

Constitutional Changes Proposed by Legal Advisers

At Clause 4.1.2, changed the term 'Board' to Governing Body to align with the term used in the legislation. **Page 14.**

Amended Clause 4.8.1 to clarify the individuals to whom the Governing Body may delegate decision-making by replicating the language used at paragraph 7(5) of Schedule 1A to the NHS Act 2006. **Page 16/17.**

Clause 9.1 of the constitution previously included a reference to the CCG working with NHS England. That clause has been retained, but moved to become clause 9.8. **Page 32.**

The NHS England model constitutional clauses have been inserted as clauses 9.5 – 9.7. **Page 27-31.**

At clauses 9.6.10 (**page 30**) and 9.7.10 (**page 31**), that the person responsible for making a written report to the Governing Body on joint commissioning arrangements could be the Chief Officer of the CCG.

The removal of the previous clause 9.6 (**page 31-32**) as its content is now reflected in the new suggested clauses 9.5 – 9.7.

The removal of most of the text which currently forms Part 10 (**page 34-36**) of the constitution (conflicts of interest) and its inclusion instead in your conflicts of interest policy. In addition, that the conflict of interest policy should not be included as an appendix to the constitution and should, instead, be established as a stand-alone document.

The amendment of the title of Schedule 2 (**page 46**) to the constitution to avoid confusion, as, at present, this is also called 'constitution'.

The removal of the text of what is currently Appendix 4 (**page 71-73**) to the constitution. As the Governing Body is not a committee, we recommend that the substantive provisions of the current Governing Body Terms of Reference be incorporated instead into the Standing Orders.

**See overleaf the relevant extracts (as numbered above) of the Constitution (changes highlighted).**

- The Governing Body

The CCG must have a governing body, to oversee the delivery of the CCG's Commissioning Plan, lead and set the strategy for the CCG and to be accountable for the delivery by the CCG of its functions as a statutory body. Member Practices will be entitled, through their Practice Lead, to elect members to the Governing Body to ensure the Members are represented and can contribute clinical expertise at the highest level within the CCG.

The NHS Act 2006 requires the CCG to establish a **Governing Body**. The CCG's Governing Body shall be known as the Merton CCG Governing Body.

The practice and procedure of the Governing Body is set out in the Governing Body Terms of Reference appended to this Constitution at

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- Exercise of Functions

The functions of the Governing Body may be exercised by any of the following on their behalf:

Any committee or sub-committee of the Governing Body;

A member of the Governing Body;

A Member of the CCG who is an individual (but is not a member of the Governing Body);

An individual of a description specified in the constitution.

- Joint commissioning arrangements with other Clinical Commissioning Groups

9.5.1 The CCG may wish to work together with other CCGs in the exercise of its commissioning functions.

9.5.2 The CCG may make arrangements with one or more CCG in respect of:

- i. delegating any of the CCG's commissioning functions to another CCG;
- ii. exercising any of the commissioning functions of another CCG; or
- iii. exercising jointly the commissioning functions of the CCG and another CCG

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9.5.3 For the purposes of the arrangements described at paragraph 9.5.2, the CCG may:

- make payments to another CCG;
- ii. receive payments from another CCG;
- iii make the services of its employees or any other resources available to another CCG; or
- iv. receive the services of the employees or the resources available to another CCG.

9.5.4 Where the CCG makes arrangements which involve all the CCGs exercising any of their commissioning functions jointly, a joint committee may be established to exercise those functions.

9.5.5 For the purposes of the arrangements described at paragraph 9.5.2 above, the CCG may establish and maintain a pooled fund made up of contributions by any of the CCGs working together pursuant to paragraph 9.5.2.iii above. Any such pooled fund may be used to make payments towards expenditure incurred in the discharge of any of the commissioning functions in respect of which the arrangements are made.

9.5.6 Where the CCG makes arrangements with another CCG as described at paragraph 9.5.2 above, the CCG shall develop and agree with that CCG an agreement setting out the arrangements for joint working, including details of:

- How the parties will work together to carry out their commissioning functions;
- The duties and responsibilities of the parties;

- How risk will be managed and apportioned between the parties;
- Financial arrangements, including, if applicable, payments towards a pooled fund and management of that fund;
- Contributions from the parties, including details around assets, employees and equipment to be used under the joint working arrangements.

9.5.7 The liability of the CCG to carry out its functions will not be affected where the CCG enters into arrangements pursuant to paragraph 9.5.2 above.

9.5.8 The CCG will act in accordance with any further guidance issued by NHS England on co-commissioning.

9.5.9 Only arrangements that are safe and in the interests of patients registered with member practices will be approved by the Governing Body.

9.5.10 The Governing Body of the CCG shall require, in all joint commissioning arrangements, that the lead clinician and lead manager of the lead CCG make a quarterly written report to the Governing Body and hold at least annual engagement events to review aims, objectives, strategy and progress and publish an annual report on progress made against objectives.

9.5.11 Should a joint commissioning arrangement prove to be unsatisfactory the Governing Body of the CCG can decide to withdraw from the arrangement, but has to give six months' notice to partners, with new arrangements starting from the beginning of the next new financial year.

- 9.6 Joint commissioning arrangements with NHS England for the exercise of CCG functions

9.6.1 The CCG may wish to work together with NHS England in the exercise of its commissioning functions.

9.6.2 The CCG and NHS England may make arrangements to exercise any of the CCG's commissioning functions jointly.

9.6.3 The arrangements referred to in paragraph 9.6.2 above may include other CCGs.

9.6.4 Where joint commissioning arrangements pursuant to 9.6.2 above are entered into, the parties may establish a joint committee to exercise the commissioning functions in question.

9.6.5 Arrangements made pursuant to 9.6.2 above may be on such terms and conditions (including terms as to payment) as may be agreed between NHS England and the CCG.

