

**WEST LEICESTERSHIRE CLINICAL COMMISSIONING GROUP  
BOARD MEETING**

**13 October 2015**

<b>Title of the report:</b>	Updating CCG Governance Arrangements
<b>Section:</b>	Governance – How we manage our business
<b>Report by:</b>	Ket Chudasama, Assistant Director of Corporate Affairs Amy Stevens, Corporate Affairs Officer
<b>Presented by:</b>	Ket Chudasama, Assistant Director of Corporate Affairs

**Report supports the following West Leicestershire CCG's goal(s) 2012 – 2015:**

Improve health outcomes		Improve the quality of health-care services	
Use our resources wisely	✓		

**Equality Act 2010 – positive general duties:**

1. The CCG is committed to fulfil its obligations under the Equality Act 2010, and to ensure services commissioned by the CCG are non-discriminatory on the grounds of any protected characteristics.
2. The CCG will work with providers, service users and communities of interest to ensure if any issues relating to equality of service within this report are identified and addressed.

**Additional Paper details:**

Please state relevant Constitution provision	4.4 – States the CCG will abide by principles of good governance 8.2.1 - The Group will make arrangements to manage conflicts and potential conflicts of interest to ensure that decisions made by the Group will be taken and seen to be taken without any possibility of the influence of external or private interest 6.4.2 - Committees, sub-committees and sub-groups may only be formed by the governing body of the Group, and are described in this Constitution
Please state relevant Scheme of Reservation and Delegation provision (SORD)	<ul style="list-style-type: none"> <li>• Consideration of any matter concerning changes to the Group's constitution</li> <li>• Changes to Terms of Reference etc.</li> <li>• Creation of committees, sub- committees and sub-groups</li> </ul>

Please state relevant Financial Scheme of Delegation provision	n/a
Please state reason why this paper is being presented to the WLCCG Board	To provide the Board with an update regarding the outcome of the legal advice and to seek approval of the recommended minor changes
Discussed by	CCG Board in June, July, Aug & Sept 2015, localities in July and CMT 03-08-2015
Alignment with other strategies	CCG constitution Conflicts of Interest Policy
Environmental Implications	n/a
Has this paper been discussed with members of the public and other stakeholders? If so, please provide details	n/a

### **EXECUTIVE SUMMARY:**

1. At its September meeting the Board received the updated governance documents in relation to the new Col management arrangements. As stated to the Board in September, all of the governance documents were subject to legal approval, which was sought during the month of September.
2. The purpose of the legal advice was to seek assurance that the new Col arrangements:
  - Are lawful and in accordance with current regulation and national guidance
  - The system of internal control and governance set out in the documentation meets a standard which satisfies the requirement for good governance as per the CCG Constitution
  - The provisions set out in the documents are cohesive and integrated, and any contradictions have been clarified and eliminated
  - The documents accurately reflect the advice previously provided by DAC Beachcroft.
3. The CCG has now received a legal opinion on the following documents, of which the detail of the legal feedback is provided to the Board in the main paper:
  - Appendix 1 - WLCCG Constitution
  - Appendix 2 - Col Policy
  - Appendix 3 - Board Terms of Reference
  - Appendix 4 - Procurement & Investment Committee Terms of Reference
  - Appendix 5 - Conflicts of Interest Screening Panel Terms of Reference.
4. The legal opinion from DAC Beachcroft confirmed the following:

*"I have now finished the review of this set of documents and can confirm that I believe these to be consistent with each other, as well as the standards of governance expected of a NHS CCG"*

5. A number of minor, non-material changes have been recommended by DAC Beachcroft, which are outlined in detail in the main paper. Examples of the changes are:
  - Deputies will be included in the quoracy and voting for both the P&I Committee and the Col Screening Panel
  - Escalation to an independent arbiter has been made more specific to include an example of a suitable person to undertake this role
  - The Col Screening panel can convene in person or via a conference call
  - The CCG can remove the model wording from the Constitution as detailed in section 7 of the main paper.
6. The Board is asked to review and approve the recommended changes contained within the tables in the main paper.
7. Following Board approval of these minor document changes, the CCG will send a communication out to all member practices to invite any final comments before submitting an application to NHS England for approval of the amended Constitution.

