

Report no: RC 05-13

**NHS LIVERPOOL CLINICAL COMMISSIONING GROUP
REMUNERATION COMMITTEE**

TUESDAY 10TH SEPTEMBER 2013

LCCG BOARD REMUNERATION AND RELATED ISSUES

Report from LCCG Board Review with Recommendations conducted by Professor Maureen Williams, Deputy Chair of GB, Chair of Remuneration and HR Committees and Chair of Audit.

INTRODUCTION

At the request of the Chair and Accountable Office the Chair of Remuneration agreed, in June 2013, to examine and report on a number of remuneration concerns that had arisen for some Board members. The Chair was given the freedom to scope the tasks as appropriate, to reach independent conclusions and to make appropriate recommendations regarding rates of remuneration and methods of payment for Liverpool CCG GB members. Management and technical support was available as and when needed. Very soon it became apparent that the individual issues could not be resolved without reference to the whole Board hence a full review was conducted. Because of the complexity of the issues under consideration and also because if the finding and recommendations are confirmed and approved LCCG may well find itself as a controversial front leader in these matters, it is important the Remuneration Committee members understand and support the rationale used and endorse the conclusions reached. Apologies for thus producing a somewhat longer paper (in a different format) than usual for Committee consideration.

THANKS

As the conductor of the review I would like to express a personal note of thanks to Board Colleagues who were unbelievably generous, patient, trusting and open with their time and information. As a relative newcomer to the CCG I learned a lot and feel very privileged to be working with such dedicated, intelligent and committed individuals!!! I also appreciate the support and guidance from CCG staff who dispelled my ignorance about various matters of fact and who were always cheerful and professionally competent in answering my queries and meeting my demands. Thanks to all of you.

GOVERNANCE NOTE

A formal note: the conclusions and recommendations herein are mine alone and I have not been persuaded or swayed by anyone or any other considerations of my findings and conclusions, other than my professional view of the evidence available to me and the appropriateness of my recommendations.

METHODOLOGY

All CCG Remunerated Governing Body Board members (i.e. elected and appointed members) were interviewed on a one to one confidential, non-attributable basis, concerning their personal circumstances and contribution to the running of LCCG. The Accountable Officer and the Director of Finance were also interviewed.

Three Board members who are full time CCG employees (Accountable Officer, DoF and Head Nurse) were not interviewed in respect of their personal remuneration as their remuneration and Board responsibility falls into a different category.

In addition to the interviews various documents were examined and a list of the consulted documents is available at the end of the report.

CURRENT POSITION

In 2012 the NHS Commissioning Board published guidance on the remuneration of chief officers (non clinical) and chief finance officers. The guidance suggested pay ranges based on population, size of the CCG and also suggested that consideration should be given to complexity factors such as the number of member practices, quality and outcome challenges and productivity challenges.

No equivalent specific guidance has been published for pay systems and rates for governing body members. The Chief Officers' document also included some guidance on general Remuneration Committees and made suggestions as to membership. The **guidance (not direction)** suggested the Committee should not include as members, full time employees or individuals who claim a significant proportion of their income from the CCG and specified that member practices should not be in the majority. This guidance suggests the Remuneration Committee makes recommendations to the CCG Governing Body as to the determination of remuneration, fees, pensions and allowances payable to the employees of the CCG. It makes the point that each individual NHS Organisation is corporately responsible for ensuring that its pay arrangements are appropriate in terms of Equal Pay requirements and other relevant legislation.

The issue of equal pay is also raised for the Public Sector and reinforced by the Hutton Fair Pay Principles (HM Treasury March 2011). In October 2012 NHS Commissioning Board produced a document, which gave more specific guidance as to remuneration or reimbursement of CCG GB members. This guidance clearly contradicts the principles of Equity and the Hutton Fair Pay Principles and assumes that GPs, other Practice /Clinical Staff, Secondary Care Clinicians and Lay Members who make up the Governing body should all be paid at different rates. It makes no mention of variation in contribution and seems to have a narrow assumption about the contribution non-GPs can make to the CCG.

