

## Review of NHS Sheffield CCG's Constitution

Governing Body meeting

2 May 2019

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<b>Purpose of Paper</b>	
<p>The purpose of the paper is to ask Governing Body to approve a fully updated Constitution for the CCG.</p> <p><b>A copy of the proposed new Constitution with all its appendices has been provided to members of Governing Body as part of their information packs for this meeting</b></p>	
<b>Key Issues</b>	
<p>In Autumn 2018 NHS England published a suggested new model Constitution for CCGs. 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.</p> <p>Governing Body approved in principle at its 1 November 2018 meeting to adopt the new model Constitution. In December 2018 a first draft of the revised Constitution including all appendices (other than appendix 7 – Committee ToR) was presented to the CCG's Audit and Integrated Governance Committee (AIGC) for consideration. Internal and external audit colleagues were asked to provide any comments on the documents and have been taken into account when preparing this updated version.</p> <p>The paper sets out the key proposed changes and the next steps for full approval.</p>	
<b>Is your report for Approval / Consideration / Noting</b>	
<b>Approval</b>	
<b>Recommendations / Action Required by Governing Body</b>	
<p>Governing Body is asked to approve the new Constitution including all its attached appendices and then to seek its approval by the CCG's Member Practices and NHS England.</p>	
<b>Governing Body Assurance Framework</b>	
<p><b><i>Which of the CCG's objectives does this paper support?</i></b></p> <p>The CCG's Constitution underpins delivery of all of its five strategic objectives as set out in the GBAF but in particular addresses Strategic Objective 5.</p>	

**Are there any Resource Implications (including Financial, Staffing etc)?**

Not specifically in relation to approval of this revised Constitution.

**Have you carried out an Equality Impact Assessment and is it attached?**

N/A

***Have you involved patients, carers and the public in the preparation of the report?***

N/A

## **Review of CCG's Constitution**

### **Governing Body meeting**

**2 May 2019**

#### **1. Background**

In Autumn 2018 NHS England 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's Constitution.

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. Governing Body approved over summer 2018 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 previously 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 Constitution, we held these pending its publication and our review as to whether it would be appropriate to adopt.

It is clear from the guidance that accompanies the new model Constitution, that in order to remain compliant with the new guidance we need to make some additional more important changes and we are required to include some Committee Terms of Reference as a minimum within the Constitution again.

The 2012 version of the Constitution was prepared at the time of CCGs 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 CCGs to establish joint committees
- Development of new models of care, particularly integrated care systems
- Refined guidance issued by NHSE 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 then delivered webinars to highlight key changes and issues for consideration by CCGs. 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.

Governing Body approved in principle at its 1 November 2018 meeting to 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 (PFPs) and now Standing Financial Instructions (SFIs) which are to set out delegated limits for financial commitments on behalf of the CCG.

On 13 December 2018 a first draft of the revised Constitution including updated copies of all the related documentation listed above was presented to the CCG's Audit and Integrated Governance Committee (AIGC). This included an audit trail (via track changes) of all the changes being made to the documentation. There was a brief discussion on the key issues as set out by the Director of Finance in her cover paper and all members of AIGC and internal and external audit colleagues were asked to provide any comments on the documents. Comments were received from AIGC's Chair and from internal audit and these comments have been taken into account when preparing this updated version.

The original intention had been to bring the Constitution (incorporating all documents) to 7 March 2019 Governing Body for approval but it did not prove possible to meet this deadline due to other planning and contracting priorities at the time.

The Constitution is being brought to this meeting at the start of the new financial year as it is important to have an up to date Constitution approved by our Member Practices and by NHS England. We need to remove current anomalies which have for example required us to suspend one element of our Standing Orders; we need to have fully approved Terms of Reference for each of our formal committees of Governing Body and we need to have a Constitution which is "fit for purpose" as the CCG evolves its working with other partners in the Sheffield Accountable Care Partnership and South Yorkshire & Bassetlaw Integrated Care System.

It is possible that the Constitution may need further changes during 2019/20 as the role of the CCG evolves but this paper does not seek to identify what these changes might be as it feels too early to do so.

