

WOLVERHAMPTON CCG

GOVERNING BODY 12 NOVEMBER 2019

Agenda item 7

TITLE OF REPORT:	Application to Vary the CCG Constitution
AUTHOR(s) OF REPORT:	Peter McKenzie, Corporate Operations Manager
MANAGEMENT LEAD:	Peter McKenzie, Corporate Operations Manager
PURPOSE OF REPORT:	To ask the Governing Body to authorise an application to vary the CCG's constitution to adopt the new NHS England model constitution format
ACTION REQUIRED:	<input checked="" type="checkbox"/> Decision <input type="checkbox"/> Assurance
PUBLIC OR PRIVATE:	This Report is intended for the public domain
KEY POINTS:	<ul style="list-style-type: none"> NHS England issued new guidance for CCGs on the contents of constitutions (the model constitution) in 2018. This guidance sets out the core requirements for the constitution and gives greater flexibility for CCGs to make changes to elements of the governance framework outside of the NHS England process for changing the constitution. A draft of the new constitution and supporting Governance Handbook have been produced for inclusion in an application to NHS England to vary the constitution.
RECOMMENDATION:	That the Governing Body approve the draft constitution for inclusion in an application to NHS England to vary the constitution.
LINK TO BOARD ASSURANCE FRAMEWORK AIMS & OBJECTIVES:	
3. System effectiveness delivered within our financial envelope	<u>Continue to meet our Statutory Duties and responsibilities</u> There is a statutory requirement for the CCG to have an up to date, published constitution. Making an application for a review will ensure that the CCG will have a constitution that reflects the

1. BACKGROUND AND CURRENT SITUATION

- 1.1. The CCG's constitution is its primary Governance document, setting out how it makes decisions. NHS England issued new guidance for CCGs in the form of a model constitution in 2018, setting out the core requirements for inclusion and suggesting that other elements (including terms of reference for committees etc.) should be managed separately from the Constitution in a Governance Handbook published on the CCG's website.
- 1.2. In order to adopt the new model constitution the CCG will need to make an application to NHS England who are responsible for agreeing changes to CCG constitutions. The procedure for making these variations is set out in statutory guidance stating that an application for a change should detail the proposed changes and make an assessment of the impact of these changes.

2. NHS ENGLAND MODEL CONSTITUTION

- 2.1. Historically, the CCG's constitution has followed the format of the model constitution issued by NHS England to support the authorisation process for CCGs in 2013. This includes a full suite of appendices, including the CCG's standing orders, Scheme of Reservation and Delegation and terms of reference for committees. This means that in order to make changes to any of these documents, an application needed to be made to NHS England to vary the Constitution.
- 2.2. In 2018 NHS England issued a new version of the Model Constitution for CCGs. This aimed to streamline the document to the core components and give greater flexibilities to CCGs to make minor changes to governance structures (e.g. Terms of Reference for Committees, Operational Scheme of Delegation) without seeking NHS England Approval. The revised format of the constitution includes:-
 - **The Constitution** – including the legal status of the constitution, the CCG's area, Membership matters and the outline arrangements for exercising the functions of the CCG
 - **Appendix 1** – Glossary of Terms
 - **Appendix 2** – Statutory Committee Terms of Reference (Audit and Governance, Remuneration and Primary Care Committees)
 - **Appendix 3** – Standing Orders (rules for appointing Governing Body Members, meeting arrangements)



- **Appendix 4 – Delegated Financial Authority Limits**

- 2.3. The guidance suggests that, following the adoption of the new constitution format, CCGs should produce a Governance Handbook which will include the elements from the existing document such as the Scheme of Reservation and Delegation, other Committee Terms of Reference and detailed financial and conflict of interest policies. This should be published on the CCG website, but will not be subject to NHS England review when changes are proposed.

3. DRAFT CONSTITUTION

- 3.1. A draft of the CCG's Constitution in line with the new formatting requirements has been and a Governance Handbook has been produced. This has mostly involved taking the current constitution and its provisions and inserting it into the new model but there have been a number of minor changes made at the same time. Due to the difference in structure, it is not possible to produce tracked changes indicating the amendments so the table below gives details of the changes made:-

Constitution Section	Amendment Made	Details
Appendix 3 – Standing Orders	2.2.6, 2.2.8, 2.2.13 Appointment process for Lay Member, Practice Manager, Secondary Care Consultant	These individuals are eligible to serve two terms of office. The new wording clarifies that, at the end of their first term, the Governing Body will determine whether to re-appoint them for a second term.
	3.3 Petitions	Change to state the Chair will decide whether to include a petition received on the agenda for the Governing Body. Previous version required all petitions to be included on the agenda (which might not be appropriate)
	3.6.2 Quorum	Provision to allow 'virtual attendance' in exceptional circumstances pre-agreed by the Chair.
	3.12.3 Public Attendance	Amendment to clarify that Member meetings are not held in public
	3.12.4 Public questions	Additional paragraph to reference CCG's procedure for managing public questions
	4.2.1 Terms of Reference	Provision to include Committee Terms of Reference in Governance Handbook
Scheme of Reservation and Delegation (not included in constitution but detail for information)	Inclusion of 'policy areas' Ungrouping of various responsibilities into separate items in table	Formatting change to align Scheme with the other Black Country and West Birmingham CCGs to support future collaboration
	Remuneration Committee arrangements	Clarification of responsibilities in line with NHS England legal advice that decisions about remuneration are a legislative function

