

practical issues in the governance

of Clinical Commissioning Groups

Contents

Foreword	3
Executive Summary.....	4
The principles of corporate governance.....	6
Translating the principles into practice	10
Potential conflicts of interest	15
Joint working and the Better Care Fund.....	23
ANNEX 1	
Roles, responsibilities and relationships in public bodies.....	30
ANNEX 2	
Effective financial management in public bodies	36
ANNEX 3	
Resources	42

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\ foreword

This document is intended to give Clinical Commissioning Group (CCG) members an introduction to best practice in governance. It will be especially helpful for those acting in a governor role for the first time, giving an introduction to the principles of public sector corporate governance that will apply to them. For those with previous experience on public sector boards it provides a benchmark against which to review their participation and performance.

Given their current relevance:

- Particular attention is paid to conflicts of interest, which are a generic governance issue but also inherent to the particular set-up of CCGs, the more so if commissioning is extended to primary care in line with the Vanguard Programme¹ being piloted from 2015-16
- Possible arrangements for governance of the Better Care Fund (BCF)² are given as a practical example.

It is not intended to replicate NHS England's statutory guidance on the governance of CCGs, nor the wide range of other documents addressing these issues, but to provide a focus for issues emerging in practice and to provide a context of corporate governance in which they should be placed.

¹ www.england.nhs.uk/ourwork/futurenhs/5yfv-ch3/new-care-models/

² www.england.nhs.uk/ourwork/part-rel/transformation-fund/bcf-plan/

executive summary

Effective corporate governance is often about asking what suits a given situation in light of the principles rather than trying to apply rules which may not exactly fit the situation.

Actions and arrangements are likely to be appropriate depending on the answer to the following questions:

	Yes/No
Is it in the best interests of citizens and service users?	
Is this in line with the organisation's purpose and values?	
Is the board receiving the right, and timely, management information to enable effective decision making?	
Have possible risks been taken into account?	
Am I being as open and transparent as possible?	
Could this be embarrassing if it became public?	
Does the action correctly reflect the difference between executive and non-executive roles?	

The following provides a checklist of specific points to consider:

- Is there an understanding of the principles of corporate governance?
- Does the CCG's constitution reflect the new CIPFA/IFAC International Framework?
- Have relevant roles been set out clearly to ensure understanding?
- Does the CCG have guidance on conflicts of interest which reflects best practice? In particular:
 - Are arrangements in place to identify potential conflicts of interest as early as possible in the decision making process? As a fallback safeguard, is there a standard item at the beginning of meeting agendas to confirm if there are conflicts of interest?
 - Are processes in place to manage conflicts should they arise?
 - Is there a process in place to monitor possible patterns indicative of conflicts of interest, such as assessing referral patterns, involvement of third parties and/or referral management systems?
 - Have decisions been structured to split decisions on 'is this a good health care idea?' from those on 'how can it best be delivered?'

- Have the relevant practical arrangements been made to set up governance around transactions to enable smooth and consensual operation of the Better Care Fund?
- Have Better Care Fund risks been identified and mitigation put in place, both those shared by the CCG and council, and those arising as a consequence of collaborative action but the impact of which would fall on the CCG?

the principles of corporate governance

What is corporate governance?

Good governance is fundamental to effective Clinical Commissioning Groups. This guide starts by considering what is meant by good corporate governance, the principles that underpin it, and what members of governing bodies can do to translate these principles into action. The guide then concentrates in more detail on the topical areas of conflicts of interest and the Better Care Fund.

Corporate governance is about the management of management. It was defined in the Cadbury Report as *‘the system by which organisations are directed and controlled’*. Corporate governance is, therefore, concerned with the structures and processes for decision-making and accountability as well as controls and behaviour at the top of organisations.

Public bodies, however, need to go further than Cadbury as resources are not provided by informed investors or customers who have a choice but by mandatory taxation. Public bodies are often complex and have to balance competing demands for services against the resources available to them. Recognising the additional governance demands of public bodies is a key element of effective public services, whether this is in terms of the organisation or the individual.

All public bodies have, at their head, a group which is responsible for:

- giving leadership and strategic direction
- defining control mechanisms to safeguard public resources
- supervising the overall management of the body’s activities
- reporting on stewardship and performance.

The principles of corporate governance applies to this group, who are charged with maintaining governance.

The updated Nolan principles

The *Nolan Principles of Standards of Behaviour in Public Life*³, as revised in 2013, are seen as a key starting point for any discussion of governance in the public sector and apply to anyone who works as a public office holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the civil service, local government, the police, courts and probation services, non-departmental public bodies, and in the health, education, social and care services. All public office holders are both servants of the public and stewards of public resources. The principles are also applicable to all those in other sectors delivering public services.

3 www.gov.uk/government/publications/the-7-principles-of-public-life

The seven principles of public life

Principle	Revised description
<i>Selflessness</i>	Holders of public office should act solely in terms of the public interest.
<i>Integrity</i>	Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
<i>Objectivity</i>	Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
<i>Accountability</i>	Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
<i>Openness</i>	Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
<i>Honesty</i>	Holders of public office should be truthful.
<i>Leadership</i>	Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

Individuals themselves, whilst having a vital role in promoting and ensuring good governance in the public services need to be supported by organisational frameworks and cultures that promote and foster good governance.

The CIPFA/IFAC International Framework

The *International Framework: Good Governance in the Public Sector*⁴ sets out the organisational and cultural attributes that would be expected to be present in any public benefit entity with effective corporate governance arrangements. The framework defines governance in the public sector as ‘the arrangements put in place to ensure that the intended outcomes for stakeholders are defined and achieved’.

The Framework states that acting in the public interest requires:

- A. Behaving with integrity, demonstrating strong commitment to ethical values, and respecting the rule of law.
- B. Ensuring openness and comprehensive stakeholder engagement. In addition to the over-arching requirements for acting in the public interest in principles A and B, achieving good governance in the public sector also requires effective arrangements for:
 - defining outcomes in terms of sustainable economic, social, and environmental benefits
 - determining the interventions necessary to optimise the achievement of the intended outcomes
 - developing the entity’s capacity, including the capability of its leadership and the individuals within it

⁴ *International Framework: Good Governance in the Public Sector*, CIPFA/IFAC (2014)
www.cipfa.org/policy-and-guidance/standards/international-framework-good-governance-in-the-public-sector

- managing risks and performance through robust internal control and strong public financial management
- implementing good practices in transparency, reporting, and audit, to deliver effective accountability.

Good governance in the public sector encourages better informed and longer-term decision making as well as the efficient use of resources. It strengthens accountability for the stewardship of those resources. Good governance is characterised by robust scrutiny, which places important pressures on improving public sector performance and tackling corruption. Good governance can improve organisational leadership, management, and oversight, resulting in more effective interventions and, ultimately, better outcomes.

General guidance for the NHS

The NHS Leadership Academy⁵ has set the purpose and role of NHS boards as being to govern effectively and in doing so build patient, public and stakeholder confidence that their health and healthcare is in safe hands. This fundamental accountability to the public and stakeholders is delivered by building confidence:

- in the quality and safety of health services
- that resources are invested in a way that delivers optimal health outcomes
- in the accessibility and responsiveness of health services
- that patients and the public can help to shape health services to meet their needs
- that public money is spent in a way that is fair, efficient, effective and economic.

Effective NHS boards demonstrate leadership by undertaking three key roles:

1. Formulating strategy for the organisation.
2. Ensuring accountability by: holding the organisation to account for the delivery of the strategy; by being accountable for ensuring the organisation operates effectively and with openness, transparency and candour; and by seeking assurance that systems of control are robust and reliable.
3. Shaping a healthy culture for the board and the organisation.

Moreover, effective governing bodies:

- are informed by the external context within which they must operate
- are informed by, and shape, the intelligence which provides an understanding of local people's needs, and trend and comparative information on how the organisation is performing together with market and stakeholder analyses
- give priority to engagement with stakeholders and opinion formers within and beyond the organisation. The emphasis here is on building a healthy dialogue with, and being accountable to, patients, the public, and staff, governors and members, commissioners and regulators.

The three roles of the governing body and the three building blocks all interconnect and influence one another.

The Institute of Chartered Secretaries (ICSA) has produced guidance, cited by the NHS Confederation, which sets out principles specific to the CCG context as follows:

- CCG 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 commissioned care.
- CCGs act collaboratively with a range of interested provider parties to deliver better health outcomes for patients and the public.

⁵ *The Healthy NHS Board Principles for Good Governance* at www.leadershipacademy.nhs.uk

- CCGs are aware of, and understand, the different relationships to be built and maintained by the CCG when working with other commissioning 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.
- The CCG and its governing body accept, and act in accordance with, collective accountability to its membership, along with drawing on the strengths and expertise of individual contributions.
- The CCG, through its governing body, ensures that the views of interested parties, including patients, their carers, support groups and the public are actively sought and used to inform commissioning decisions and the likely impact of such decisions.
- Governing bodies have robust and effective processes for decision-making, as outlined in their constitution, that support and maintain transparency and accountability at every level.

The Government introduced a test for *Fit and proper persons: directors' for NHS bodies* in November 2014 where 'NHS bodies' means NHS trusts, NHS foundation trusts and special health authorities. The test was extended to apply to all registered Care Quality Commission (CQC) providers in April 2015.

As a result, all NHS board members are now required to undergo the fit and proper person's test before they are appointed. CCGs might be expected to ensure that the providers that they commission meet the fit and proper tests, and in that context – while the test doesn't apply directly to CCGs – it is good practice to apply the test to appointments to CCG governing bodies.