**RECOMMENDATION:**

The West Leicestershire Clinical Commissioning Group is requested to:

**APPROVE** the recommended changes to the updated governance documents following legal advice

# WEST LEICESTERSHIRE CLINICAL COMMISSIONING GROUP

## BOARD MEETING

13 October 2015

### Updating CCG Governance Arrangements

#### INTRODUCTION

1. At its September meeting the Board received the updated governance documents in relation to the new Col management arrangements. As stated to the Board in September, all of the governance documents were subject to legal approval, which was sought during the month of September.
2. The purpose of the legal advice was to seek assurance that the new Col arrangements:
  - Are lawful and in accordance with current regulation and national guidance
  - The system of internal control and governance set out in the documentation meets a standard which satisfies the requirement for good governance as per the CCG Constitution
  - The provisions set out in the documents are cohesive and integrated, and any contradictions have been clarified and eliminated
  - The documents accurately reflect the advice previously provided by DAC Beachcroft
3. The CCG has now received a legal opinion on the following documents, of which the detail of the legal feedback is provided in the table below:
  - Appendix 1 - WLCCG Constitution
  - Appendix 2 - Col Policy
  - Appendix 3 - Board Terms of Reference
  - Appendix 4 - Procurement & Investment Committee Terms of Reference
  - Appendix 5 - Conflicts of Interest Screening Panel Terms of Reference
4. In summary, the documents presented to the Board in September included the following changes:
  - Adding the P&I Committee and Col Screening Panel to the list of formally constituted committees of the Board
  - The Board terms of reference had been updated to reflect the new Col arrangements
  - The Col Policy had been updated to include a detailed procedure for how Col will be managed
5. The legal opinion from DAC Beachcroft confirmed the following:

*“I have now finished the review of this set of documents and can confirm that I believe these to be consistent with each other, as well as the standards of governance expected of a NHS CCG”*

- Following Board approval of these minor document changes, the CCG will send a communication out to all member practices to invite any final comments before submitting an application to NHS England for approval of the amended Constitution.

## LEGAL FEEDBACK

- The following minor changes have been made to the governance documents following legal advice from DAC Beachcroft:

<b>Appendix 1: WLCCG Constitution</b>		
<b>Page/section number:</b>	<b>What the change/amendment is:</b>	<b>Rationale for the change:</b>
Page 35 Section 8.6.4	The following addition has been made to the ‘Transparency in Procuring Services’ section:  “The CCG will comply with the Procurement Strategy and associated policies included as Appendices to that Procurement Strategy, and ensure that the Procurement Strategy is reviewed regularly and kept up to date”	To make a more detailed reference to the CCG’s Procurement Strategy (currently being developed)
Page 98 Section 13.2.2	Legislation reference update in relation to the procurement of contracts	To update the original reference so that it reflects current legislation and guidance

<b>Appendix 2: Col Policy</b>		
<b>Page/section number:</b>	<b>What the change/amendment is:</b>	<b>Rationale for the change:</b>
Throughout the document	Removal of the term "Board" to describe the Governing Body	Using the terms “Board” can have an adverse effect on the perceptions members of the CCG have as to the role and function of the GB

<b>Appendix 3: Board Terms of Reference</b>		
<b>Page/section number:</b>	<b>What the change/amendment is:</b>	<b>Rationale for the change:</b>
No further changes made		

<b>Appendix 4: Procurement &amp; Investment Committee Terms of Reference</b>		
<b>Page/section number:</b>	<b>What the change/amendment is:</b>	<b>Rationale for the change:</b>

Throughout the document	Removal of the term "Board" to describe the Governing Body	Using the terms "Board" can have an adverse effect on the perceptions members of the CCG have as to the role and function of the GB
Pages 3 – 4 Section 4	The addition of the following duties:  "It is the duty of the Committee to consider procurement and investment decisions as and the GB refers these to it. In doing so the Committee shall have regard for:  <ul style="list-style-type: none"> <li>• Applicable procurement legislation and national guidance</li> <li>• The strategy, aims and objectives of the CCG</li> <li>• Clinical leadership and input</li> <li>• CCG and LLR commissioning arrangements</li> <li>• Consider all options in merit as defined in procurement documentation such as Invitations to Tender"</li> </ul>	To provide more detail on the duties of the Committee
Page 4 Sections 6 & 7	The use of deputies has been added in to allow voting members to nominate a suitable deputy to attend and where required, vote on their behalf. Deputies will be included in the quoracy	This change has been made to allow flexibility for members and to increase quoracy options. This change is consistent with the recent changes made to other sub-group terms of reference
Page 4 Section 8.2.3	Escalation to an independent arbiter has been made more specific to state the following:  "The Procurement & Investment committee could appoint an independent arbiter (of appropriate standing e.g. Chair of another CCG) for the purpose of considering challenges and objections"	In the original version the reference to an independent arbiter was considered too vague, and so an example of an appropriate person for this role has been included
Pages 4 – 5 Section 9	A standard section regarding secretariat services has been included	This sets out the requirements for minute taking, agenda setting and the supporting papers. Previously this section was not as detailed
Page 5 Section 10	A standard section regarding procedural documents and corporate record keeping has been added in as follows:  <ul style="list-style-type: none"> <li>• "Prepare, review and approve procedural documents (strategies, policies, protocols and procedures) as set out in the CCG's Policy for Policies</li> <li>• Maintain the corporate records and evidence required to demonstrate how it has discharged its duties to the CCG</li> <li>• Pursue gaps in evidence and assurance to demonstrate the successful achievement of the Committee's objectives."</li> </ul>	This section has been included to provide clarification that the Committee will act in accordance with the CCG's Policy for Policies when preparing and approving any procedural documents, and that corporate records of the Committee's business will be maintained. This section was not previously included in the original version.