9.6.6 Where the CCG makes arrangements with NHS England (and another CCG if relevant) as described at paragraph 9.6.2 above, the CCG shall develop and agree with NHS England a framework setting out the arrangements for joint working, including details of:

- How the parties will work together to carry out their commissioning functions;
- The duties and responsibilities of the parties;
- How risk will be managed and apportioned between the parties;
- Financial arrangements, including, if applicable, payments towards a pooled fund and management of that fund;
- Contributions from the parties, including details around assets, employees and equipment to be used under the joint working arrangements

9.6.7 The liability of the CCG to carry out its functions will not be affected where the CCG enters into arrangements pursuant to paragraph 9.6.2 above.

9.6.8 The CCG will act in accordance with any further guidance issued by NHS England on co-commissioning.

9.6.9 Only arrangements that are safe and in the interests of patients registered with member practices will be approved by the Governing Body.

9.6.10 The Governing Body of the CCG shall require, in all joint commissioning arrangements that the Chief Officer of the CCG make a quarterly written report to the Governing Body and hold at least annual engagement events to review aims, objectives, strategy and progress and publish an annual report on progress made against objectives.

9.6.11 Should a joint commissioning arrangement prove to be unsatisfactory the Governing Body of the CCG can decide to withdraw from the arrangement, but has to give six months' notice to partners, with new arrangements starting from the beginning of the next new financial year after the expiration of the six months' notice period.

9.7 Joint commissioning arrangements with NHS England for the exercise of NHS England's functions

9.7.1 The CCG may wish to work with NHS England and, where applicable, other CCGs, to exercise specified NHS England functions.

9.7.2 The CCG may enter into arrangements with NHS England and, where applicable, other CCGs to:

- Exercise such functions as specified by NHS England under delegated arrangements;
- Jointly exercise such functions as specified with NHS England.

9.7.3 Where arrangements are made for the CCG and, where applicable, other CCGs to exercise functions jointly with NHS England a joint committee may be established to exercise the functions in question.

9.7.4 Arrangements made between NHS England and the CCG may be on such terms and conditions (including terms as to payment) as may be agreed between the parties.

9.7.5 For the purposes of the arrangements described at paragraph 9.7.2 above, NHS England and the CCG may establish and maintain a pooled fund made up of contributions by the parties working together. Any such pooled fund may be used to make payments towards expenditure incurred in the discharge of any of the commissioning functions in respect of which the arrangements are made.

9.7.6 Where the CCG enters into arrangements with NHS England as described at paragraph 9.7.2 above, the parties will develop and agree a framework setting out the arrangements for joint working, including details of:

- How the parties will work together to carry out their commissioning functions;
- The duties and responsibilities of the parties;
- How risk will be managed and apportioned between the parties;
- Financial arrangements, including payments towards a pooled fund and management of that fund;
- Contributions from the parties, including details around assets, employees and equipment to be used under the joint working arrangements.

9.7.7 The liability of NHS England to carry out its functions will not be affected where it and the CCG enter into arrangements pursuant to paragraph 9.7.2 above.

9.7.8 The CCG will act in accordance with any further guidance issued by NHS England on co-commissioning.

9.7.9 Only arrangements that are safe and in the interests of patients registered with member practices will be approved by the Governing Body.

9.7.10 The Governing Body of the CCG shall require, in all joint commissioning arrangements that the Chief Officer of the CCG make a quarterly written report to the Governing Body and

hold at least annual engagement events to review aims, objectives, strategy and progress and publish an annual report on progress made against objectives.

9.7.11 Should a joint commissioning arrangement prove to be unsatisfactory the Governing Body of the CCG can decide to withdraw from the arrangement, but has to give six months' notice to partners, with new arrangements starting from the beginning of the next new financial year after the expiration of the six months' notice period.

- NHS England (NHSE)

The CCG shall work with NHS England (formerly the Commissioning Board Authority) to improve the quality of primary care services; ensuring that local service re-design promotes innovation and reducing health inequalities.

The CCG will work in partnership with NHS England to improve quality of specialist services.

The CCG will be accountable to NHS England.

- Conflicts of Interest

The Governing Body shall develop and maintain a conflicts of interest policy (the “Conflicts of Interest Policy”).

1.1.2 A copy of the Conflicts of Interest Policy as amended from time to time by the Governing Body will be published on the CCG’s website and shall be appended to this Constitution.

- Registers of Interest

10.2.1 The CCG shall create and maintain **one or more** registers of the interests of:

Practice Leads

Members of the Governing Body;

The members and attendees of committees or sub-committees or of committees or sub-committee of the Governing Body; and

CCG employees

(the “Registers of Interest”) recording all declarations of interest as set out below and in the CCG’s Conflicts of Interest Policy.

The Registers of Interest shall be available for public inspection on written request.

10.2.2 The CCG shall make arrangements to ensure that:

~~A person referred to in paragraph 10.2.1 above declares any conflict or potential conflict of interest that the person has in relation to a decision to be made in the exercise of the commissioning functions of the CCG;~~

~~Any such declaration is made as soon as practicable after the person becomes aware of the conflict or potential conflict and, in any event within 28 days; and~~

**Any such declaration is included in the Registers of Interests.**

~~10.2.3 The CCG shall make arrangements for managing conflicts and potential conflicts of interest in such a way as to ensure that it does not, and does not appear to, affect the integrity of the CCG's decision making processes.~~

10.2.2 The CCG shall have regard to guidance published by NHS England on the discharge of CCG functions in respect of conflicts of interest.

10.2.3 Conflicts of Interest shall be managed in accordance with the CCG's Conflicts of Interest policy, which is available on the Merton CCG website.

# Schedule 1

*Amendments to the Constitution*