Constitution Section	Amendment Made	Details
		of the Governing Body (on the <u>advice</u> of the Remuneration Committee)
	Approval of Risk Management arrangements	Role of Audit and Governance Committee in line with revised risk management arrangements

- 3.2. Applications for variation of the constitution must be authorised by the CCG Membership and the proposal to make this application was raised and agreed at the Members meeting on 2 October 2019. All Practices were subsequently emailed a copy of the proposed new constitution and details of the proposed changes along with an opportunity to raise any queries. No direct feedback has been received.
- 3.3. In line with NHS England Guidance, the new constitution includes a provision to speed up the process of making future minor changes by only requiring Membership approval of 'substantive' proposals for changes. Following feedback at the Members meeting the table below aims to provide an initial guide of what would be deemed to be substantive and non-substantive. This is not designed to provide a comprehensive definition but working guidance. In addition, the provision in the constitution also allows for two or more elected Governing Body Members to refer any proposed changes to the Membership for decision if they consider a change proposed by the Accountable Officer deemed to be substantive has been wrongly defined.

Substantive Changes	Non-Substantive Change
<ul style="list-style-type: none"> • Changes to the CCG name or area • Changes to the composition of the Governing Body • Changes to the powers reserved to the members • Changes to Member's rights or arrangements for members meetings 	<ul style="list-style-type: none"> • Corrections of typographical errors etc. • Changes to wording to reflect changes in legislation or new guidance • Changes to the list of Member practices following mergers etc. • Changes to list of Joint arrangements following agreement

4. NEXT STEPS

- 4.1. If the Governing Body gives authority to proceed, an application to vary the constitution will be made to NHS England. This will, in line with the statutory guidance, include an impact assessment and outline the CCG's approach to seeking member and other stakeholder views. NHS England aims to respond to applications within eight weeks.



- 4.2. The other Black Country and West Birmingham CCGs are also in the process of adopting or have adopted the new model constitution format. This means that all four CCGs will be able to work from the same position as work to align governance structures continues. In particular, it will be possible to undertake any work to amend the terms of reference for non-statutory committees to support collective working approaches without going through the NHS England constitutional review process.

5. CLINICAL VIEW

- 5.1. All GP Member practices have been provided with an opportunity to comment on the proposed changes. No specific feedback has been received.

6. PATIENT AND PUBLIC VIEW

- 6.1. As the proposed changes to the constitution are administrative in order to comply with the latest guidance, it has not been deemed necessary to specifically seek patient and public views on these changes.

7. KEY RISKS AND MITIGATIONS

- 7.1. There is a risk that the CCG's constitution will be out of date and not fit for purpose if it is not structured in line with the latest guidance. Adopting the new model will mitigate this risk.

8. IMPACT ASSESSMENT

Financial and Resource Implications

- 8.1. There are no specific financial or resource implications associated with this report.

Quality and Safety Implications

- 8.2. There are no specific Quality and Safety implications associated with this report.

Equality Implications

- 8.3. There are no specific equality implications associated with this report.

Legal and Policy Implications

- 8.4. The CCG is required by legislation to have a constitution that complies with guidance produced by NHS England on the content and format. The new draft constitution is in line with this guidance and an application to vary the constitution will be submitted in line with the procedure set out in NHS England's guidance on CCG Constitutions.

Other Implications

8.5. There are no other implications associated with this report.

Name	Peter McKenzie
Job Title	Corporate Operations Manager
Date:	October 2019

ATTACHED:

Draft Constitution

RELEVANT BACKGROUND PAPERS

NHS England Model Constitution and Guidance

NHS England Procedure for Clinical Commissioning Groups to apply for constitution change merger or dissolution

REPORT SIGN-OFF CHECKLIST

This section must be completed before the report is submitted to the Admin team. If any of these steps are not applicable please indicate, do not leave blank.

	Details/ Name	Date
Clinical View	GP Members Meeting & Email	October 2019
Public/ Patient View	N/a	
Finance Implications discussed with Finance Team	N/a	
Quality Implications discussed with Quality and Risk Team	N/a	
Equality Implications discussed with CSU Equality and Inclusion Service	N/a	
Information Governance implications discussed with IG Support Officer	N/a	
Legal/ Policy implications discussed with Corporate Operations Manager	Report Author	October 2019
Other Implications (Medicines management, estates, HR, IM&T etc.)	N/a	
Any relevant data requirements discussed with CSU Business Intelligence	N/a	
Signed off by Report Owner (Must be completed)	Peter McKenzie	29/10/19