

## Governing Body

27 July 2016

<b>Details</b>	Part 1	✓	Part 2		Agenda Item No.	8 Paper 5
Title of Paper:	Governance Structure – Terms of Reference					
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Presenter:	Margaret O'Dwyer, Director of Commissioning and Business Delivery					
Please indicate:	For Decision		For Information		For Discussion	X

### Executive Summary

<b>Summary</b>	<p>Following the support of the Senior Management Team, an initial report on the Governance Arrangements of the CCG was presented to the Governing Body in February 2016, which included a series of recommendations intended to enhance the existing arrangements already in place.</p> <p>The report was well received and a number of recommendations were prioritised for progression, including a full review of the committees and sub-committees of the Governing Body, including the role, responsibility, remit and membership of each of the committees within the governance structure.</p> <p>This is a significant undertaking which will also need to be reflected in the CCG Constitution and Standing Orders.</p> <p>Following discussion and feedback through SMT, Committee chairs, executive officers and the governance committees, revised and refreshed Terms of Reference have been prepared for review by the Governing body prior to presentation and sign-off by the Membership, as the responsibility for establishing terms of reference and reporting arrangements for committees is reserved to the Membership, as set out in the scheme of reservation and delegation.</p>					
<b>Risk</b>	<b>High</b>		<b>Medium</b>	X	<b>Low</b>	
	There is a risk that without review and amendment of existing arrangements, the governance framework is not aligned to the changes which have occurred in the CCG which could open the CCG up to criticism and could result in any decision making processes being questioned.					
<b>Recommendations</b>	<p>The Governing Body is requested to:</p> <ul style="list-style-type: none"> <li>consider the points for discussion as presented;</li> <li>support submission of the Terms of Reference for Audit, Remuneration and Finance, Contracts and Procurement Committees to the membership for final approval in accordance with the CCG Constitution;</li> <li>note the approval by the membership in respect to the Primary Care Commissioning Committee;</li> <li>note that the discussions in respect to Governing Body, Remuneration Committee, Quality &amp; Performance Committee, Clinical Cabinet and Patient Cabinet are still underway and will be presented at a later stage.</li> </ul>					

## Strategic themes

Deliver improvement in outcomes for patients	
Deliver service improvement through system redesign in priority areas	
Develop NHS Bury CCG and Primary Care capability as commissioners and leaders	
Deliver through the Health and Wellbeing Board improved population health and reduction in inequalities	
Deliver the CCG element of QUIPP through effective system management and working with partners and stakeholders and ensuring a culture with focus on quality, fostering innovation, improving health outcomes and reducing inequalities.	
Equality Impact Assessed?	
Supports NHS Bury CCG Governance arrangements	X

## **Governance Structure – Terms of Reference**

### **1. Introduction**

- 1.1 This paper has been drafted following a series of on-going discussions in respect to the governance structure of NHS Bury CCG. It sets out a proposal, pending further discussion, for progression through the CCG's existing governance arrangements.

### **2. Background**

- 2.1 The NHS Bury Clinical Commissioning Group ("the CCG") was formally established on 1 April 2013, when it acquired statutory responsibility for the commissioning of healthcare services for the people of the Borough of Bury.
- 2.2 The CCG's governance arrangements have been approved by NHS England (NHSE) as part of the authorisation process, and also following changes, such as the establishment of a Finance Committee to support the challenging financial agenda but also with the establishment of the joint Primary Care Co-Commissioning Committee with NHS England.
- 2.3 These arrangements are set out in its constitution and associated documents such as the scheme of reservation and delegation and the terms of reference for the various committees, including the Governing Body, that constitute the governance structures.
- 2.4 The CCG has recently made a number of changes to its staffing structure which impact upon its management and governance arrangements and therefore it has been agreed that the existing arrangements will be reviewed to ensure the CCG is fit for the future.
- 2.5 The statutory provisions that established Clinical Commissioning Groups (CCGs) are set out in the Health and Social Care Act 2012 (the HSCA 2012). CCGs are membership organisations, where each member is a GP practice, that is, a contractor for primary medical services with NHSE. Each CCG therefore comprises its constituent members.
- 2.6 The duties and functions assigned by Parliament to CCGs therefore reside with the CCG members collectively, such that the actions and decisions of a CCG are ultimately the responsibility of its members. The way in which a CCG chooses to organise and govern itself in order to exercise its powers is set out in its constitution, however must comply with the following requirements:
- under paragraph 3 (iii) of Part 1 of Schedule 1A of the NHS Act 2006, the CCG must have a governing body, with a membership reflective as a minimum of specific requirements laid out in statute and guidance;
  - under provisions in the HSCA 2012 the governing body must establish an audit committee and a remuneration committee to carry out specific functions on behalf of the CCG, which are automatically delegated to these Committees; and
  - all other powers need to be explicitly delegated, with the scope of delegation recorded in the CCG's constitution, including a scheme of reservation and delegation setting out which powers are reserved to the members and which are delegated to the committees or to specific officers such as the accountable officer and the chief finance officer.

