

# NHS clinical commissioning groups draft code of governance

Expert review



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## Context

The Government's Health and Social Care Act 2012 moved responsibility for commissioning care to clinicians, by way of clinical commissioning groups (CCGs). Clinical commissioning groups are new statutory NHS bodies making commissioning decisions and healthcare strategy for their community.

CCGs are different entities from previous NHS arrangements, with each GP practice being a member and clinicians leading commissioning decisions. The CCG is its member practices; the members are the authority and appoint governing body members. This code seeks to differentiate between principles that should be applied to the CCG entity, for the guidance of its members, and those aimed at the governing body.

In addition to their current clinical and business demands, GPs now have new powers, roles and responsibilities. With the transfer of responsibility for commissioning health care and services to CCGs, there will be an increase in the demands placed on GPs, and fellow clinicians, to perform these new statutory duties in a manner that is transparent, and enables interested parties to hold them to account; most notably patients and the public. Good governance is an important aspect for delivering that transparency and accountability, but may not be well understood by those likely to be involved in running CCGs.

The aim of the following draft code of good governance, specifically created for clinical commissioning groups, is to develop a concise document that outlines governance principles that will support clinicians, and those that work with them, to perform their new commissioning activities and help to maintain public trust in clinicians and the NHS.

An agreed approach as to what is understood, and accepted, to be appropriate governance in CCGs would be ultimately to ensure consistency and define the reasonable expectations of the governing bodies. Ideally, the code will be developed by health service professionals for health service professionals and that is why we welcome feedback to this draft code from those within CCGs, including governing body members, and those that will work with them.

## Providing feedback

The following document provides the principles the expert panel believes to encapsulate good governance appropriate to clinical commissioning groups. Below are key questions that the expert panel seeks feedback on. Other comments that aim to improve the understanding of governance within the newly created CCGs are welcome. Feedback should be directed to:

CCG Code Feedback  
Policy Department  
ICSA  
16 Park Crescent  
London  
W1B 1AH

Comments can also be made at [www.icsaglobal.com/ccgcode](http://www.icsaglobal.com/ccgcode) or by e-mailing [ccgcode@icsaglobal.com](mailto:ccgcode@icsaglobal.com).

The deadline for feedback is Friday 26 July 2013. In providing feedback on the draft principles it would be appreciated if you could provide information about the organisation you are responding on behalf of.

Draft NHS clinical commissioning group code of governance: feedback questions

1. Is the content of the draft CCG code of governance easy to understand?
2. Are the principles contained within the draft CCG code of governance applicable to your CCG? If you work with CCGs, do the draft principles help to support that work?
3. Is the language in the draft CCG code of governance appropriate for governing body members, GP member practices, staff and others interested in the governance of CCGs?
4. For those working within CCGs, is the draft CCG code of governance flexible enough to adapt to your CCG's needs?
5. What are the most useful aspects of the draft CCG code of governance in relation to your work and interactions with CCGs? As someone who works with CCGs or as part of a CCG?
6. How could the draft CCG code of governance be improved for those working in or with CCGs?
7. What other information could be included in the draft CCG code of governance?
8. What, if any, supporting activities and documents would help you to implement the draft CCG code of governance principles within your CCG?
9. How would the draft CCG code of governance principles help your organisation to meet its objectives?
10. What other comments do you have regarding the draft CCG code of governance?

## Foreword from the chairman

The introduction of the clinical commissioning group (CCG) brings with it significant opportunities, and challenges, for the NHS. The CCG is a new NHS statutory body, based on the principle of a membership (in this case GP practices) providing suitable representatives to commission services in a defined local area.

Why is this different? CCGs have governing bodies (not boards) which provide assurance for the governance of the CCG. Together with GPs, these bodies include lay members, a secondary care consultant and a nurse. Governing body members are not non-executive directors, but are responsible for ensuring the CCG acts effectively, efficiently and economically, and works in accordance with the principles of good governance. CCGs must also operate entirely in conjunction with the public and patients that they serve – NHS organisations must now involve and work alongside patients and public from the outset in all areas of their planning. They will also need to collaborate with other organisations in order to deliver coherent, integrated commissioned care.

There are examples of good governance within the NHS and across the UK economy, but none that deal explicitly with the membership arrangements within CCGs. It is for this reason that the panel has drawn up this guidance. It will evolve over time and in response to lessons as they are learned but this code marks the start of the governance journey for CCGs. To reflect those lessons we will review, and amend, the guidance after 12 months. I commend it to you.