To be 'fit and proper', directors must:

- be of good character
- have the qualifications, skills and experience necessary for the relevant position
- be capable of undertaking the relevant position, after any reasonable adjustments under the Equality Act 2010
- not have been responsible for any misconduct or mismanagement in the course of any employment with a CQC registered provider
- not be prohibited from holding the relevant position under any other law, eg under the Companies Act or the Charities Act.

The specified circumstances under which a person is not fit are:

- having been sentenced to imprisonment for three months or more within the last five years
- being an undischarged bankrupt
- being subject of a bankruptcy order or an interim bankruptcy order
- having an undischarged arrangement with creditors
- being included on any barring list preventing them from working with children or vulnerable adults
- having been struck-off a register of professionals maintained by a regulator of health or social care.

translating the principles into action

This section summarises best practice to translate principles into action. In this publication we refer to the Accountable Officer as the most senior staff member in a CCG. However, where the Accountable Officer role is taken by a clinician as chief clinical officer the Chief Operating Officer will have many of the responsibilities and functions that would have been prescribed to the Accountable Officer.

Best practice in corporate governance is constantly evolving and the chair and governing body members must be kept up to date with developments. The governing body should ensure that the Accountable Officer or other nominated officer is charged with briefing the governing body on developments in corporate governance. The governing body will also need to obtain the requisite level of assurance that the organisation is complying fully with all relevant guidance and best practice. More information on the role of the governing body can be found in Annex 1 on page 30.

Roles, responsibilities and relationships

The chair and the governing body members should have a good understanding of the different roles and responsibilities that relate to governing body life.

The role of the governing body

The governing body of a public body exists to provide effective leadership, direction, challenge, support and guidance to the organisation. It must ensure that the policies and priorities of government are implemented and the decisions taken are in the interest of the public.

A CCG's governing body has responsibility⁶ for:

- a) ensuring that the group has appropriate arrangements in place to exercise its functions *effectively, efficiently and economically* and in accordance with the group's *principles of good governance*
- b) determining the remuneration, fees and other allowances payable to employees or other persons providing services to the group and the allowances payable under any pension scheme it may establish
- c) such other functions as are delegated to it by the group.

In carrying out those functions, the CCG governing body should:

- provide active leadership
- guide and challenge the Accountable Officer and the management team to ensure the delivery of agreed plans is on time, within budget and in line with clearly defined parameters
- fulfil the goals set by NHS England.

⁶ See the model constitution set out at www.england.nhs.uk/resources/resources-for-ccgs/ccg-mod-cons-framework

The role of the chair

The chair has a key role in ensuring that the governing body develops the vision and purpose for the organisation. The chair is responsible for chairing governing body meetings, providing leadership and holding the Accountable Officer to account for ensuring the strategy is delivered.

The chair has additional responsibilities over and above those of ordinary governing body members, particularly in relation to strategic leadership and the conduct of governing body business. These include:

- building governing body level links with partner organisations and other stakeholders. Acting as the figurehead of the organisation, representing it at meetings and functions, and to the press
- ensuring that the governing body carries out its essential functions efficiently and effectively
- ensuring that all governing body members have a proper knowledge and understanding of their corporate roles and responsibilities.

The effective chair

- ensures that the governing body maintains a focus on strategy and performance and is not distracted by detail
- sets the agenda, style and tone of the governing body discussions to promote effective decision making and constructive debate
- promotes effective relationships and open communication, both inside and outside the governing body meetings, between governing body members and the executive team
- builds an effective and complementary governing body, initiating change and planning succession in governing body appointments, subject to ministerial approval and guidance issued by the Commissioner for Public Appointments
- promotes the highest standards of corporate governance, upholding the highest ethical standards of integrity and probity
- ensures effective implementation of governing body decisions
- establishes a good relationship with the accountable officer, providing support and advice while respecting executive responsibility; and at the same time, leading the governing body in effective challenge and scrutiny of executive performance
- develops and maintains positive relationships at governing body level with stakeholders ensuring mutual understanding and co-operation
- carries out regular and rigorous appraisals of governing body members to assess performance and ensure the governing body continues to have the right mix of skills and perspectives
- ensures that a periodic governing body effectiveness review is conducted and acts on the findings as a basis for continuous improvement.

The Praesta guide to great public sector chairs

Consultancy firm Praesta's recently published guide *What Makes a Great Chair in the Public Sector?* was compiled after conducting interviews with a number of chairs and accountable officers in both the public and the private sector. This advises that the chair should:

- check that governing body members have a shared understanding of governance
- think about the available levers and use them wisely

- regularly review governing body and accountable officer performance
- ask others to review the chair's performance against the key skills for a chair
- build a strong relationship with the accountable officer – or part company
- understand the politics and the expectations of ministers
- identify stakeholders and how to work with them
- be prepared for the media spotlight
- consider designating a senior independent director to provide support
- think about your other sources of personal support.

Chairs may also consider appointing a vice chair who can step in instantly should the chair be indisposed.

The roles of the governing body members

The role of the governing body member involves bringing an independent judgement to bear on four key areas, strategy, performance, risk and behaviour.

Strategy

- Contribute to strategy development and decision-making that enables the organisation to achieve its objectives.
- To ensure openness and comprehensive stakeholder engagement.

Performance

- To hold management to account for its performance in meeting agreed outcomes goals and objectives through purposeful challenge and scrutiny.
- To ensure that effective management arrangements and an effective team are in place at the top level of the organisation.
- To determine and keep under review the information needs of the governing body and its committees, including arrangements for the monitoring of performance, internal controls and financial management.
- To help to clarify which decisions are reserved for the governing body and then ensure that the rest are clearly delegated.

Risk

- To participate in the development and review of the organisation's arrangements for the identification and management of risk to ensure that controls and systems of risk management are robust and defensible.

Behaviour

- To live up to the highest ethical standards. Governing body members should also demonstrate through their behaviour that they are focusing on their responsibilities to the organisation and its stakeholders, demonstrating strong commitment to ethical values and respecting the rule of the law.

It is important that the chair and governing body members have a clear and thorough understanding of the roles of the Accountable Officer, the wider management team and the NHS Commissioning Board, all in the context of their own roles and responsibilities.

The King's Fund⁷ sets out the following as top tips for setting up the governing body in the best way:

- The optimal size of the governing body is between eight and 12 (the minimum size for a CCG is six).
- The CCG needs to set out the respective roles and responsibilities of all the members of the governing body in the constitution. CCGs should consider tailored job descriptions for each member of the governing body, reflecting their responsibilities to the governing body and the membership of the CCG.
- All members of the governing body should have an appropriate induction and development programme.
- The skills of the chair are critical in a well-functioning governing body, and chairs should have well-developed interpersonal skills to support effective decision-making.
- An external assessment of the performance of the governing body should be undertaken (ideally annually) leading to a development plan.
- There should be active support to member practices to strengthen their contribution to the work of the CCG. This could include a support package for practice leads.
- Members should adhere to the Nolan principles of public life.

Specific roles

Specific roles may vary, but generally members will be expected to:

- operate as an effective team member
- understand the business of the organisation and the environment in which it operates
- offer constructive challenge in governing body and committee discussions, contribute to decision-making and share responsibility for the governing body's decisions
- attend governing body meetings on a regular basis and be well prepared by reading relevant papers in advance and, if necessary, seeking further information
- contribute to the work of any committees that have been established by the governing body
- represent the governing body at meetings and events when required
- act with propriety and in good faith at all times.

The effective governing body member:

- upholds the highest ethical standards of integrity and probity (and complies with the public body's code of conduct)
- supports the Accountable Officer (and other executives) in their leadership of the business while monitoring their performance and conduct
- questions intelligently, debates constructively, challenges rigorously and decides dispassionately
- listens sensitively to the views of others, inside and outside the governing body
- gains the trust and respect of other governing body members
- maintains a focus on strategy and performance and is not distracted by detail.

Each public body has a code of conduct that sets out the standards that governing body members must apply in everything they do. The practical implications of this code and the Nolan principles that underpin it are discussed in greater depth on page 6.

⁷ *Good Governance for Clinical Commissioning Groups - An introductory guide*: King's Fund in conjunction with KPMG and the national association of primary care.

Responsibilities

Governing body members must be (and must be seen to be) completely selfless and objective and must adhere to the highest standards of personal integrity. Specifically, governing body members must:

- demonstrate selflessness by taking decisions solely in terms of the public interest, not acting in order to gain financial or other material benefit for self, family, friends or employer
- demonstrate integrity by not placing themselves under any financial or other obligation to any individual or organisation that might reasonably be thought to influence them in the performance of their duties
- be objective – decisions should be taken solely on merit when carrying out public business
- act with honesty at all times. Declare any private interests relating to public duties and take steps to resolve any conflicts arising in a way that protects the public interest.

The role of the Accountable Officer

The Accountable Officer has two lines of accountability. As an employee of the organisation, he or she is directly accountable to the governing body for the overall organisation, management and staffing. The officer is also responsible to NHS England and ultimately Parliament. Where the role is undertaken by the clinical leader this section relates to the Chief Operating Officer.

The key roles of the Accountable Officer are:

- to assist the governing body in developing the strategy for the public body. This will involve devising alternative strategies by which the public body might achieve its purpose and assessing the strengths and weaknesses of each for the governing body
- to devise and recommend corporate and annual business plans that will allow for the full implementation of the governing body's adopted strategies within the resources available
- to devise and implement management structures and processes that will allow the public body to implement agreed plans
- to implement governance arrangements and sound systems of internal control
- to ensure that the public body has managers and staff with the necessary skills, knowledge, qualifications and experience to be able to implement agreed plans
- to lead and inspire the organisation to fully implement agreed plans on time and within budget to achieve agreed objectives
- to monitor carefully the implementation of plans, taking corrective action where required
- to ensure that the governing body is kept adequately informed for it to be able to discharge its duty to monitor performance
- to develop and maintain an effective relationship with the chair and to ensure an effective link between senior managers, the chair and non-executive governing body members.