## **2. Key Issues and Changes**

**A copy of the proposed new Constitution with all its appendices has been provided to members of Governing Body as part of their information packs for this meeting.**

**It is important to highlight that this is NOT a radically new Constitution. In most cases the changes made are "tidying up" of existing documents.** As a result, to make it easier for members to follow the documentation, it is not presented with a

whole range of messy track changes. The documentation should be read as a new set. This paper highlights any KEY changes made which Governing Body and then our Member practices need to consider.

### **A) Main Body of Constitution**

This has been produced with the starting point being the new model Constitution produced by NHS England with its lawyers. To this we have added in various sections from the CCG's old Constitution including role descriptions for each Governing Body member although this is no longer a mandatory requirement as it is believed that this is helpful.

The main proposed change to the Constitution in terms of substance is the inclusion of section 1.4.2 which allows for Governing Body to agree changes that are determined as "not material" without needing to seek GP Membership approval as currently has to occur for all changes. This would seem a sensible and pragmatic way forward with the safeguard built in that if a majority of Governing Body members believe the issue is sufficiently important it can be deemed "material" and referred to our membership for consideration.

For ease of reference the section is as follows:

*" The Accountable Officer may periodically propose amendments to the Constitution which shall be considered and approved by the Governing Body and not also by the CCG's Member practices unless:*

- *Changes are thought to have a material impact*
- *Changes are proposed to the reserved powers of the members*
- *At least half (50%) of all the voting Governing Body Members formally request that the amendments be put before the membership for approval.*

*Changes considered to have a material impact will include, but are not limited to:*

- *A change in the number of GPs on Governing Body as voting members*
- *A Change in the quoracy of voting members of Governing Body*
- *Changes to the role of the Chair of the CCG "*

In addition as referred to above, in line with the national recommendations, a new section 7 has been included in the Constitution which expands the existing ability of the CCG to work collaboratively with other partners, in particular our Local Authority, other CCGs and NHS England.

### **B) Standing Orders (SOs)**

No new national model SOs have been produced and so we have reviewed the CCG's existing ones. The review suggests that minimal changes are needed. We have made section 2.2.2 in relation to the appointment of the CCG's Chair to now be in line with the main body of the Constitution removing the anomaly which required Governing Body to suspend this section of the SOs last autumn.

The only material change we have made is in relation to the issue of a quorum for Governing Body for decisions on Remuneration Committee proposals. As Governing Body members may recall, the legal advice issued with the new Constitution based on the 2012 NHS Act, is that CCG Remuneration Committees are not permitted to approve the remuneration of Governing Body members, such committees can only

make recommendations to Governing Bodies. There is a clear conflict of interest for all Governing Body voting members as clearly they cannot be able to vote on their own remuneration. As our quoracy is constituted, Governing Body could never be quorate if we exclude GP members. Thus it is proposed that we include a clause to allow quoracy without GPs being present / able to vote on the issue of their remuneration only. For other Governing Body members I have suggested other quoracy proposals. These are all set out in section 3.6 (2) as follows:

*“For the matter of Governing Body Members’ remuneration as proposed by the CCG’s Remuneration Committee, and where conflicts of interest of GP members in particular would make Governing Body not quorate to make a decision, there will be separate quorum arrangements. For the remuneration of Governing Body GP Members, the Governing Body can take a decision if 6 of the other 11 voting members are present including at least one Lay Member. For Lay Members remuneration the Governing Body can take a decision if 6 of the other 15 voting members are present including at least 4 GPs. For all other Governing Body member remuneration, the Governing Body can take a decision if at least a third of other members are present.”*

SOs will remain part of the Constitution and it remains the responsibility of AIGC to review at least annually and make recommendations to Governing Body on any changes.

### **C) Standing Financial Instructions (SFIs)**

Sheffield CCG has previously not had any SFIs now stated as mandatory. Under the new model Constitution, CCGs are required to incorporate “the delegated authority limits for financial commitment”.

CCGs when established were set up to have Prime Financial Policies (which rather confusingly many other organisations call SFIs.) The new model Constitution suggests that CCG’s have Prime Financial Policies which set out the arrangements for managing the CCG’s financial affairs and have SFIs which set out the delegated limits for financial commitments on behalf of the CCG.

