systems. One of the key objectives throughout the national review process was to ensure that the new version supported CCGs in developing integrated or collaborative working arrangements and the new model enables this by:

- Recognising the speed of change associated with integration, as well as the fact that arrangements evolve over time. Model wording has been included for various joint and collaborative working arrangements

- With the agreement of Member practices, CCGs can agree certain aspects of the Constitution that are not 'material' and which can be revised without Member practice approval being required, thus avoiding the current administratively burdensome processes for some minor wording updates. The national FAQs provide guidance on what might be determined a material change and so still require Member practices to agree. These include changes to the role of Clinical Chair, changes to membership of Governing Body, eg the number of GPs, and amendments giving effect to delegations of decision making outside of the CCG. Other changes such as amendments to the terms of reference of Committees could be made without reference back to Member practices. The new model sets out suggested wording for how this could be handled.
- Ensuring that the legally permissible options for who decisions can be delegated to by a CCG Governing Body is clearly set out

The new model takes account of all the changes which have taken place over the last few years, whilst looking to the future and facilitating a greater degree of flexibility for CCGs at the same time as maintaining high levels of transparency and accountability.

Adoption of the model is not mandatory as no new requirements have been introduced. CCGs are free to retain their current Constitution as long as it remains compliant with current guidance. Where current Constitutions are not compliant CCGs are being asked to assess the risk and make changes as soon as is practical in line with the level of identified risk. **From a first review our Constitution would need to implement a number of important changes if we are to be compliant and not to move to the new version.**

The guidance with the new model Constitution also sets out some recommended good practice for CCGs to consider and we intend to work through these as well.

3. Options

Options include:

- 1) Retain the current model Constitution applying the necessary changes for example appending committee Terms of Reference (now a requirement of NHS England)
- 2) Adopt the new model Constitution, appending a full suite of Committee Terms of Reference together with the Scheme of Reservation and Delegation (SoRD), Standing Orders (SOs), Prime Financial Policies and now Standing Financial Instructions (SFIs) which are to set out delegated limits for financial commitments on behalf of the CCG (in addition it appears to operational scheme of delegation). There would then be reference to where other specific documents such as Standards of Business Conduct Policy can be found on CCG website.
- 3) Adopt the minimum (shortened) new model Constitution eg with only the Terms of Reference of the 3 mandated statutory Committees included (ie Audit, Remuneration and Primary Care Commissioning) but at the same time establish a Committee Handbook to include a range of documents which must be kept up to date in parallel and also published on the CCG's website.

Whilst there is no obligation to adopt the new model constitution (with or without Committee Handbook) there appear to be clear benefits from doing so. In particular, the new model clearly re-defines the minimum requirements for CCGs, includes a new process for amendment and variation subject to approval by the Membership and provides

clear advice on working jointly. **As described above, our current Constitution would need some important changes to be compliant and it would seem more appropriate to concentrate efforts on preparing a new Constitution which we could then recommend to our Member practices.**

Each of the CCGs in South Yorkshire and Bassetlaw Integrated Care System (ICS) are currently considering their options, with a recognition that if we all moved to one of the options adopting the new model, this would facilitate greater joint working together as appropriate.

4 Proposed Timetable and Process to complete the Review

The Director of Finance has already initiated a detailed piece of work to compare the existing CCG Constitution and related key governance documents with the new model Constitution and national guidance. The initial thinking is that it would make more sense and be easier administratively and arguably be more transparent for our Member practices and our public to have a comprehensive Constitution (ie Option 2) rather than the shorter Constitution with a Governance Handbook (ie Option 3.) However, it is proposed that the pros and cons of this are resolved as we do the detailed review and a final decision on what to recommend to Member Practices is taken by Governing Body in January 2019.

The proposed timetable and process is as follows:

1 November 2018	Governing Body approve in principle to adopt a new Constitution and approves work and process to complete this. If approved detailed work would take place in November to create a draft new Constitution and related documents. We could seek legal opinion on these documents pre or post AIGC.
13 December 2018	AIGC undertake a first review, in particular in relation to any proposed changes to Standing Orders, Scheme of Reservation & Delegation (SoRD), Prime Financial Policies and the apparent new requirement for Standing Financial Instruction as first three are all documents which currently under our SoRD, AIGC has responsibility for reviewing each year. We would also through this process capture any comments from External and Internal Audit.
10 January 2019	Governing Body to consider replacement NHS Sheffield CCG Constitution and related documents and approve subject to approval by Member Practices and NHS England
During January 2019	Member Practices consulted on / vote on proposed changes
During February 2019	NHS England asked to approve new Constitution ready for start of new financial year, subject to Governing Body needing to consider any changes to Constitution following Member Practice feedback. If necessary this could take place at 7 March 2019 public session of Governing Body.
By 31 March 2019 at latest	Publication of the Constitution on the CCG's webpage

5 Recommendation

Governing Body is asked to:

- a) Approve in principle that the CCG should move to adopt a new Constitution based on the new national model which the CCG would recommend to our Member Practices and then to NHS England for approval.
- b) Approve that work is undertaken to prepare documents which can be considered by Governing Body in January 2019, having first been considered by AIGC in December 2018.

Paper prepared by Sue Laing, Corporate Services Risk and Governance Manager and Julia Newton, Director of Finance

October 2018