**Lord Hunt of Wirral**

## Introduction

Good governance in NHS clinical commissioning groups (CCGs) plays an important role as one aspect of improving the quality of care commissioned. It enhances NHS decision-making with a view to meeting patient needs. CCG governing bodies are one of the primary vehicles by which the Health and Social Care Act 2012 (the Act) is translated into local action for the benefit of NHS stakeholders. Success in delivering stated outcomes will be dependent upon the CCG ordering its decision-making processes and behaviours in a way that maximises the likelihood that strategic objectives will be achieved for the benefit of patients and the wider public.

“Governance describes the ways in which organisations conduct themselves to ensure that they carry out their duties successfully and to the standards expected of them. It is concerned with accountability and responsibilities and describes how an organisation is directed and controlled.”<sup>1</sup>

The Act creates the mechanism to establish CCGs as statutory bodies that are clinically led. The difference being that clinical commissioning is performed by those closer to patients with the desired result that the quality of care is improved, patient choice increased and noticeable improvements in health outcomes achieved.

The introduction of CCGs, including as they do all GP practices, puts clinical leadership at the heart of commissioning. All CCGs have worked across their membership to develop their constitution which sets out how they will discharge their legal responsibilities. Governing body members of CCGs will play a vital role in serving their patients and the wider community, assuring that the CCG meets its responsibilities and maintaining that public trust.

The following principles are designed to be universal and applicable to all CCGs in England, regardless of their size or collaborative arrangements and whatever the CCG has set out in its constitution. Inevitably, the practice and procedures for each CCG will differ. The application of the principles, however, should be proportionate and appropriate for each CCG and its governing body, thereby reinforcing that good governance is an aide to clinicians in delivering the aims of the Act and improving the quality of care and health experiences of patients.

## Using the code

The high level principles outlined in this code provide CCGs and their governing body members with flexible guidance to be used in a manner that is appropriate to the needs of the organisation, and CCGs are encouraged to adopt an 'apply or explain' approach. CCGs will decide how best to implement each principle in order for it to be proportionate and effective, but should consider the best way to communicate to their stakeholders how they apply the principles.

It is hoped that all CCGs and their governing bodies will adopt the high level principles and include a statement in their annual reports as to how they apply the principles in order to deliver the group's strategic aims for patients and the public. Where they do not, CCGs are encouraged to provide a clear explanation as to the reasons.

## Principles of the code

Clinical commissioning group (CCG) governing bodies carry an important responsibility to ensure that the governance of their CCGs enables delivery on their legal duties in a way that enhances public trust in, and support for, the NHS. In order for the members of CCGs and governing body members to perform their duties effectively and efficiently the following principles apply:

1. Clinical commissioning group members and their governing bodies understand and support each other's role in effective decision-making with a view to improving the experiences of patients and the quality of the care commissioned.
2. CCGs act collaboratively with a range of stakeholders in order to deliver better health outcomes for patients and the public.
3. CCGs are aware of, and understand, the different relationships to be fostered and maintained by the CCG when working with other organisations and regulators in relation to the local and national health economy, and contribute effectively to the greater debate on patient safety, quality and outcomes.
4. The CCG and its governing body accept, and act in accordance with, collective accountability, along with drawing on the strengths and expertise of individual contributions.
5. The CCG, through its governing body, ensures that the views of stakeholders including relevant clinical professionals, patients and the public are actively sought and used to inform commissioning decisions and the likely impact of such decisions
6. Governing bodies have robust processes for decision-making, as outlined in their constitution, that support and maintain transparency and accountability at every level.

## Principle 1

Clinical commissioning group members and their governing bodies understand and support each other's role in effective decision-making with a view to improving the experiences of patients and the quality of the care commissioned.

The relationship between GP member practices, who make up the CCG, and the governing body should be based on trust and a clear understanding of the position and responsibilities of each.

This could be achieved by:

- individual GP member practices regularly contributing to, and developing, the CCG's vision and working with the governing body to provide such support and guidance as detailed in the Act or in the CCG's constitution
- the individual representative of GP member practices having clear guidance as to their role and relationships within the CCG and the governing body
- the various committees of the CCG and the governing body being open in their communications and dealings with the GP member practices, with dialogue based on the mutual understanding of agreed objectives
- ensuring GP member practices' meetings are constructive and effective in demonstrating accountability to stakeholders
- GP member practices acknowledging the duties of their governing body for ensuring the governance of the NHS clinical commissioning group, on their behalf, as detailed in legislation and the CCG's constitution.

