RCGP Conference
The New Commissioning Landscape – what it means to be a public body

Ross Clark – Partner
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Introduction

• The new healthcare landscape
• Politics and culture shift
• Acting in the Public Interest?
• The Act and the Constitution
• Typical structure of a CCG
• Procurement
• Judicial Review
• Freedom of Information
• Case Studies
The New Healthcare Landscape

- GP Practices
- Clinical Senates
- Clinical Networks
- Health and Wellbeing Boards
- DoH
- NHS CB
- CCGs
- CSU
- Monitor
- CQC
- FTs
- GP Provider Groups
- Third Sector
- Private Sector
- Primary Care

HEMPSONS
Politics

• “I have come to the conclusion that politics is too serious to be left to the politicians”
• New Secretary of State for Health
• Timetable
• Bottom up -v- top down
• 38 Degrees suggested amendments to Constitution
Culture shift

• Clinicians to managers
• Small to large
• Private to public
• Providers to commissioners
• Partnerships to corporate body
• From corner shop to plc
Acting in the Public Interest?

• No:
  - Compliance with Act, Regulations and Guidance
  - Constitution – patient population not public
  - Meetings in public not public meetings

• But involves elements of public interest:
  - Exercise functions effectively, efficiently and economically
  - Promote the involvement of patients and their carers in decisions
  - Reduce inequalities
  - Transparency
NHS Act 2006 (as amended by the Health and Social Care Act 2012)

• Constitution (14B): The constitution of a CCG must:
  • specify the procedure to be followed in making decisions
  • make provision for dealing with conflicts of interest of members
  • secure that there is transparency about decisions and the manner in which they are made
NHS Act 2006 (as amended by the Health and Social Care Act 2012)

• Accountable Officer (Schedule 2 Part 2):
  • Appointed by NHS CB
  • Responsible for ensuring:
    • CCG exercises functions effectively, efficiently and economically, and secures improvement in health service
    • compliance with obligations for accounts, audits, provision of financial information to the Board, provision of information to the SoS
    • CCG exercises functions in a way that provides good value for money
NHS Act 2006 (as amended by the Health and Social Care Act 2012)

• Duties of CCGs include:
  • Promote NHS Constitution
  • Exercise its functions effectively, efficiently and economically
  • Secure that the provision of health services is integrated with the provision of social care services
  • Promote the involvement of patients and their carers in decisions
  • Reduce inequalities
  • Promote innovation in the provision of health services
The Constitution

- NHS CB Model Constitution Framework:
  - Mandatory and optional provisions
  - “Guidance”
  - 38 Degrees suggested amendments
The Constitution

1. Introduction and commencement
2. Area Covered
3. Membership
4. Mission Values and Aims
5. Functions and General Duties
6. Decision Making – The Governing Structure:
   - Authority to Act (6.1)
   - CCG can only authorise the following to act on its behalf:
     - Members
     - Governing Body
     - Employees
     - Committee or sub-committee
The Constitution

- Extent of authority depends on powers delegated:
  - Scheme of Reservation and Delegation (“SoRD”)
  - Terms of Reference (Committees)
- SoRD (6.2)
  - Decisions reserved for the membership
  - Decisions that are the responsibility of the Governing Body, committees (of GB and CCG), individual members and employees
The Constitution

- The Council of Members (6.4):
  - See SoRD and Terms of reference
- The Governing Body (6.6):
  - Functions (6.6.1)
  - Composition (6.6.2)
  - The NHS (CCG) Regulations
- Committees of the GB (6.6.4):
  - Audit and Remuneration Committees
  - Others (Locality Committees etc)
The Constitution

7. Roles and Responsibilities

8. Standards of Business Conduct:
   - Detailed conflict provisions
   - The Nolan Principles
   - The Good Governance Standard for Public Services

9. The Group as Employer

10. Transparency
The Constitution

Appendix C: Standing Orders
Appendix D: Scheme of Reservation and Delegation
A typical structure of a CCG

NHS CLINICAL COMMISSIONING GROUP

Council of Members (Practice Representatives)

Governing Body

- Other Committees
- Remuneration Committee
- Audit Committee
Procurement

• When a...
  - contracting authority – i.e. spending public money
  - requires something over a certain financial value
  - a form of process has to be followed
  - to ensure that that market is opened up to competition
Procurement

• Types of Contract:
  • Supplies
  • Services
    • Part A services
    • Part B services
Procurement

• Financial thresholds
  • Supply £113,057 excluding VAT
  • Part A service £113,057 excluding VAT
  • Part B service £173,934 excluding VAT
Procurement

• Part A services:
  • must run a process compliant with the Public Contracts Regulations 2006
  • Follow set procedures – each has different time limits and requirements:
    • Open
    • Restricted
    • Competitive Dialogue
    • Negotiated procedure with notice
    • Negotiated procedure without notice
Procurement

• **Part B services (including health):**
  - Not caught by the full regime of the Public Contracts Regulations 2006
  - Overarching EC Treaty principles still apply:
    - a fair and transparent tender process, treating all bidders equally and following the stated process
    - If “certain cross border” interest then must advertise the opportunity
Procurement

• **BUT** consultation on changes announced:
  - Abolish distinction between A and B services
  - All services to be procured using process compliant with the Public Contracts Regulations 2006
  - Perhaps with higher thresholds
Judicial Review

• A procedure by which the courts supervise the exercise of public power

• Grounds for reversing an administrative decision by way of judicial review:
  • Illegality
  • Irrationality (Unreasonableness)
  • Procedural impropriety

• Application must be made promptly and in any event within three months
Judicial Review

• The decision can be set aside (quashed) and:
  • damages
  • mandatory orders to compel the authority to do its duty
  • injunctions to stop the authority from acting illegally
• Cannot apply for JR of laws passed by Parliament, except where law is contrary to the EU law
Freedom of Information

- The Freedom of Information Act creates a general right of access, on request, to information held by public authorities.

- On receipt of a FOIA request a public authority has two duties (subject to certain exceptions):
  - to inform a member of the public whether or not it holds the information requested
  - if it does hold that information, to communicate it to the person making that request
Case Studies

• Out of Hours Procurement
  
  • A CCG is going to tender the local GP OOH Service.
  
  • The CCG asks two GPs who work for the current provider to help it draft the service specification.
  
  • Is there anything wrong with this?
  
  • What if those two GP’s are also members of the Governing Body of the CCG and will participate in the tender assessment process?
Case Studies

• **Drug and Alcohol Procurement**
  - A CCG is going to tender for Drug and Alcohol services.
  - A GP who has been nominated to sit on the assessment panel declares a conflict of interest on the basis that he holds one share in a potential bidder.
  - How should the CCG deal with this?
  - What if he held no shares but his wife (also a GP) held one share in a potential bidder?
Case Studies

• Request from unsuccessful tender participant
  • An unsuccessful tender participant writes to the CCG shortly after the announcement of the award of the tender.
  • The participant requests details of:
    • the basis upon which the decision was made;
    • who participated in the decision making process; and
    • what other interests (if any) they declared.
  • How does the CCG respond and what are the key issues here?