For Sheffield CCG the most pragmatic way forward is for us to take the summary sheet from what we currently call our operational scheme of delegation which currently sits as an appendix to the detailed financial policy “Budget Management” and rename this summary sheet our SFI as this provides the delegated financial limits. I have also included the tender and quote limits for procurements from the PFPs.

Both of our External and Internal Auditors have indicated that they are comfortable with this proposal and it was agreed as a practical way forward by AIGC when considered in December 2018.

SFIs will be part of the Constitution and will be the responsibility of AIGC to review at least annually and make recommendations to Governing Body on any changes.

### **D) Prime Financial Policies (PFPs)**

No new national model PFPs have been produced and so we have reviewed the CCG’s existing ones and have made a range of minor amendments. These were supported by AIGC when considered by the committee in December 2018.

The only substantive changes are to accommodate that we need to include SFIs (as discussed above). This necessitated changes to section 7 on budgetary control and section 13 on tendering in particular.

PFPs will remain part of the Constitution and it remains the responsibility of AIGC to review at least annually and make recommendations to Governing Body on any changes.

#### **E) Scheme of Reservation and Delegation (SoRD).**

Under the new Constitution arrangements CCGs are still required to have a SoRD. The current version has been fully reviewed so that it cross references to the revised Constitution, SOs and PFPs and incorporates the SFIs.

No substantive changes have been made. Importantly no changes have been made to the powers reserved to the CCG's Membership or to the powers reserved to the CCG's Governing Body.

The SoRD will remain part of the Constitution and it will remain the responsibility of AIGC to review at least annually and make recommendations to Governing Body on any changes.

#### **F) Committees' Terms of Reference (ToR)**

As part of this review, the ToR of all five of the CCG Governing Body Committees and the Governance Sub-committee have been reviewed. Changes have been made to all the sets of ToR so that they fully align with the new Constitution in terms of cross references.

A few further minor consistency changes have been made. Separately, Quality Assurance Committee and Strategic Patient Engagement, Experience and Equality Committee are due to review their ToR at their next meetings in April or May. The revisions (which are all minor) which are being proposed have been incorporated into the versions of the ToR included in Appendix 7 to this version of the Constitution.

It will remain the responsibility of each Committee and Sub-committee to review their ToR at least once a year and to recommend any changes to Governing Body for approval.

### **3. Next Steps**

Assuming Governing Body approves the new Constitution the next steps would be:

During May: Member practices consulted on / vote on proposed changes

During June: Governing Body on 7 June to consider any issues emerging from Member practices.

NHS England asked to approve new Constitution

New Constitution published on CCG website and all staff made aware.

#### 4. Approval of Changes in the Future

If the attached new Constitution is approved by Governing Body, Member practices and NHS England then going forward the approvals would be as follows:

##### **By Governing Body**

All changes to the Constitution including all appendices. This is the current position.

##### **Also by the CCG's Member Practices**

Only changes to the Constitution which are deemed **material** by Governing Body as outlined in section 1.4.2 of the new Constitution or at least 50% of Governing Body voting members request are sent to the CCG's Membership for approval or changes to the powers reserved to the CCG's Membership (ie Member practices) as set out in the SoRD and section 3 of the Constitution.

This considerably reduces the time consuming current bureaucracy of asking the CCG's Membership to approve all changes but at the same time, importantly ensures that any material changes still go to our Membership for approval.

##### **Also by NHS England**

There are only three documents as set out in sections 1.4 and 1.5 of the Constitution (ie the main body of the Constitution, the Standing Orders and the Standing Financial Instructions) which require NHS England approval.

This change helpfully allows changes to be made in particular to the terms of reference of the CCG Governing Body's Committees which are always reviewed at least annually without these also having to go to NHS England for approval.

#### 5. Recommendations

**Governing Body is asked to approve the new Constitution including all its attached appendices and then to seek its approval by the CCG's Member practices and NHS England.**

Paper prepared by Julia Newton, Director of Finance

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