The Accountable Officer will be supported on a day-to-day basis by a senior management team. Members of the senior management team may attend governing body meetings to support the Accountable Officer, report on their areas of responsibility, and provide clarification, answer questions and provide assurance on material issues as required.

The role of the Chief Financial Officer

Each governing body is required to have a Chief Financial Officer. This role may be combined with the chief operating officer role but may not be combined with an accountable officer role for good governance reasons. The key roles of the Chief Financial Officer are to:

- be the governing body's professional expert on finance and ensure through robust systems and processes the regularity and propriety of expenditure is fully discharged
- make appropriate arrangements to support, monitor and report on the CCG's finances
- oversee robust audit and governance arrangements leading to propriety in the use of CCG resources
- be able to advise the governing body on the effective, efficient and economic use of its allocation to remain within that allocation and deliver required financial targets and duties
- produce the financial statements for audit and publication in accordance with statutory requirements to demonstrate effective stewardship of public money and accountability to tax payers.

CIPFA's *Statement on the Role of the Chief Financial Officer in Clinical Commissioning Groups* sets out in detail the roles and responsibilities of the Chief Financial Officer.

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Relationships

Effective relationships are key to effective governing bodies. Examples of these relationships, as well as the challenges in achieving them, are overviewed here.

The governing body and the NHS Area Team

Building an effective relationship with the NHS Area Team can have an enormous impact on the efficiency and effectiveness of a CCG.

The governing body and the Health and Wellbeing Board

The Health and Wellbeing Board has strategic influence over commissioning decisions across health, public health and social care, and as such aims to bring together all system players, including CCGs, to establish a shared understanding of the health and wellbeing needs of the community. CCGs will input to the Joint Strategic Needs Assessment (JSNA), the results of which form a critical influence on CCG decision-making.

The chair and the Accountable Officer

This has often been identified as one of the most important, and trickiest, things to get right. The key components for a successful chair and Accountable Officer relationship are:

- an effective working relationship, based on challenge, support, trust, openness and honesty
- regular one-to-one conversations to discuss key items of business and how best to work together. It is important that the chair makes time to listen to the concerns of the Accountable Officer.

The chair should provide constructive advice where appropriate, but should be careful not to intervene in what they consider to be matters for the organisation.

In times of difficulty, the chair can often provide a shield to protect the Accountable Officer (and executive team) so that operational duties are not neglected in the process. In successful relationships the chair and the Accountable Officer will often act as a mutual check balance.

The chair and the Accountable Officer should decide the division of leadership responsibilities early on, to avoid overlap and confusion.

The chair is responsible for leading the governing body in effective challenge and scrutiny of executive performance, ensuring the effective implementation of governing body decisions and leading the performance assessment process in relation to the Accountable Officer. Consequently, an effective working relationship should not become an unduly cosy relationship.

The chair and governing body members

In the governing body meetings, individual members are expected to contribute fully to discussions and to exercise challenge where needed. It is important that no individual governing body member (or the chair) dominates the debates or has an excessive influence on decision-making. The chair has an important role to play in ensuring that all members have an opportunity to contribute to discussions.

Outside the governing body meetings, the chair should be a useful source of advice and guidance for governing body members (in particular, less experienced members) on any aspect of their role, responsibilities and conduct.

Members should support the chair in their efforts to conduct governing body business in an efficient and effective manner. However, it is also the duty of members to challenge the chair if they believe a decision is wrong, or has been taken without a full and proper debate.

The governing body and the Accountable Officer

It is essential that members of the governing body work together as an effective team. This involves having clarity about roles and responsibilities and having an atmosphere of mutual respect for each other's position. It is important that the governing body maintains a focus on strategy, performance and behaviour and is not diverted by detail, which is the responsibility of the Accountable Officer and their team. Similarly, the Accountable Officer is able to advise the governing body, but ultimately it is the governing body that takes decisions.

The governing body as a body should also protect the Accountable Officer and staff from the governing body as individuals. Individual governing body members have no authority to instruct the Accountable Officer or any member of staff.

There is also a danger that the Accountable Officer and staff could start making governing body-level decisions. This manifests itself in a number of ways:

- The governing body rubber stamping strategy proposals or a draft corporate plan put forward by the Accountable Officer.
- The governing body being unable to take a decision without the Accountable Officer's recommendation.
- The governing body allowing the Accountable Officer to dictate the agenda for governing body meetings.

A good governing body/executive relationship recognises that the roles of the governing body and executives are quite separate and that there should be an appropriate level of challenge of the executives by the governing body. Governing bodies govern – executives manage. Both are part of the same team but discharging very different roles within that team.

The governing body and stakeholders

It is useful for the governing body to review from time to time who its key stakeholders are. In this context, the term 'stakeholder' refers to anyone with an interest in the work of the organisation.

The governing body needs to consider the concerns and needs of all stakeholders and actively manage its relationships with them. Stakeholders – and the public – should have access to full and accurate information on the decision-making processes and activities of each public body and have the opportunity to influence its decisions and actions.

Public bodies should communicate clearly with their stakeholders in plain language, make information widely available and consult thoroughly and imaginatively. Where practicable and appropriate, the governing body should:

- hold annual open meetings
- hold all governing body meetings (but not committee meetings) in public, unless there is a good reason not to
- release summary reports and/or minutes of meetings
- invite evidence from members of the public in relation to matters of public concern
- consult stakeholders and users on a wide range of issues and committing to effective feedback on such consultation
- make the annual report and accounts widely available including publishing it on the body's website, in a place that is visible and easily accessible.

Link to financial management

The CIPFA definition of public financial management focuses on its contribution to achieving strategic and operational goals as a key aspect of good governance:

*"Public Financial Management (PFM) is the system by which financial resources are planned, directed and controlled to enable and influence the efficient and effective delivery of public service goals."*⁸

This definition underlines the important link between financial management and organisational performance. Good financial management drives successful performance by supporting planning and decision-making, aiding the efficient running of the organisation and promoting the best use of resources.

⁸ Public Financial Management – A Whole System Approach (CIPFA, 2010)

A key concept in the use of public funds is achieving value for money. The chair and the governing body should always bear in mind the need for a public body to demonstrate value for taxpayers' money.

Governing body members are collectively responsible for ensuring that the body has a secure financial position and meets its financial targets. The governing body may establish committees to allow more detailed scrutiny and challenge of financial management and accountability issues by those with the appropriate knowledge and skills, including audit committees. However, while a governing body may delegate specific tasks to a committee, it can never abdicate its responsibilities as the collective governing body retains overall responsibility for finance and accountability matters. More detailed information on effective financial management in public bodies can be found in Annex 2 on page 36.

potential conflicts of interest

Whilst the potential for conflicts of interest is always present to some extent in the governance of public bodies, it has been seen as a particular issue for CCG's due to the possibility that commissioning decisions made by the representatives of GP practices are likely to affect – directly or indirectly – the income of those same practices. That has led to the production of guidance specifically designed to address these matters – details of which can be found in the resources section on page 26.

Background and types of conflict

Confidence in a public body and its governing body members depends on it being clearly understood that decisions are taken in the public interest and not for any other reason. This issue has been seen as particularly relevant to CCGs as GPs are at the centre of both commissioning and provision. This naturally gives rise to some potential conflicts not only because of the critical reputational importance of maintaining credibility in the new system. This does not necessarily indicate a system problem. True, commissioning decisions which are in the best interest of the whole population may not always be in the best interests of either GPs' own individual financial and business positions, or for individual patients for whom they may be expected to advocate. Yet that stems largely from the involvement of people with a strong interest and knowledge of the activities with which they are dealing. It is the other side of the coin which can also be seen positively: primary health care providers play the central role in their local health economy and are ideally placed to assess their communities' health care needs and decide how best to improve them.

Conflicts of interest may arise where judgment on a primary interest (such as award of a contract to secure best value) may be seen to be unduly influenced by a secondary interest (such as individual financial gain). The NHS Confederation's paper *'Managing conflicts of interest in clinical commissioning groups'*⁹ provides a fuller exploration of the specific issues relating to this matter. It includes example scenarios alongside principles which CCGs might adopt.

The scenarios illustrate how potential conflicts may range much more widely than the obvious direct contractual interests, for example do GPs considering taking over business from a failing practice have a conflict of interest in making decisions about what remedial action to take when another practice runs into problems? And might GPs have a very broadly based conflict of interest in seeking to shift care from primary to secondary settings, if such a move might increase their own practices' incomes? Such questions give a flavour for why a principles-governed, rather than a rule-governed, approach makes sense – circumstances will vary, and the issues may not be black and white.

Principles, which illustrate the balance of factors involved, include:

- **Doing business properly.** If commissioners get their needs assessments, consultation mechanisms, commissioning strategies and procurement procedures right from the outset, then conflicts of interest become much easier to identify, avoid or deal with, because the rationale for all decision making will be clear and transparent and should withstand scrutiny.