2.7 Changes locally, with the transfer of responsibility from NHS England to NHS Bury CCG in respect to full delegated responsibility for Primary [medical] Care commissioning, the aspiration to be 'one commissioner' with the Local Authority and the changes in respect of GM Devolution require the CCG to ensure that its governance arrangements are fit for the future and enable delivery of the overarching agenda whilst also supporting the organisation to discharge all statutory duties.

### **3 Governance Arrangements**

- 3.1 The CCG has determined that a Governing Body and a membership that operates on a sector basis, with 4 sectors covering the North, South, East and West of the Borough, is the governance structure that will best enable the CCG to understand and serve the needs of its population.
- 3.2 The current Governance Structure is set out at Appendix A.
- 3.3 It should be noted that there is no right or wrong structure and each NHS organisation will adopt a structure that is appropriate to meet the needs of its members and population.
- 3.4 The proposals set out in this paper are not intended to make any radical amends to the existing governance structure but to work with what is already in place and ensure this is best placed to meet future needs, which includes the amalgamation of the Finance and Procurement Committees.
- 3.5 A phased approach to the review has been adopted with initial findings presented to the Senior Management Team, Committee Chairs and each respective Committee for information and input.
- 3.6 This paper reflects the keys areas for further consideration and a proposed new structure (Appendix B) that supports both delegation of CCG functions and their effective discharge, the engagement of members in the CCG, and the CCG's accountability as an organisation to those members.
- 3.7 Terms of Reference have been drafted for the following Committees and are presented at Appendix C:
- Audit Committee;
  - Primary Care Commissioning Committee; and
  - Finance, Contracting & Procurement Committee.
- **Membership**
- 3.8 The members of the CCG have delegated some of their powers either to the Governing Body or to officers of the CCG, however have retained responsibility for:
- making changes to the Constitution;
  - changing the nature of the business of the CCG
  - using any name other than that specified in clause 2 of the Constitution;
  - merging, amalgamating or federating the CCG;
  - removing any member for reasons other than those set out;
  - reorganising the boundaries or changes to localities (sectors)

- approving standing orders, scheme of reservation and delegation and standing financial instructions;
- suspending, varying or amending standing orders;
- establishing the terms of reference and reporting arrangements for all Committees and sub-committees;
- defining the strategic aims and objectives of the CCG
- working with NHS England on the structure of local interfaces for primary care commissioning, clinical commissioning and specialist commissioning;
- approving proposals for quality and developing clinical governance in services commissioned or provided by constituent practices.

3.9 This is a wide remit and whilst recognising that a number of these powers are not likely to be exercised on a regular basis, further consideration should be given as to whether:

- any of these powers would be more appropriately delegated to other parts of the governance structure; and
- the membership is routinely receiving and assuring itself that these areas are discussed and appropriately discharged through existing arrangements.

3.10 These points will need to be discussed with the membership as part of the CCG Constitution review exercise that will commence in August 2016.

- **Governing Body**

3.11 The CCG's Governing Body is appointed under section 14L of the NHS Act 2006 (as inserted by section 25 of the 2012 Act) with the main function of ensuring that the Clinical Commissioning Group has made appropriate arrangements for ensuring that it complies with its obligations under section 14Q of the NHS Act 2006 (as inserted by section 25 of the 2012 Act), and such generally accepted principles of good governance as are relevant to it.

3.12 There are currently 37 matters reserved to the Governing Body including, but not limited to:

- determining any matter for which it has been given delegated authority by the CCG;
- receiving the declarations of officer's interest that may conflict with those of the CCG;
- approving arrangements for dealing with complaints;
- determining the organisations structure, processes and procedures to facilitate the discharge of the CCG's business;
- receive reports from committees, including those required by the secretary of state or other regulation;
- confirming the recommendations of the governing body committees where the committees do not have executive powers;
- appointing and dismissing / dissolving, as appropriate, the vice chair of the governing body, officers, committees and individual members directly accountable to the governing body,;
- identifying, evaluating and monitoring strategic risks, implementation of QIPP plans, approving financial plans to support delivery of the strategic plan;