### Key questions for the CCG:

- Do the GP member practices know under what circumstances they can challenge the decisions of the CCG's committees and governing body and hold them to account?
- Is there a high degree of engagement across all GP member practices? If so, how is that manifested?
- Where are the priorities and aims of the CCG stated?

## Principle 2

CCGs act collaboratively with a range of stakeholders in order to deliver better health outcomes for patients and the public.

The NHS clinical commissioning group co-operates with other clinical commissioning groups, NHS entities, service providers, local authorities and other relevant organisations with an interest in the local health economy.

This could be achieved by:

- ensuring appropriate relationships and constructive dialogue at the right level with a range of identified current and future service providers, other CCGs and regulatory organisations, are in alignment with the agreed strategic aims
- maintaining a schedule of the specific third party bodies, in relation to which the NHS clinical commissioning group has a duty to co-operate, and identifying an individual CCG member, or authorised representative, to lead on those arrangements. Examples include: primary care services, specialised services and the work of the Health and Wellbeing Boards
- regularly reviewing the effectiveness of these relationships and the processes supporting them, where necessary, taking proactive steps to improve them
- developing, and regularly reviewing, written agreements between appropriate partners, including other CCGs and locality boards (where they exist)
- identifying those with an interest in the work of the CCG and ensuring that there is a strategy for regular and effective communication with them about the CCG, its work, strategy and values
- working with current and potential providers of NHS funded services to ensure the commissioning of quality healthcare to meet the needs of the CCG's population
- ensuring partners have the opportunity to express their views and interests appropriately to inform the CCG's planning, decision-making and strategic reviews.

### Key questions for the CCG:

- Does the CCG maintain full records of delegated decision-making? These records should include both:
  - records of delegations made by the CCG of its decision-making powers. This includes both a register of functions which you have asked other CCGs to exercise on your behalf and a record of delegated decision-making authority which has been given to your members, employees, governing body, committees or sub-committees – both general delegations in place for categories of person/organisation and any specific authorisations given for particular decisions. The records should include authority given to individual employees, members or others to make decisions on behalf of the CCG in the context of any joint working groups or other collaborative groups, in which two or more CCGs discuss and agree steps to achieve joint exercise of their commissioning functions or other collaborative activities;
  - records of the decisions made under these delegation arrangements.
- How often are these records reviewed by the CCG and its committees?

[The CCG remains legally liable for all decisions taken under delegated authority, including functions delegated to another CCG, and decisions which exceed the powers of the person who purports to take the decision are legally vulnerable. Therefore it is very important that the CCG tracks and monitors decisions taken and activities carried out on its behalf.]

## Principle 3

CCGs are aware of, and understand, the different relationships to be fostered and maintained by the CCG when working with other organisations and regulators in relation to the local and national health economy, and contributing effectively to the greater debate on patient safety, quality and outcomes.

The CCG, and its governing body, should be clear about the form, level and scope, of co-operation required with relevant external bodies in order to discharge the CCG's statutory duties.

This could be achieved by:

- the CCG governing body, and any committees being aware of, and understanding, the role of key bodies outlined in the legal and regulatory framework governing CCGs, including:
  - NHS England and its regional and local area teams
  - health and wellbeing board(s)
  - HealthWatch England and their local representatives
  - other NHS clinical commissioning groups
- changes in the legal and regulatory environment being discussed at the appropriate level and implemented accordingly
- identifying authorised individuals responsible for maintaining appropriate relations with each body
- providing relevant information to each organisation in a manner that is timely, accurate and appropriate
- making requests for information from other bodies that are clear in content and identify the purposes for which the information is required.

### Key questions for the CCG:

- Do the CCG and its governing body consider the feedback from other organisations and act accordingly? If so, how is that manifested?
- Has there been any patient care or wider quality issues that could have been improved by better co-operation within the CCG's local health economy in the past 12 months?
- Does the CCG have appropriate processes in place to ensure they are aware of, and can act upon, issues raised by regulators in relation to their providers?



## Principle 4

The CCG and its governing body accept, and act in accordance with, collective accountability, along with drawing on the strengths and expertise of individual contributions.