9 *Managing conflicts of interest in clinical commissioning groups'*, (Center for comissioning, NHS Confederation, Sept 2011)

- **Being proactive not reactive.** Commissioners should seek to identify and minimise the risk of conflicts of interest at the earliest possible stage. For instance by considering potential conflicts of interest when electing or selecting individuals to join the governing body or other decision-making roles, and by ensuring individuals receive proper induction and understand their obligations to declare conflicts of interest.
- **Being balanced and proportionate.** Rules should be clear and robust but not overly prescriptive or restrictive. They should protect and empower people by ensuring decision-making is efficient as well as transparent and fair, not constrain people by making it overly complex or slow.

Interests may be financial or non-financial. If a governing body member has an interest, they must declare that and withdraw, thereby avoiding any participation in either the discussion or the voting process. However, if the interest could be considered to be insignificant or remote, both in practice and in terms of public perception, it may be possible, after discussion with the chair and the Accountable Officer, to remain and participate.

In circumstances where it is unclear whether or not a conflict of interest exists, real or perceived, the matter should be discussed with the chair and/or the Accountable Officer. If still in doubt, cautious withdrawal is indicated. Governing body members should also be aware of situations and circumstances when it would be appropriate to declare any financial or non-financial interests of their spouse, relatives or close friends. The key test is *how a member of the public, acting reasonably, might think that a particular interest could influence the decision taker.*

Handling conflicts

There should be a standard item at the start of any meeting to confirm if there are any conflicts. A declaration of a conflict of interest must be made as early as possible and certainly well before the particular item on the agenda is discussed. Ideally, the declaration should be made at the beginning of the meeting and provide enough information to allow those present to understand the nature of the interest. In the event of a particularly contentious or difficult matter, there may be a need to hold a pre-meeting to discuss how a particular conflict of interest should be handled. Declarations of interest and any action taken as a result should be recorded in the minutes or other appropriate record.

Where a conflict of interest exists and a governing body member does not declare their interest and withdraw, the chair should take appropriate action to ensure that the governing body (and the governing body member concerned) is not compromised. In the event that a governing body member refuses to leave the room, the chair should suspend the meeting and reconvene without the governing body member concerned being present.

In certain situations, handling a conflict of interest properly may require much more than simply leaving the room while the matter is being discussed and voted upon. In particular, governing body members who have a conflict of interest should:

- not get involved in the setting of criteria for the assessment of a grant, tender, etc
- not get involved in the actual preparation of a grant, tender, licence application (or subsequent presentations, interviews, etc) if at all possible
- not receive any relevant papers in advance of the meeting
- not be present for the discussion or voting or receive any minutes relating to that part of the meeting
- not use their position as a governing body member to try to improperly influence a decision by lobbying any other governing body member or by contacting another governing body member to represent their interests at the meeting.

The statutory code of conduct provides for a particular composition of the committee making decisions where a conflict of interest is identified. The committee should be constituted so as to ensure that the majority is held by lay and executive members. In addition to existing CCG lay members, members may be drawn from the CCG's executive members, except where these members may themselves have a conflict of interest (eg if they are GPs). Provision could be made for the committee to have the ability to call on additional lay members or CCG members when required, for example where the committee would not be quorate because of conflicts of interest. It could also include GP representatives from other CCG areas and non-GP clinical representatives (such as the CCG's secondary care specialist and/or governing body nurse lead).

Consistent with that approach, some CCGs are considering a swap arrangement with neighbouring CCGs, in which GPs from one CCG area sit on the committee commissioning primary care in another. That would achieve the combination of GP involvement in primary care decisions but from a more demonstrably non-conflicted source.

Other ways to help demonstrate propriety include seeking advice from the Health and Wellbeing Board which, given its role in producing the Joint Strategic Needs Assessment and Joint Health and Wellbeing Strategy for the area, will have a good overview of the needs and priorities of local populations. It may also be appropriate in some circumstances to seek advice from the NHS England Area Team. It may also help to use the commissioning support services (CSSs) to present information, including an assessment of whether providers meet the relevant criteria, which helps demonstrate independently that the CCG is acting fairly and transparently (note that decisions cannot be delegated to the CSS). Likewise, professional legal advice may be helpful on occasion to demonstrate probity on procurement and competition issues.

Perhaps the simplest way to ensure that those best qualified are fully involved in decisions about medical care whilst minimising the chances of them being seen to be inappropriately involved in decisions about who provides care is to structure decisions to separate the questions on 'is this a good health care idea?' from those on 'how can it best be delivered?'

The NHS commissioning guidance Managing Conflicts of Interest cites a number of good governance processes to ensure patients are being given appropriate choices, particularly where referring GPs have an interest in a provider service that the patient could potentially choose:

- Assessing referral patterns: the CCG could monitor and publish information on referral patterns to help provide assurance that patients are receiving free choice.
- A CCG (or CSS on behalf of one or more CCGs) could have a system whereby these referrals were peer reviewed to check that the referral destination was appropriate and that patient choice was exercised.
- Establishing referral management systems – there could be systems whereby, once a GP has made a decision to refer, a third party manages the discussion with the patient about which service they wish to be referred to. This would take away any perceived potential for GPs to influence patient behaviour.

The NHS has also issued a useful compilation of FAQs on CCG governance. The following two points are of particular relevance.

Can a CCG award a contract to itself or its constituent members?

The CCG will not be able to provide services in its own right, as it is a commissioning-only organisation. The NHS Commissioning Board will be responsible for commissioning primary care services under the GP contract. At the same time, it is an essential feature of the reforms that CCGs should be able to commission a wider range of community-based services, including primary care services over and above those commissioned by the board under the GP contract to improve quality and outcomes for patients. Where the provider for these services might be a GP

practice, CCGs will need to be able to demonstrate – for example to the auditor or in answer to a public question – that those services:

- clearly meet local health needs and have been planned appropriately
- go beyond the scope of the GP contract, and the appropriate procurement approach is used.

Such services will be commissioned using the NHS standard contract rather than the GP contract.

Might GPs be conflicted when referring, for example in giving unbiased information about treatment options?

The reforms do not in any way alter the existing duties of GPs as clinicians to provide high quality primary medical care to meet the needs of patients, as required by their contracts and the terms of their registration as doctors. Through General Medical Council (GMC) guidance, doctors are under a duty that any commercial interest a GP may have in a company must not affect the way they refer or prescribe for a patient.

joint working and the Better Care Fund

There is an increasing emphasis on integration between health and social care, which brings with it a need to apply the principles of good governance in a context which can be challenging if accountabilities are not sufficiently clarified. The Better Care Fund – with joint plans required for every local authority area, and expected to total £5.3bn nationally in 2015-16 – is a newly important area of activity which could also form the template for wider collaboration. Whether it does, or the devolution experiment in Manchester proves closer to the long-term model, the governance issues to be dealt with to take forward integration successfully are similar. The ‘How To’ guides provided by the Better Care Fund Support Programme include coverage of governance issues in the modules on *Leadership and management* and on *Joint working* at www.scie.org.uk/about/partnerships-better-care.asp

It is good practice to set out the responsibilities of individuals and groups in agreeing and monitoring such arrangements. The main matters to be considered are:

- practical arrangements for operation
- risk sharing
- governance arrangements in that context.

Practical arrangements

Factors to consider include:

- Will each CCG in a multi-CCG local authority area agree a separate pooled budget, or will there be one overall pooled budget?
- Which authority will lead in administering the pooled budget? The regulations require that one of the partners is nominated as the host of each pooled budget and this body is then responsible for the budget’s overall accounts and audit.
- What will the contributions be (the BCF arrangements sets minimum but no maximum amounts)?
- The timing of the instalments to be paid to the pool?
- What will be the arrangements for determining when the health-commissioned ‘in hospital’ services element of the pooled budgets (the pay for performance associated element) will be released, ie on delivery of emergency admission reductions only?
- On what can the Better Care Fund money be spent (ie in line with the submitted plans), and are there any purposes for which it is agreed spending is not chargeable to the fund? For example some partnerships have agreed that payments for the protection of social care will not be used to fund the local authority’s statutorily unavoidable functions or services, but should be focused on preventative investments.
- Is there to be a transparent and open book approach as is consistent with good partnership working?
- How often will in-year reporting of the performance of the pooled budget be made to the parties to the agreement?

- Once those approaches are agreed in order to meet the requirements of an annual return, the host must prepare and publish a full statement of spending, signed by the host's Statutory Finance Officer. This will provide assurance to all other parties to the pooled budget and is likely to include:
 - contributions to the pooled budget
 - expenditure from the pooled budget
 - the difference and the treatment of the difference
 - any other agreed information.

The host will authorise income and expenditure in relation to the pooled fund in accordance with its own or each partner's standing orders and financial regulations, dependant on where the individual contracts will sit and who will make direct payments to those providers. The host will be responsible for ensuring that appropriate capital accounting arrangements are applied. The host will be responsible for ensuring that the VAT arrangements are compliant with both NHS and local authority VAT regimes as appropriate.

Risk sharing arrangements

There are two main risk types:

- shared partnership risks
- partner organisational risks associated with the move towards integrated working that are specific to each partner.

The overall better care plan will contain a risk register covering shared risks. That might, for example, consider:

- how any variations to the initial expenditure plan are to be agreed
- how under or overspends are to be shared (50:50 being typical)
- restrictions on overspends occurring in sub-areas of spending without appropriate prior knowledge
- any arrangements to allocate funds to contingencies to mitigate against, for example, increased acute costs if admissions do not reduce in line with stated requirement outlined in the pooled fund, and what happens in practice if that happens.

It is better to establish up front how such matters will be dealt with rather than having to respond to a problem should it arise, in which case particular interests may play more of a role.