- agreeing policies and procedures for the management of risk;
  - approving outline and final business cases for investment, budgets, organisational development plans and contracts to provide Primary Care Services;
  - approving the write off of losses, making special payments and individual compensation payments;
  - approving the appointment of External Auditors, receiving the annual management letter from Internal Audit and annual Internal Audit Report;
  - approving the annual report and accounts; and
  - approving the Director of Public Health Annual report.
- 3.13 As part of the review of roles, responsibilities and accountability, these duties should be reviewed and where appropriate delegated to the respective committees.
- 3.14 The Governing Body comprises of 17 voting members, with an invite extended to a Bury Local Authority Officer on a non-voting basis.
- 3.15 The Constitution outlines at 6.9.2b that there will be six clinical representatives of member practices, of which the majority will be GPs from member practices.
- 3.16 Consideration will also be given to the following points as part of the CCG Constitution review:
- inclusion of all four sector chairs on the Governing Body as non-voting members;
  - extending an invite to Healthwatch as a non-voting member; and
  - including more detailed quoracy arrangements.
- 3.17 The Governing Body has established sub-committees (Audit, Remuneration, Quality and Risk, Finance, Primary Care Co-Commissioning, Clinical Cabinet, Patient Cabinet and Procurement) and has delegated some responsibilities to these committees.
- 3.18 Following discussions and interviews to seek views on how the governance arrangements work in practice, this paper proposes an amended sub-committee structure. It is recognised however that there is no ‘right’ way and therefore further discussion is imperative to ensure any agreed structure satisfies local needs whilst also enabling full discharge of statutory duties. A full review of the duties delegated to sub-committees should be undertaken to support any changes agreed.
- 3.19 The following changes are proposed to the Committees and sub-committees of the Governing Body and are reflected in the Terms of Reference as presented:
- **Audit Committee**
- 3.20 The Audit Committee fulfils the audit committee functions required by statute, namely to ensure that the CCG is exercising its functions effectively, economically and efficiently, and in accordance with accepted principles of good governance.
- 3.21 The purpose of the CCG’s Audit Committee is expressed to provide “an independent and objective view” of the CCG’s financial systems, financial information, and compliance so far as it relates to financial matters, and to assure all the Governing Body that all the governance arrangements (including clinical) are determined in accordance with good practice guidance.

- 3.22 The members of the Audit Committee must be independent and one member of the committee must have recent and relevant financial experience and must chair the meetings of this committee. The terms of reference indicate that all lay members of the Governing Body should be members of the Committee. This does not happen in practice, and reflection needs to be given as to whom is covered under the term 'lay member'.
- 3.23 The Chief Finance Officer, Board Secretary, Head of Internal Audit, External Auditor and Local Counter Fraud Specialist may attend committee meetings but not vote.
- 3.24 The quorum for meetings is two members, and the committee meets at least four times a year.
- 3.25 Recent changes have been introduced, including changing the frequency of meetings to quarterly from bi-monthly and also inviting the lay member for patient and public involvement to join the Committee, to support achievement of quoracy, which is set out as two members.
- 3.26 These changes have enabled the Audit Committee to meet on a quorate basis since July 2016 (when the changes were introduced), and the following key changes are outlined in the Terms of Reference:
- Inclusion of one clinical director (on a rotational basis) be in attendance in a non-voting capacity;
  - Inclusion of Information Governance within its remit with the Information Governance (IG) Operational Group reporting to the Audit Committee and not the Quality & Risk Committee.
- 3.27 The Terms of Reference have been reviewed by the Audit Committee at its meeting in July and are supported for review by the Governing Body.
- **Remuneration Committee**
- 3.28 The Remuneration and Terms of Service Committee fulfils the remuneration committee functions required by statute, principally to determine remuneration, fees and allowances payable to CCG staff and making recommendations to the Governing Body.
- 3.29 It should be noted that the roles and responsibilities as written within the Constitution are specific to the Accountable Officer, Chief Operating officer, Executive Directors and other senior managers on VSM or Band 9 or above only and not all staff. It is therefore not wholly reflective of the responsibilities set out in statute.
- 3.30 As well as dealing with remuneration and terms of service in relation to the Governing Body, the Remuneration and Terms of Service Committee should also monitor the performance of individual members of the Governing Body and advise on succession planning.
- 3.31 The Committee meets at least twice a year and currently comprises of four members; three lay members of the CCG and the CCG Chair, with a HR advisor or other relevant colleagues invited to attend as required. The quorum for the meeting is two members.