Members of the governing body understand their role and responsibilities collectively and individually in relation to the legal and regulatory frameworks that apply to them.<sup>2</sup>

This could be achieved by:

- recognising and respecting that all governing body members are equally responsible in law (notwithstanding the additional responsibilities of the Accountable Officer) for the decisions of the governing body, as detailed in a comprehensive induction and ongoing support
- ensuring compliance with all relevant legislation and regulation applicable to the CCG, and the activities it undertakes, and making appropriate public statements to confirm that this is the case
- assuring that all governing body members are properly appointed and are qualified to serve, supported by role descriptions and an agreed appointment process
- being alert to those matters reserved to the CCG and those delegated and reserved to the governing body, or other committee, including reviewing regularly the scheme of delegation, list of matters reserved, and the terms of reference for committees
- assuring the solvency and financial strength of the group, in line with legal requirements, standing financial instructions, internally agreed financial arrangements and policies detailed in the CCG's annual report and accounts
- ensuring that all governing body members understand their relationship with, and responsibilities to, other organisations, including:
  - patients and the public and other stakeholders
  - GP member practices
  - staff
  - committees of the group, and if appropriate to the CCG locality boards
  - collaborative partners, and other arrangements
- undertaking ongoing training and support to ensure all governing body members can fulfil their duties.

### Key questions for governing body members:

- Has each governing body member undergone a thorough induction programme? Has any further training or development been requested and acted on?
- Does the governing body understand its role and what is expected of it in terms of decision-making challenge, scrutiny and governance assurance on behalf of the CCG?
- Does each governing body member understand their collective responsibility and that any disagreements are managed using an agreed process as set out in the constitution?
- Does the governing body understand the particular responsibilities of the Accountable Officer and are these discussed at least annually by the governing body?

<sup>2</sup> Further information regarding the respective roles of each governing body member can be found in Appendix C.

## Principle 5

The CCG, through its governing body, ensures that the views of stakeholders including relevant clinical professionals, patients and the public are actively sought and used to inform commissioning decisions and the likely impact of such decisions.

The governing body ensures that the CCG has made appropriate arrangements for compliance with such generally accepted principles of good governance that are relevant to it. This can include development of the CCG's strategy, having taken into account the views, as far as appropriate and practicable, of stakeholders, as well as other functions which can be set out in CCG constitutions.

This could be achieved by:

- involving members of the public and patients in the work of the CCG, including the planning of commissioning arrangements, changes to those arrangements and the decision processes associated with any such arrangements
- ensuring governing body meetings are open to the public, unless not in the public interest, with clear criteria as to when matters of confidentiality or business sensitivity require private discussions
- fully supporting the members of the governing body in fulfilling their roles<sup>3</sup>
- open and regular communication informing stakeholders about the work of the clinical commissioning group
- providing guidance to interested parties on how stakeholders, including patients, carers and the public, can get involved with the work of the CCG and how it can be held to account
- the CCG delivering appropriate consultations on significant changes to services commissioned and policies affecting the wider health economy
- listening and responding to the views of patients, carers and the local community and providing feedback as to how, if appropriate, those opinions have informed decisions aligned to the CCG's public and patient involvement strategy
- the CCG handling complaints constructively, impartially and effectively in line with a widely promoted policy
- considering the group's responsibilities to the wider community and publicly reporting that approach.

### Key questions for governing body members:

- How did the CCG identify its stakeholders and put in place appropriate engagement procedures for each?
- What methods does the governing body use to monitor the extent to which public and patients are involved in the business of the CCG?
- Does a description of the CCG's public involvement and engagement appear in the CCG's Annual Report?
- Does the CCG publish learning and responses to complaints?

<sup>3</sup> See Appendix 3 for sources of further information on these roles.

## Principle 6

Governing bodies have robust processes for decision-making, as outlined in their constitution, that support and maintain transparency and accountability at every level.

Governing body members demonstrate probity and integrity in their governance role and when representing the clinical commissioning group. Governing body members ensure the CCG adopts and adheres to open, robust and transparent processes.

This could be achieved by:

- governing body members acting in the best interests of the CCG, its patients and the public, in accordance with CCG agreed policies, procedures and values
- adopting and adhering to a conflicts of interest policy, which is publicly available
- establishing and regularly updating the register of interests, which can be easily accessed by the public
- ensuring conflicted governing body members are identified and do not participate in decision-making<sup>4</sup>
- behaving in accordance with the Nolan principles<sup>5</sup>
- promoting and supporting the NHS Constitution, as detailed in the annual report or on the CCGs website
- complying with laws against bribery, including implementing clear guidance on gifts and hospitality, and recording those gifts that have been offered, accepted and refused
- assuring legal requirements regarding competition and procurement practices are implemented and recorded accordingly
- assuring decisions, actions and activities are defensible and within the agreed scheme of delegation.