Individual partners will be reviewing their own risk registers to ensure full account is taken of any organisation specific risks (financial and operational), which may include:

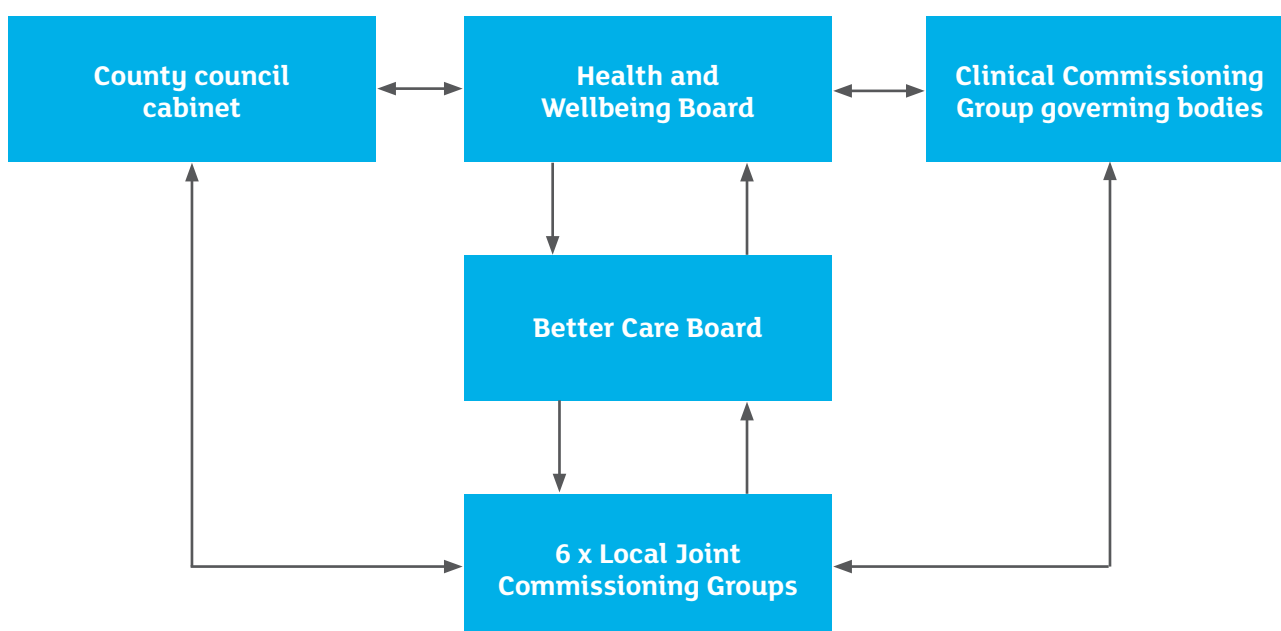
- managing pressures associated with these programmes themselves, but also retaining knock-on benefits in full
- protecting spend in the relevant areas from an internal point of view
- an understanding of the assurance and reporting mechanisms to enable identification and mitigation of any under or overspends against planned expenditure/investments and/or variations against planned BCF activity/performance metrics.

Governance structure

Various models of governance are available. The example below illustrates a relatively complex health economy with six CCGs. It recognises that the pooled budget arrangements do not constitute a delegation of statutory responsibilities – these are retained by the CCG governing bodies and the county council’s cabinet. Streamlined approaches following similar principles are applicable to areas with simple arrangements, such as a coterminous council and CCG area.

In the example the Better Care Board is a partnership group, co-chaired by representatives of a CCG and the council. The Better Care Board operates on behalf of the Health and Wellbeing Board providing strategic leadership across the health and social care system.

At a local CCG level, six local joint commissioning groups have been established – this enables each area to address the range of different communities and will drive local ownership and leadership.



Roles and responsibilities

Body	Roles and responsibilities
<p>Local Joint Commissioning Groups (LJCGs)</p>	<p>Provide a joint commissioning framework for the delivery and implementation of the Better Care Fund plan and integration in each LJCG, to:</p> <ul style="list-style-type: none"> ■ agree local plans to determine how the amount allocated to each LJCG area will be spent. Allocations to LJCGs will be agreed at the Better Care Board with final sign off by the Health and Wellbeing Board ■ jointly commission and oversee the operational delivery of local services to improve outcomes for the local adult population via the Better Care Fund plan ■ drive closer integration between health and social care ■ support the strategic shift from acute to community and to protect social care services ■ invest funds prudently to generate whole systems benefits and avoid new pressures for joint BCF schemes ■ monitor and report financial, quality and performance outcome measures to the Better Care Board ■ remain within agreed budget (the CCG’s Chief Finance Officer and council finance lead) will take the lead in ensuring that income and expenditure of the LJCG is accounted for correctly) ■ monitor and ensure delivery of agreed metrics ■ report to the local Transformation Board (or equivalent) to ensure provider engagement ■ develop appropriate skills and knowledge to manage budgets effectively ■ develop consistent standards and operational procedures ■ exercise control over budgets delegated to them, identifying and reporting risks and exceptions and taking action to manage variations from plan ■ comply with delegated financial limits, financial policies and procedures of the organisation, and requests to supply information to auditors. <p>Decision-making responsibilities are clear and stated in the terms of reference of the LJCG, with explicit delegated powers to take decisions about the fund, with clear rules governing its operation.</p> <p>The LJCG will make a local decision on appropriate membership, to be agreed by CCG governing body and Better Care Board.</p> <p>A named social care lead with decision making authority and a dedicated finance lead to be part of each LJCG.</p> <p>The CCG and council will have equal status in relation to all aspects of governance and decision-making for each LJCG.</p>

Body	Roles and responsibilities
Better Care Board	<p>The Better Care Board has responsibility to:</p> <ul style="list-style-type: none"> ■ formulate, agree and implement strategies for achieving the objectives of the BCF ■ oversee the implementation and management of the joint agreement and related Service Contracts ■ monitor and assure delivery of the agreed improvement targets and trajectories ■ review performance of the pooled budgets ■ seek to determine or resolve any matter referred to it by the LJCGs ■ provide strategic oversight across LJCG plans, identifying complimentary workstreams and opportunities to align improvement initiatives ■ promote and ensure effective engagement with wider partnership arrangements, including but not limited to the Health and Wellbeing Board and Partnership Boards ■ ensure effective clinical/professional leadership and project management arrangements are in place ■ ensure engagement with patients, service users and local communities is meaningful and effective ■ promote learning that can be shared and/or applied to different client groups ■ determine and approve the Terms of Reference of the LJCGs.
Health and Wellbeing Board (HWB)	<p>The Health and Wellbeing Board:</p> <ul style="list-style-type: none"> ■ sets and monitors the overarching strategy across the health and care system ■ receives assurance through regular updates from the Better Care Board on progress to implement the Better Care Fund Plan ■ has overall accountability for approving and delivery of the Better Care Fund Plan.
CCGs/Councils	<ul style="list-style-type: none"> ■ CCG governing bodies and the council cabinet retain their statutory responsibilities for the delivery of statutory services and are accountable for the proper use of resources. ■ The CCG Accountable Officer remains accountable for the use of these resources. ■ CCG governing bodies will be asked to approve the local plans created by the LJCGs. ■ Adult social care area directors will approve the local plans created by the LJCGs on behalf of the council. ■ Council cabinet and CCG governing bodies will determine any additional contributions from their respective organisations to the BCF pooled budget beyond the required minimum. ■ The Director of Adult Social Care Services remains accountable for the delivery of local authority adult social services functions (in line with relevant legislation).

Review and escalation arrangements are in place within the model:

- A signed joint S75 Agreement for the fund forms the basis of the arrangement and will be reviewed at least annually to ensure that the arrangement remains relevant to local circumstances and that all those involved are working towards the same goals. This document would be subject to change if new guidance is issued.
- Where the LJCG is unable to reach agreement, representatives of the CCG governing body and the council will meet in order to review the areas of disagreement with the aim of resolution. Where resolution cannot be reached, the CCG Chief Officer and Director of Adult Social Care should agree a third party to arbitrate.

This approach is in line with the essential measures and controls contained in the *CIPFA/HFMA Guide to Pooled Budgets and the Better Care Fund*, outlined below:

Governance arrangements
■ The governance arrangements for the pooled budget should meet the requirements of all partners.
■ Each partner must satisfy itself the pooled budget complies with requirements of its appropriate code of governance.
■ Each partner must satisfy itself that all other regulatory requirements are met.
■ In-year changes to plans must be subject to appropriate authorisation/approval including final sign-off by relevant HWB.
■ In-year financial reporting must comply with the requirements of SI 2000/617 section 7 paragraph 4(b).
■ Parties to the pooled budget will need to reflect the better care fund in their risk register.
■ Risks of pooled budget arrangements must be assessed and as necessary be subject to ongoing internal audit review.
■ Supporting assurance must be obtained that the information received in relation to the fund is correct and accurate.
■ There must be a process for alerting the CCG governing body and local authority cabinet/executive of concerns about delivery of better care fund projects.
■ CCGs will probably be required to identify if there have/have not been significant financial issues relating to the pooled budget for the period of the governance statement.
■ Other than the host, parties to the pooled budget must identify what assurance information they require on the projects from other organisations.
■ Those charged with governance need to assure them that the data underpinning the above assurances is robust, and then consider the results and the implications for the achievement of the fund's objectives.
Operational structures
■ Each local area must determine the operational structure for their pooled budget.
■ The HWB must sign off pooled budget plans.
■ The HWB must implement measures for the on-going oversight of better care fund projects.
■ The operational structure must include formal delegation arrangements.
■ The membership and terms of reference of the HWB must be appropriate.