- 3.32 The main amends within the Terms of Reference are:
- widening of the remit as outlined at 3.31 above for all employees, including clinical leads of the CCG;
  - including responsibility for reviewing performance of accountable officer (and other execs);
  - widening remit to include adoption of HR policies (associated with pay and terms of service); and
  - creating a committee which ensures appropriate in attendance colleagues to manage conflicts of interest appropriately.

3.33 There is also a requirement to ensure when establishing the Committee that the membership reflects good practice in so much that no member of the Committee claims a significant proportion of their income from the CCG. A change to the membership as currently written is therefore proposed.

3.34 The Terms of Reference are currently being reviewed by the Committee and are not presented to the Governing body at this time.

- **Primary Care Commissioning Committee**

3.35 The CCG has recently applied and secured authority from NHS England to move to full delegation of Primary Care Commissioning.

3.36 This has required a change to the terms of reference and also the membership of the Committee, which reflects and take account of the potential conflicts of interest that naturally arise by the nature of clinical commissioning groups and commissioning of Primary Care.

3.37 It should be noted that the Primary Care Commissioning Committee, unlike to Primary Care Co-Commissioning Committee is not a sub-committee of the Governing Body, but rather a Committee of the Clinical Commissioning Group. It has full decision making authority within the bounds of the Memorandum of Understanding signed by both the CCG and NHS England.

3.38 The Terms of Reference have been reviewed by the Primary Care Commissioning Committee, and shared with the CCG membership for approval. Whilst it should be noted that the response rate was low, there was a clear caveat that a nil response would be considered in terms of no objection and therefore positive affirmation of the Terms of Reference.

3.39 Two queries have been received in respect of Conflicts of Interest and the duties delegated by NHS England falling within the remit of the Committee, which have been responded to, with no impact on the Terms of Reference.

3.40 There are presented for information.

- **Clinical Cabinet**

3.41 As set out in the CCG Constitution, the Clinical Cabinet committee is accountable to the group's governing body to set the Clinical Strategy and ensure that NHS Bury Clinical Commissioning Group remains in financial balance, whilst commissioning high quality services and ensure appropriate links to the wider Primary Care Regulatory function. e.g. NHS Commissioning Board. The governing body has conferred or delegated the following



functions, connected with the governing body's main function, to its Clinical Policy Committee:

- Setting Clinical and Effective use of Resources policies for the group including prescribing policies;
- Managing exceptionality;
- Advising the Governing Body on latest clinical evidence in decision making;
- Prioritising clinical policy implementation;
- Providing advice on setting quality standards including CQUIN; and
- Promoting research and the use of research evidence.

3.42 Following the establishment of a Finance committee and the delegated responsibilities for Primary Care Commissioning being discharged through the relevant committee, a review of the role, responsibilities and duties of the Clinical cabinet in conjunction with the Committee Chair has been completed.

3.43 The revised Terms of Reference reflect these changes and also provides a more formal alignment between the Project Management Office, MDTs and Clinical Cabinet. It should be noted that PMO and MDTs (Clinical work-Streams) are part of the management arrangements of the CCG and not formally included in the governance structure.

3.44 Following discussion through the Clinical Cabinet, the Terms of Reference will be presented to the Governing Body for support before onward progression to the CCG Membership for approval.

- **Finance, Contracting and Procurement Committee**

3.45 The CCG currently has a separate finance committee and procurement committee and it is proposed, that these two committees are amalgamated to become one Committee.

3.46 The Terms of Reference presented reflect this.

- **Patient Cabinet**

3.47 The Patient Cabinet is established as part of the CCG Governance Structure to promote patient engagement and involvement through the work of the CCG.

3.48 As a Committee, it is chaired by the lay member with responsibility for patient and public involvement but has little executive or senior manager support from the CCG.

3.49 The lay member, officers and members of the patient cabinet are currently reviewing the models of delivery that will best meet the needs of the CCG in supporting patient and public involvement in CCG business.