<b>Appendix 5: Conflicts of Interest Screening Panel Terms of Reference</b>		
<b>Page/section number:</b>	<b>What the change/amendment is:</b>	<b>Rationale for the change:</b>
Throughout the document	Removal of the term "Board" to describe the Governing Body	Using the terms "Board" can have an adverse effect on the perceptions members of the CCG have as to the role and function of the GB
Pages 4 – 5 Sections 7 & 8	The use of deputies has been added in to allow voting members to nominate a suitable deputy to attend and where required, vote on their behalf. Deputies will be included in the quoracy.	This change has been made to allow flexibility for members and to increase quoracy options. This change is consistent with the recent changes made to other sub-group terms of reference
Page 5 Section 9.4	The term "meet virtually" has been changed to "meet in person or by conference call"	The term "virtual" was considered too vague and not robust enough, therefore, the amendment makes the arrangements for meeting more clear
Page 5 Section 9	A standard section regarding secretariat services has been included	This sets out the requirements for minute taking, agenda setting and the supporting papers. Previously this section was not as detailed
Pages 5 – 6 Section 10	A standard section regarding procedural documents and corporate record keeping has been added in as follows: <ul style="list-style-type: none"> <li>• "Prepare, review and approve procedural documents (strategies, policies, protocols and procedures) as set out in the CCG's Policy for Policies</li> <li>• Maintain the corporate records and evidence required to demonstrate how it has discharged its duties to the CCG</li> <li>• Pursue gaps in evidence and assurance to demonstrate the successful achievement of the Committee's objectives."</li> </ul>	This section has been included to provide clarification that the Committee will act in accordance with the CCG's Policy for Policies when preparing and approving any procedural documents, and that corporate records of the Committee's business will be maintained. This section was not previously included in the original version.

## **REMOVAL OF MODEL CONSTITUTION WORDING**

8. As outlined to the Board last month, as part of the new Col arrangements the CCG was seeking legal advice regarding the removal of the following model Constitution wording, as it is considered that the new arrangements negate the need for enacting these clauses. Following legal advice it has been confirmed that the CCG can remove the following wording as the new Col provisions are considered comprehensive and robust:

*“Where more than 50% of the members of a meeting are required to withdraw from a meeting or part of it, owing to the arrangements agreed for the management of conflicts of interests or potential conflicts of interests, the chair (or vice-chair) will determine whether or not the discussion can proceed.*

*In making this decision the chair (or vice-chair) will consider whether the meeting is quorate, in accordance with the number and balance of membership set out in the CCG’s standing orders. Where the meeting is not quorate, owing to the absence (temporary or otherwise) of certain members, the discussion will be deferred until such time as a quorum can be convened. Where a quorum cannot be convened from the membership of the meeting, owing to the arrangements for managing conflicts of interest or potential conflicts of interests, the chair (or vice-chair) of the meeting shall consult with the AD Corporate Affairs on the action to be taken.*

*This may include:*

*Requiring another of the CCG’s committees, which can be quorate, to progress the item of business, or if this is not possible;*

*Inviting on a temporary basis one or more of the following to make up the quorum (where these are permitted members of the Board or committee or sub- group in question) so that the CCG can progress the item of business:*

*a member of the clinical commissioning group who is an individual*

*a member of a relevant Health and Wellbeing Board*

*a member of the governing body of another clinical commissioning group”*

9. The CCG has removed this wording from the Constitution, however, this change is subject to NHS England approval

## **NEXT STEPS**

10. Following Board approval of these minor document amendments, the CCG will send a communication out to all member practices to invite any final comments before submitting an application to NHS England for approval of the amended Constitution and accompanying governance documents.
11. The Board will receive an update at the November meeting (or before if appropriate/material) regarding the outcome of any comments received from member practices.

## **RECOMMENDATION:**

The West Leicestershire Clinical Commissioning Group is requested to:

**APPROVE** the recommended changes to the updated governance documents following legal advice