Hosting

- The decision on which partner hosts the pooled budget should be made locally.
- While the host body will have delegated powers it will need to work within the reporting and management environments of the partnership.

Signed agreement

- The signed agreement must set out precisely what the overall aims are; who is responsible for what and the associated plans for reporting and accountability.
- The agreement should be reviewed regularly.

Information requirements

- The information required to support performance monitoring and reporting must be identified in advance and collected on a regular basis from the outset.

Financial arrangements

- Parties to the pool will need to discuss with their external auditors the assurances that will be required in order to sign off the year-end accounts.
- The pooled budget host must ensure that VAT arrangements are compliant with NHS and local authority VAT regimes.
- The pooled budget host will be responsible for ensuring that appropriate capital accounting arrangements are applied as required.
- Regular and timely performance reports must be provided for the HWB, the CCG governing body and the local authority cabinet/executive.
- All parties to a pooled budget must understand and consider the various issues relating to the year-end financial processes in advance of the year end itself.
- The Accountable Officer/Section 151 Officer must consider the assurances that may be required to sign off accounts that include pooled budget transactions.
- For joint operations, parties should account for their share of the assets, liabilities, income and expenditure in accordance with IFRS 11.
- Under SI 2000/617 paragraph 7(4), hosts must submit an annual return to the partners about the income and expenditure of the pooled fund.
- The annual return must include a full statement of spending, signed by the Accountable Officer/Section 151 Officer

roles, responsibilities and relationships in public bodies

The role of the governing body – an overview

This section provides a basic overview of the role and function of the public sector governing body. It deals with approaches relevant to CCGs but not specific to them. For those new to a governing body, either as a chair or a governing body member, then this section should be a helpful introduction. For those more experienced in such roles, the later sections will be of more use, as they provide a detailed breakdown of the specific responsibilities and the challenges of the various roles to be performed.

The main purpose of the governing body of a public body is to provide effective leadership, direction, challenge, support and guidance to the organisation and to ensure that the decisions taken are in the interest of the general public.

The two main functions of a governing body are:

- 1 To provide active leadership of the public body by:
 - agreeing the organisation's strategy within the government framework
 - maintaining its focus on strategy, performance and behaviour, without being diverted by detail
 - setting cost-effective plans to implement the strategy, being clear about expected outcomes and ensuring that these are achieved
 - establishing a performance management framework which encourages and supports effective performance and enables under-performance to be addressed quickly
 - establishing the values and standards of the organisation and ensuring that it adopts and complies with codes of conduct and practice for staff and governing body members, ensuring any issues with performance are addressed promptly
 - focusing on the difference that the organisation is making in the outside world and considering the needs of customers and citizens in all decisions made
 - ensuring that the principles of good corporate governance are reflected in the conduct of the governing body; that the organisation complies with all ministerial and departmental guidance, its management statement and financial memorandum and legislation; and that a framework of prudent and effective controls is in place to enable risks to be assessed and managed.
- 2 To provide guidance and challenge to the Accountable Officer and the management of the organisation to ensure the delivery of agreed plans are on time, within budget and in line with clearly defined parameters.

Core responsibilities of the governing body

In addition to those responsibilities specific to an organisation, the basic tasks of the governing body are:

- To define, and seek compliance with, the corporate purpose, aims and values of the body in line with expectations.
- To uphold and provide commitment to those core values, policies and objectives.
- To oversee the development and review of the strategies, plans and policies of the body.
- To oversee the development and review of performance targets, including key financial targets.
- To ensure that the operation and work of is closely aligned with the work of other service delivery public bodies and to co-operate with such bodies to ensure efficiency and effectiveness at the highest strategic level.
- To provide continuity of direction and management by making appropriate arrangements for delegation.
- To establish and promote the body's role in the community by developing mechanisms for gathering and responding to the views of stakeholders, including customers, and involving such individuals in the work of the organisation as appropriate.
- To represent the body within the community and keep stakeholders informed.
- To ensure that the body operates in an open, accountable and responsive way.
- To ensure the organisation adopts and complies with its code of conduct.

Collective corporate responsibility

While governing body members must be capable of constructive challenge, they must also share corporate responsibility for decisions taken by the governing body as a whole. If an individual fundamentally disagrees with the decision taken by the governing body, they have the option of recording that disagreement in the minutes. However, ultimately, they must either accept and support the collective decision of the governing body or resign. Governing body decisions should, however, always comply with statute, ministerial directions, the management statement and financial memorandum and departmental guidance.

Confidentiality

It is essential that the chair and governing body members respect the confidentiality of sensitive information held by the body while ensuring compliance with the Freedom of Information and Data Protection Acts. This includes commercially sensitive information, personal information and information received in confidence by the organisation.

Conduct

Governing body members have a responsibility to set an example by demonstrating the highest standards of behaviour. They should never publicly criticise the organisation, fellow governing body members or staff, including the Accountable Officer. They must not attempt to undermine governing body decisions or distance themselves from them outside the governing body meetings.

Upon appointment to the governing body, members should be provided with a copy of the relevant code of practice for governing body members. It is their personal responsibility to make sure that they are familiar with the provisions of this code of practice, and that their actions comply with it at all times. Individuals should also review regularly, and at least annually, their personal circumstances with this in mind, particularly when circumstances change. Members must not at any time advocate or encourage any action contrary to the code of conduct.

It is important that nothing done or said, whether acting as chair or governing body member or in a business or private capacity, should in any way tarnish the reputation of the organisation or the governing body. If a governing body member has specific concerns about the manner in which the public body is being run, these concerns should be raised with the chair in the first instance. If a governing body member fails to achieve resolution with the chair, they can take that to the sponsoring department – but it should be appreciated that this is a significant step. They are also able to take specific concerns to other appropriate authorities.

Representing the governing body externally

When writing or speaking on any matter that is at all within the remit of the organisation, it is important to be aware that one might well be perceived as representing the governing body even when writing or speaking as a private citizen, as an academic, or as a professional.

If the governing body has adopted a particular position on any policy matter, it is for members of it to support that position. If the governing body has not adopted a position on a particular policy issue, members may be able to promote their own personal views.

As a governing body member, there are certain restrictions on what can be said and to whom. Any articles or speeches on a subject matter of relevance to the public body should be cleared with the chair or the accountable officer (if appropriate) in advance. If approached by the media, it is good practice to leave any responses to the chair or the Accountable Officer or the organisation's press office (if one exists).

Operational issues – executive and non-executive roles

It is essential that there is a clear understanding of the role of executive officers and the role of non-executive governing body members – there is often a fine line between the two. The governing body's role is to oversee the development of strategies, plans and policies for the organisation and to monitor and review performance. It is the role of the officials to implement those plans and strategies.

Governing body members should avoid becoming involved in the day-to-day running of the organisation. However, they should expect to be fully involved in the development and selection of long-term goals and strategies for achieving them.

Registration of interests

All public bodies have a duty to set up, maintain and make available for public inspection a register of governing body member interests. Codes of conduct will be very specific about the interests that governing body members must register and these will normally include:

- remuneration from employment, self-employment, directorships, etc
- related undertakings, ie members must register any directorships held which are themselves not remunerated but where the company (or other undertaking) in question is a subsidiary or parent of a company (or other undertaking) in which they hold a remunerated directorship
- contracts with the public body
- houses, land and buildings that members own or have an interest in, which are of significance or relevance to, or bear upon the work and operation of, the public body

- shares and securities – holdings in a company or organisation which are of significance or relevance to, or bear upon the work and operation of, the public body
- relevant non-financial interests including membership or holding office in other public bodies, clubs, societies and organisations such as trade unions and voluntary organisations.

The code of conduct should contain definitions of what is required under each of these categories and if members are in any doubt about what to register, they should discuss this with the chair and/or the Accountable Officer.

Gifts, hospitality and entertainment

The chairman of a public body should ensure that it is not damaged through the receipt (or provision) of inappropriate levels of gifts and hospitality. There are a number of general guidelines to consider in relation to the acceptance of gifts or hospitality:

- No-one in the organisation should canvas or actively seek gifts or hospitality. Nor should they accept any offer of a gift or hospitality from any individual or organisation that:
 - stands to gain from a decision that the public body may be involved in determining
 - is seeking to do business with the organisation now or in the future.
- Members should usually refuse offers of gifts and/or hospitality except:
 - lunch, or other reasonable hospitality, taken by governing body members after, during, or as a result of a business-related meeting where it would be inappropriate to refuse
 - gifts of a trivial nature or inexpensive seasonal gifts such as diaries or calendars or simple items of office equipment
 - gifts that are received on behalf of the public body and not an individual. However, it is important that these gifts should not be excessive or give the impression of a cosy relationship with, for example, a particular supplier.

In most cases, there will be guidance available in relation to the receipt of gifts and hospitality. This should provide information on, for example, the level of gifts and hospitality that are acceptable, when approval is needed and when offers of gifts or hospitality should be recorded in the gifts and hospitality register.

The chair and the governing body have a duty to maintain the reputation of the organisation through fair, open and consistent dealing with suppliers. Anyone involved in the procurement process is expected to display high standards of competence and integrity. Suppliers should be selected on the basis of quality, suitability and value for money. Both non-executives and executives should take care to avoid becoming, or appearing to become, obliged to individual suppliers through the acceptance of hospitality, gifts, entertainment or sponsorship.