### Key questions for governing body members:

- What types of decisions have generated most interest from stakeholders?
- Does the governing body receive an annual summary of information that has been made available to the public?
- Has the governing body checked that its delegations and schedule of matters reserved are enacted in practice across the CCG? What remedial, if any, action has been taken?
- Does the governing body regularly review the CCG's actions under Freedom of Information legislation?
- Has the CCG received any feedback regarding its procurement processes, from stakeholders, and if so what actions were taken as a result?

<sup>4</sup> Further guidance can be found in Appendix C

<sup>5</sup> Please see Appendix A for a list of the Nolan Principles

# Appendix A: The Seven Principles of Public Life (Nolan principles)

The Committee on Standards in Public Life was established in 1994, initially to deal with concerns about unethical conduct amongst MPs, including accepting financial incentives for tabling Parliamentary questions, and issues over procedures for appointment to public bodies. As an independent advisory body to the Government it monitors, reports and makes recommendations on all issues relating to standards in public life.

‘The seven principles include:

## **Selflessness**

Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

## **Integrity**

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

## **Objectivity**

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

## **Accountability**

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

## **Openness**

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

## **Honesty**

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

## **Leadership**

Holders of public office should promote and support these principles by leadership and example.’

Further information about the committee can be found at [www.public-standards.gov.uk](http://www.public-standards.gov.uk).

## Appendix B: Professional Standards Authority

The Commission for Health Regulatory Excellence (since the Health and Social Care Act 2012 the body was renamed the Professional Standards Authority) was charged by the Secretary of State for Health to develop a range of standards for those appointed to NHS boards or governing bodies.

The final standards cover the personal behaviour of board and governing body members, technical competence and business practices. The standards can be found at [www.professionalstandards.org.uk/docs/psa-library/november-2012---standards-for-board-members.pdf?sfvrsn=0](http://www.professionalstandards.org.uk/docs/psa-library/november-2012---standards-for-board-members.pdf?sfvrsn=0).

## Appendix C: Further reading

### Legislation

Health and Social Care Act 2012

S.I.2012, No. 1631 NHS, England: NHS (Clinical Commissioning Groups) Regulations 2012, June 2012

S.I.2013, No. 474 NHS, England: NHS (Clinical Commissioning Groups – Payments in Respect of Quality) Regulations 2013, April 2013

### NHS England resources

Towards establishment: Creating responsive and accountable clinical commissioning groups  
NHS Commissioning Board, October 2012

Model constitution framework for clinical commissioning groups  
NHS Commissioning Board, October 2012

Clinical Commissioning Group Governing Body Members: Role outlines, attributes and skills  
NHS Commissioning Board, July 2012

Clinical Commissioning Groups: Remuneration guidance for chief officers and chief financial officers  
NHS Commissioning Board, July 2012

Clinical Commissioning Group Template Remuneration committee Terms of Reference  
NHS Commissioning Board, April 2012

Clinical Commissioning Group Template Audit Committee Terms of Reference  
NHS Commissioning Board, April 2012

Code of Conduct: Managing conflicts of interest where GP practices are potential providers of CCG-commissioned services  
NHS Commissioning Board, October 2012

Framework for Collaborative Commissioning  
NHS Commissioning Board, March 2013

### BMA resources

Ensuring Transparency and Probity  
BMA, May 2011

### RCN resources

Nurse membership on Clinical Commissioning Group governing bodies  
RCN

Clinical commissioning groups – the statutory nurse role on the governing body  
RCN, October 2012

### Other resources

Good governance for Clinical Commissioning Groups: An introductory guide  
NAPC/KPMG, July 2012

## Background information



ICSA is the Membership and qualifying body for professionals working in governance, risk and compliance, including company secretaries. Our Members work in all sectors and at every level of seniority. With over 100 years of experience, we champion high governance standards by providing qualifications, training, high-quality guidance and support (including technical resources, publications and software), and through our work with regulators and policy-makers.

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The logo for DAC Beachcroft, featuring the text 'DAC beachcroft' in a white, serif font. 'DAC' is in all caps and 'beachcroft' is in lowercase. The logo is set against a dark blue rectangular background with a thin pink horizontal line at the bottom.

DAC Beachcroft is a leading international legal business with more than 2,200 people across the UK, Europe, Asia Pacific and Latin America.

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