3.50 An update will be provided once this has been completed.

## **4 Summary**

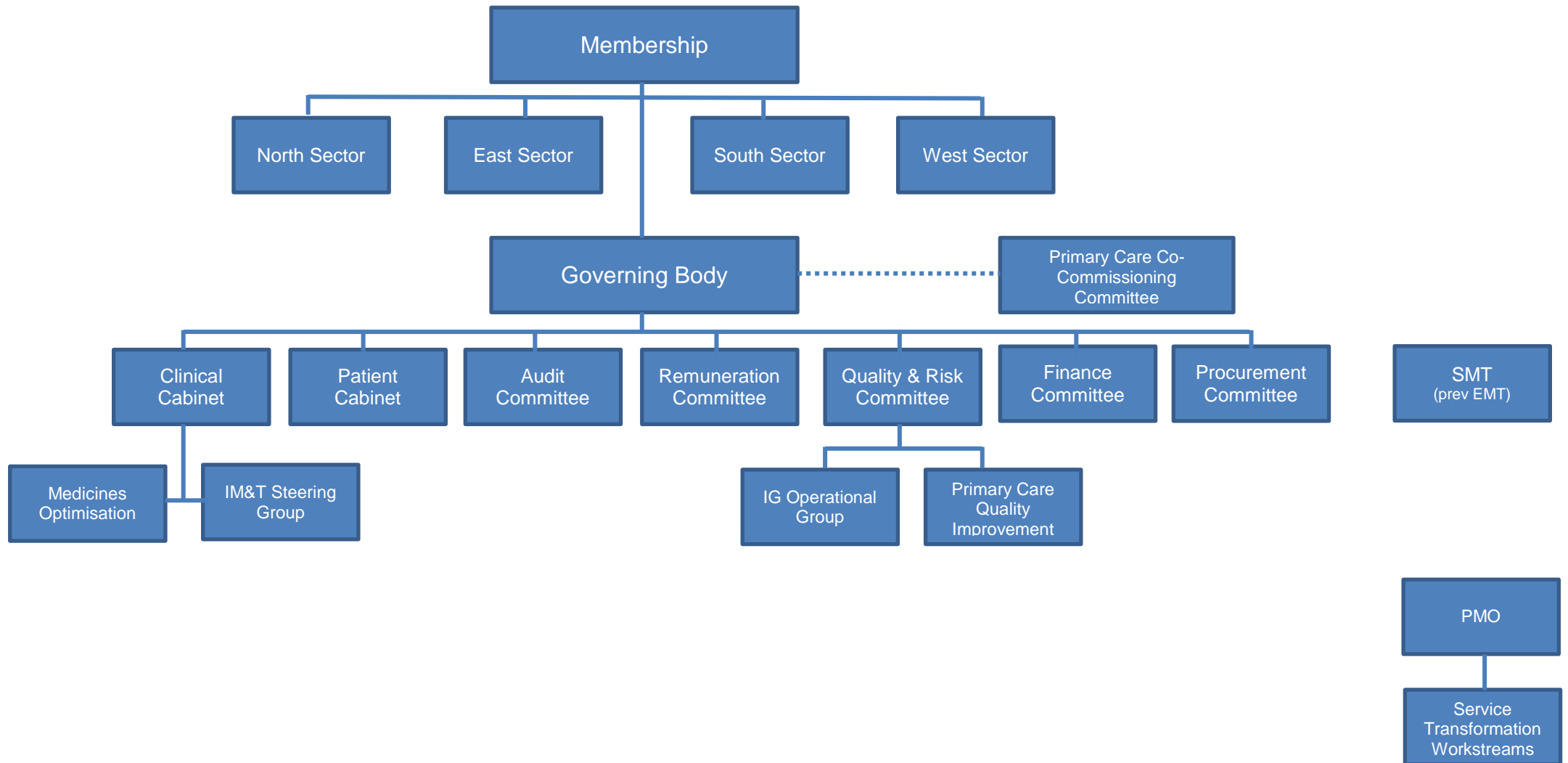
- 4.1 Overall, NHS Bury CCG is a well-run and capable CCG. It has achieved some outstanding results and outcomes, in spite of the lean workforce and significant financial challenge it has been faced with.
- 4.2 Although existing governance arrangements have been functioning adequately since April 2013, there are a number of areas for further development that would assist and enable the CCG to become more effective and efficient.
- 4.3 It should be noted that outside the statutory requirements of a Governing Body, Remuneration Committee, Audit Committee and Primary Care Committee, there is no prescribed way or 'one-size fits all' of delivering a governance framework. Whatever framework is put in place needs to be reflective of and aligned to the organisation's needs.
- 4.4 This paper reflects proposed changes which are intended to further enhance the governance arrangements of the CCG.

## **5 Recommendations**

The Governing Body is requested to:

- consider the points for discussion as presented;
- support submission of the Terms of Reference for Audit, Remuneration and Finance, Contracts and Procurement Committees to the membership for final approval in accordance with the CCG Constitution;
- note the approval by the membership in respect to the Primary Care Commissioning Committee;
- note that the discussions in respect to Governing Body, Remuneration Committee, Quality & Performance Committee, Clinical Cabinet and Patient Cabinet are still underway and will be presented at a later stage.

## Appendix 1: Existing Governance Structure



Appendix 2 : Proposed (internal) Governance Structure