Whistle-blowing

Public bodies should have their own whistle-blowing policy and procedures in place which encourage individuals to raise genuine concerns. This can include concerns on a range of issues such as fraud, health and safety, etc. The body's whistle-blowing procedures should set out clearly the names of the persons who should be approached by an individual wishing to raise concerns internally (eg line manager, senior executives and/or a governing body member). The procedures should also provide guidance on which external authorities can be approached, such as the NHS Commissioning Board, the external auditors, the Health and Safety Executive, etc.

The efficient conduct of governing body business

The role of governing body committees

To function efficiently and effectively, a governing body must put some thought into how business will be conducted. It must adopt processes for getting through business in a constructive way. Many governing bodies establish committees to deal with specific aspects of the governing body's role, the most common are:

- audit
- remuneration
- finance
- policy
- development
- clinical governance (in the health service).

The advantage of a committee structure is that it allows for specialist areas to be debated in detail by a small group of governing body members (and co-optees, where appropriate) with the requisite knowledge and skills. The key points can then be presented to the full governing body for ratification, making more effective use of scarce time.

It is important that clear terms of reference are drawn up for each committee, making it clear whether it has powers to take decisions or only to make recommendations to the governing body. The organisation's standing orders/ schemes of reservation and delegation specify how the organisation conducts its business including any functions delegated by the governing body to committees. However, while the governing body may delegate certain tasks or functions to a committee, the governing body as a whole must be aware that it carries the ultimate responsibility for the actions of its committees and cannot abdicate that responsibility.

There must be clear lines of reporting and accountability for each committee back to the main governing body. The governing body cannot be expected to understand the issues dealt with by a committee from the minutes alone. The governing body should have a report from the committee which summarises the key issues as well as the decisions taken.

Conducting governing body business efficiently

Governing body meetings should always have a manageable and prioritised agenda, an agreed duration and an estimated length of time for each agenda item. The governing body should consider developing a schedule of routine business to be conducted throughout the year as a core to the agenda and this should be kept under regular review.

It is important that the agenda is properly focused. It must reflect the governing body's two fundamental purposes – the long-term (mission, strategy and planning) and monitoring performance. There will be some issues reserved for the governing body, such as major capital spend decisions, and these must be on the agenda. However, it is important that the agenda is not clogged up with detail, even if it is just items 'for noting'. It can be tempting to dwell on the easy unimportant things and not concentrate on the big issues.

The chair should ensure that some action is agreed for every item on the agenda and that the minutes clearly and accurately record decisions taken, responsibility for agreed actions, and as appropriate, the views of individual governing body members. To aid effective working it is important that the agenda and supporting papers are made available sufficiently in advance of the meeting that governing body members have the opportunity to read and consider their content.

The chair must ensure that the governing body as a whole is effective and is working well as a team. At least once a year, the governing body should spend time assessing its own performance and considering how it can improve, including any related development needs for governing body members. This assessment should also consider whether the governing body has access to good quality advice and support to enable it to fulfil its functions.

Corporate and business planning

Managing the planning process

The corporate plan is a key management tool for a public body as it turns long-term strategies into planned action over a period of normally three years and promotes continuous improvements in performance. Generally, a corporate plan will include:

- the principal aims of the public body
- an analysis of the environment in which it operates
- the objectives, tasks and targets for the period of the plan
- a description of the resources required to achieve the plan
- indicators against which performance can be judged
- an efficiency plan describing how the public body intends to achieve better value for money.

It must also meet any specific requirements on content set by the NHS Commissioning Board.

The governing body's role is to manage the planning process by providing the vision and:

- ensuring that effective long-term and medium-term planning takes place
- ensuring that the plans reflect the public body's statutory duties
- considering, challenging and if necessary changing the plans
- reviewing the plans and performance against them on a regular basis
- developing an appropriate set of key performance indicators which will enable it to undertake a high-level overview of progress towards the agreed goals and outcomes in the corporate and annual business plan and to drill down into detail where needed.

effective financial management in public bodies

Introduction to financial management

This section focuses on the key components of effective financial management in public bodies, and considers the specific responsibilities of both the chair and the governing body in delivering good financial management, with particular focus on value for money, accountability and transparency. Those with no previous experience of financial management may find a more in-depth briefing on some of these areas useful.

Good financial management drives successful performance by supporting planning and decision-making, aiding the efficient running of the organisation and promoting the best use of resources.

Value for money

A key concept in the use of public funds is achieving value for money. The chair and the governing body should always bear in mind the need for a public body to demonstrate value for taxpayers' money and be continually asking questions:

- Is too much money being spent on certain items or activities to achieve the targets or objectives of the overall operation?
- Is money being spent to no good purpose because the spending is not helping to achieve objectives?
- What changes can be made to improve performance and efficiency?

Public bodies should regularly review their activities and identify any efficiency projects that could reduce costs and deliver the same or improved services.

Responsibilities of the chair and the governing body for financial management

Good financial management involves everyone in a public body, from the chair and governing body members to front-line staff, supported by capable finance professionals.

The chair

The role of the chair is to ensure the governing body's competency, that it receives the right flow of key performance data, and that it evaluates the effectiveness of the executive's financial management at the appropriate time. The chair must set the framework for the governing body's collective responsibility.

The governing body

Governing body members are collectively responsible for ensuring that the body has a secure financial position and meets its financial targets. The governing body has a responsibility for oversight of the whole financial system and should seek assurance that:

- proper financial management and accountability arrangements are in place and working effectively
- the organisation adheres to strict standards of propriety and complies with all requirements relating to the use of funds
- there is an appropriate level of financial expertise at a senior level within the organisation with a qualified and experienced Chief Financial Officer reporting on financial matters to the governing body
- financial information presented to the governing body is fit for purpose in terms of scope, quality, timeliness and presentation.

The governing body should have members with sufficient finance skills to provide an appropriate level of challenge. It needs the right financial and performance information and must ask the right questions.

The governing body may establish committees to allow more detailed scrutiny and challenge of financial management and accountability issues by those with the appropriate knowledge and skills, including the audit committee. However, while a governing body may delegate specific tasks to a committee, it can never abdicate its responsibilities, as the collective governing body retains overall responsibility for finance and accountability matters.

It is vital for the governing body to receive the right reporting to enable it to make effective decisions.

Considerations include:

- **Relevance:** Is the information clear, relevant and appropriate to inform the decision?
- **Accuracy:** Are reports materially accurate whilst still at a high enough level to allow for a strategic view to be taken?
- **Timeliness:** Is the speed of reporting suitable for decision-making, bearing in mind the trade-offs which can occur between immediacy and accuracy, and between the cost of obtaining information and its value.
- **Completeness:** Is there any information missing? For example a sufficient account of the relationship between clinical and financial factors? Are the harder-to-obtain aspects – eg relating to benchmarking or outcomes – adequately covered?
- **Accompanying interpretation and advice:** There will often be medical, operational, financial, legal, resource, equalities, environmental and risk aspects to a decision. Are the systems in place to identify these aspects?
- **Options:** Is there a suitable range of options to give a rounded view of any alternatives to the recommended course of action?

Applying such principles in the context of CCGs is complicated. They are likely to have to report on the performance in both financial and operational terms of a variety of providers, ranging from a specialist provider responsible for only very small parts of a shared contract, to the performance of the main provider of acute services. The challenge is to get the balance right rather than just concentrating on the big ticket items – exception reporting will be key and also being able to see the link between the performances of different providers. For example, the performance of an ambulance service trust could have a significant impact on the activity going to an acute trust, and therefore the costs and likely performance against A&E targets. As the system is complex and looks to use incentives to promote good operational performance, it is important to understand how the different elements interact, and how they balance out across the health economy.

Scheme of delegation

To enable the chair, the governing body and the organisation to operate efficiently and effectively, the governing body will often delegate some of its powers and responsibilities to the Accountable Officer, Chief Financial Officer and staff. This process should be documented in a scheme of delegation (or equivalent). The scheme of delegation

should clearly set out those matters that the Accountable Officer, Chief Financial Officer and staff have the delegated authority to determine and those matters that must be referred to the governing body.

The organisation should also have a set of financial regulations setting out the financial rules within which the governing body and staff must operate.

Financial planning and monitoring

Budget preparation

The annual budget for a public body should be closely linked with the organisation's corporate and business planning process. Each year, a public body is required to update its corporate plan and produce a business plan for the year ahead. The business plan will include:

- detail on the objectives, activities and targets for the year ahead
- the planned activities in a budget for the year in line with resources confirmed by the sponsor department as available for the year
- the budget broken down to a level of detail that identifies the resources allocated to achieve specific objectives
- a more detailed budget profiled over the year for internal and reporting purposes

A public body will usually publish its corporate plan and annual business plan on its website.

The role of the governing body in planning is to:

- provide input on the strategic priorities for the period ahead, carefully considering competing priorities and providing direction
- formally approve the plans, ensuring that sufficient time is allowed for discussion and debate.

Budget and performance monitoring

A public body needs to have appropriate accounting and financial information systems in place to enable it to review performance, in a timely and effective manner, to gain a full picture. Budget monitoring should take place alongside performance monitoring. The governing body should:

- receive regular finance reports (at least quarterly) showing actual use of resources against the budget and the current financial position of the organisation
- ensure it is provided with explanations for any significant variances from budget, including those expected to occur later in the year, and that action is taken as necessary to bring actual use of resources back in line with the budget
- receive regular performance reports (at least quarterly) showing performance against output and outcome targets
- ensure it is provided with explanations for any significant variances against target along with actions being taken to address underperformance.

Risk management and internal control

Risk management and internal control are closely linked concepts. Risk is uncertainty of outcome (in delivering organisational objectives), whether positive opportunity or negative threat. Control is any action taken to manage risk and increase the likelihood that an organisation's objectives will be achieved.

Risk management

Public bodies should have a risk management strategy and appropriate risk management processes in place as part of their corporate governance arrangements. Both the public body's Accounting Officer and the governing body have responsibilities in respect of risk management and internal control:

- The Accounting Officer is responsible for maintaining a sound system of internal control, with risk management being a key component of this.
- The governing body is responsible for ensuring that effective risk management and internal control systems are in place.

In discharging their responsibilities, both the governing body and the Accounting Officer need independent assurance on the adequacy and effectiveness of the risk management and internal control systems. Internal audit and the audit committee have an important role to play in meeting these assurance needs.

Detailed guidance for public bodies on risk management is contained in the HM Treasury publication *The Orange Book*.

Fraud

Many public bodies will identify fraud and theft as a key risk for their organisation. As with other risks, the organisation needs to take action to manage the risk of fraud and theft and thereby safeguard public funds. These actions typically include:

- development and communication of an anti-fraud policy and response plan (and a whistle-blowing policy)
- promotion of an anti-fraud culture within the organisation
- a risk management approach to identifying, assessing and responding to the risk, including specific systems, controls and actions to deter, prevent, detect and investigate fraud.

It is the governing body's role to ensure that adequate and effective anti-fraud arrangements have been put in place within the organisation. Further guidance on fraud issues is available on the Treasury website.

Accountability

Accountability can be defined as the obligation to report on and account for the use of public money and the safekeeping of public assets. Accountability is one of the governing body's key responsibilities in ensuring effective financial management within a public body.

A public body's stewardship and accountability duties include ensuring that public funds are:

- properly safeguarded and accounted for
- used economically, efficiently and effectively, and prudently to deliver value for money
- used in accordance with the statutory and other authorities that govern their use and in line with public finance principles (considering both the 'letter' and 'spirit' of the requirements) – regularity and propriety.

There are a range of functions, systems and processes that help promote good financial management and accountability within an organisation.

The annual report and accounts

A public body is required to produce an annual report and accounts each year. This is the primary means of reporting on the organisation's activities to stakeholders and the public.

The chair and the governing body are responsible for approving the annual report and accounts. There is a strict timetable for completion of draft accounts for audit and for publication and the governing body should ensure that there are suitable arrangements in place to meet the deadlines set.

Internal audit

The role of internal audit is to:

- provide an independent and objective assurance service on risk management, governance and internal control
- provide an opinion on the overall adequacy and effectiveness of the organisation's framework of governance, risk management and control to support the SIC
- provide advice and guidance to improve risk management, control and governance processes
- where required, take the lead on conducting or co-ordinating fraud investigations.

The internal audit function in a public body may be provided by an in-house team or by contracting with a shared services organisation or professional audit firm.

The primary reporting line for internal audit will be to the Accountable Officer and senior management. However, internal audit must also establish effective communication with, and have free and confidential access to, the governing body (normally through the chair of the audit committee).

The chair and the governing body:

- must ensure that an effective internal audit function is established and maintained, including ensuring that quality reviews of the internal audit function are carried out periodically in line with GIAS requirements
- should have input to the internal audit strategy and annual plans, and review the reports produced by internal audit
- should seek assurance that recommendations contained within internal audit reports are implemented.

In practice, the governing body's responsibilities in respect of internal audit are often delegated to an audit committee.

The audit committee

The role of an audit committee is to support the chair, the governing body and the Accountable Officer by providing advice and guidance on issues of risk, control and governance. The existence of an audit committee will enable more detailed consideration of these issues than would be feasible during routine governing body meetings.

The audit committee should be a formal committee of the governing body with written terms of reference. To effectively carry out its role, the audit committee has to have a high degree of objectivity and independence, including independent members and preferably an independent chair. The responsibilities of an audit committee will be set out in its terms of reference. These responsibilities might include advising the governing body and Accountable Officer on:

- the strategic processes for risk, control and governance and the Statement on Internal Control
- the accounting policies, the accounts and the annual report of the organisation, including the process for review of the accounts prior to submission for audit, levels of error identified, and management's letter of representation to the external auditors
- the planned activity and results of both internal and external audit
- the adequacy of management's response to issues identified by audit activity, including internal audit findings, external audit's management letter and commitments made in response to recommendations made by the Public Accounts Committee

- assurances relating to the organisation's corporate governance requirements
- anti-fraud policies, whistle-blowing processes and arrangements for special investigations.

External audit

The Local Audit and Accountability Act 2014 requires CCGs to appoint their own external auditors. Value for money responsibilities is the responsibility of the National Audit Office.

The appointed auditors will conduct a financial audit each year on the accounts (financial statements) produced by the organisation. The main objectives of a audit are to check:

- the financial statements give a true and fair view
- the financial statements have been properly prepared in accordance with relevant accounting and other requirements
- funds have been applied in accordance with any rules governing the use of the funds and within relevant legislative frameworks.

On completion of the financial audit, the auditor will write formally, drawing attention to areas of weakness in systems and controls. Governing body members (particularly members of the audit committee) and senior management should pay particular attention to the content of this report and ensure that any remedial action required is promptly taken.

Auditor access to information

When conducting a financial audit or value for money review, the auditor has right of access to all the documents that are held or controlled by the organisation itself or by certain other parties such as grant recipients, contractors, etc. This will include a right of access to governing body papers and minutes. The auditor is also entitled to any assistance, information or explanation that they reasonably think necessary to conduct the audit.

Transparency

The Government has an ambitious transparency agenda, and has outlined its commitment to extend transparency to every aspect of public life. Public bodies have an important role to play in improving transparency in their organisations, which will in turn help to increase accountability.

Information presented by public bodies should be:

- readily accessible and useable
- relevant to the needs of different audiences
- timely
- put in context and explained
- proportionate.

To make things simple for users, it is recommended that all public bodies organise the information they provide under four themes:

1. customers and citizens: the services offered, how to get involved and how to give feedback
2. performance: how the organisation is doing
3. governance: how the organisation is run and how it makes decisions
4. data: the data held.

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Audit and Risk Assurance Committee Handbook (HM Treasury, 2007)

www.hm-treasury.gov.uk/d/auditcommitteehandbook140307.pdf

CIPFA's Code of Practice on Managing the Risk of Fraud (CIPFA, 2014)

www.cipfa.org/services/counter-fraud-centre/code-of-practice.

Clinical Commissioning Group Governing Body Members: Role Outlines, Attributes and Skills

(NHS Commissioning Board, 2012) www.commissioningboard.nhs.uk/files/2012/09/ccg-members-roles.pdf

Code of Conduct: Managing Conflicts of Interest Where GP Practices are Potential Providers of CCG Commissioned Services (NHS Commissioning Board, October 2012)

www.england.nhs.uk/wp-content/uploads/2012/09/c-of-c-conflicts-of-interest.pdf

Code of Conduct for Governing Body Members of Public Bodies (Cabinet Office, 2011)

www.bl.uk/aboutus/governance/blboard/BoardCodeofPractice2011.pdf

Good Governance for Clinical Commissioning Groups: An Introductory Guide (King's Fund/NAPC/KPMG, 2011)

www.kingsfund.org.uk/sites/files/kf/Good-governance-for-Clinical-Commissioning-Groups-Introductory-Guide-December2011.pdf

The Good Governance Institute's suite of diagnostic tools that CCGs can use to test whether they are achieving good governance outcomes: www.ccggovernance.org/tools.html

The Healthy NHS Board: Principles for Good Governance at

www.leadershipacademy.nhs.uk/wp-content/uploads/2013/06/NHSLeadership-HealthyNHSBoard-2013.pdf

Managing Conflicts of Interest: Statutory Guidance for CCGs (NHS England, revised Dec 2014)

www.england.nhs.uk/wp-content/uploads/2014/12/man-confl-int-guid-1214.pdf

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(Centre for Commissioning/NHS Confederation, Sept 2011)

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Managing Public Money (HM Treasury, 2011)

www.hm-treasury.gov.uk/psr_mpm_index.htm

The orange book: Management of Risk – Principles and Concepts (HM Treasury, 2004)

www.hm-treasury.gov.uk/d/orange_book.pdf

Public Financial Management: A Whole System Approach (CIPFA, 2010)

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Regularity, Propriety and Value for Money (HM Treasury, 2004)

www.hm-treasury.gov.uk/psr_governance_valueformoney.htm

Report of the Committee on the Financial Aspects of Corporate Governance (The Cadbury Report, 1992)
www.ecgi.org/codes/documents/cadbury.pdf

Statement on the Role of the Chief Financial Officer in Clinical Commissioning Groups (CIPFA 2013)
www.cipfa.org/Policy-and-Guidance/Reports/The-Role-of-the-Chief-Financial-Officer-in-Clinical-Commissioning-Groups

Summary of the Nolan Committee's First Report on Standards in Public Life (The Nolan Committee, 1995)
<http://webarchive.nationalarchives.gov.uk/20140131031506/http://www.archive.official-documents.co.uk/document/parlment/nolan/nolan.htm>

Towards establishment: Creating Responsive and Accountable Clinical Commissioning Groups (NHS Commissioning Board, 2012) www.england.nhs.uk/wp-content/uploads/2012/09/towards-establishment.pdf

Uncharted Waters: NHS Governance Review 2015 (Grant Thornton, 2015)
www.grant-thornton.co.uk/Global/GT.1110-NHS-Governance-Review-2015-FINAL.pdf

What Makes a Chair in the Public Sector? (Praesta, 2010)
www.praesta.co.uk/_resource/_upload/190551211.pdf



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