In producing the conclusions and recommendations of this review the findings were examined in the light of similar issues to those affecting Chief Officers and DoFs i.e. levels of responsibility, complexity, legal liability, equity, productivity challenge and performance. In addition consideration has been given to the specific value Board members contribute to the operation of the LCCG in discharging its legal obligations under the Health and Social Care Act 2012, the size of budget managed by the Board, the level of Leadership provided by members, the size of the Health challenge in Liverpool, and the degree of Board members' wide ranging operational involvement outside of formal Board meetings. As a matter of course, issues of sustainability and value for money have also been considered.

Liverpool was unique in having extensive clinical (GP) "buy-in" to the work of the predecessor PCT and its PEC and this left the LCCG with a "problem of success" when it came to agreeing a CCG structure. After significant discussion and debate Liverpool CCG was formed from an initial 3 CCGs and now, with 95 member practices, it is the sixth largest CCG in the country in terms of budget– and has significant complexity to manage such as the large and varied membership, buy in and performance from GPs, public and patients and other providers including the Local Authority and multiple foundation trusts. The LCCG budget of £728 million includes £11.8 million running costs.

Board members carry significant statutory responsibility and are very involved in executive and operational matters. The Board thus operate as a mix of traditional non-executive directors with statutory responsibility for everything under delegated authority from the 95-practice membership, but at the same time the Board members are involved in leadership matters, operational issues and organisational development.

The Board also takes its role as leader in the Liverpool and Merseyside NHS, and the local Health economy very seriously and members are actively developing leadership and support across a range of clinical and non clinical determinants of health outcomes as they grapple with issues of quality, sustainability and future proofing needs and resources within the NHS. Within the LCCG footprint, services are commissioned from at least five Liverpool located Foundation Trusts and a further three potential Foundation Trusts currently bidding for recognition by Monitor.

As is by now obvious LCCG is a complicated CCG that does not fit easily into the guidance referenced by most other CCG bodies and because of its unique circumstances has no easily comparable reference CCG against which to benchmark its remuneration model. Compared to most other CCGs the degree of Board members operational involvement in CCG on a day to day basis is very high and all Board members, regardless of medical status, carry the same legal, corporate responsibility, operational involvement and leadership. There is no ready, one size fits all, solution to the various anomalies and inequalities that currently exist within the Board. In the absence of national direction in these fields and in the face of various sets of national guidance, and interpretation from specialist advisors with limited unanimity between the various documents Liverpool CCG will have to make its own decisions.

Since the development of the Liverpool Shadow Clinical Commissioning Board in June 2012 GP members have been paid £300 per session and non-GP member rates vary below this. This rate itself reflected that paid by the original Liverpool PCT to its PEC from 2008. The numbers of sessions per Board Member vary and this variety is intended to reflect the different personal and corporate responsibilities, degrees of operational involvement, different personal capacities and Board need. Current Payment methods vary, just over half the members are remunerated with gross payments going direct to their Practice/Employer. Other members are paid via CCG payroll and paid into their personal accounts net of tax and national insurance. The rates remained the same when the CCG became fully authorised as from 1st April 2013. In addition the Liverpool CCG remunerates various GPs in the Locality and Neighbourhood at the same rate of £300 per session for limited operational, non-statutory work on its behalf.

There are a number of technical issues concerning the employment status of Board Members, and the superannuity of remuneration that have not been possible to resolve in time for this committee. Further technical advice is being sort and a supplementary paper detailing final recommendations on these two issues will come to the next Remuneration Committee with any changes backdated to October 1st whenever practicable. In the meantime members are asked to endorse the following findings and approve the various recommendations for implementation from 1st October 2013 herein.

CONFLICTS OF INTEREST

All members of the Remuneration Committee and the full GB Board other than paid staff are clearly in a conflict of interest situation because they are proposing, and or accepting a decision to award themselves remuneration.

However by noting in minute form this Conflict and agreeing that any decisions will only be made by taking full account of the general principles behind the changes (and following the example of MPs, not to mention other CCGs,) and adhering to the good governance guides on conduct as adduced by Nolan and the NHS et al, the CCG will probably have done enough to be seen to have been transparent and managed this conflict of interest.

FINDINGS/ISSUES

Many of the current anomalies within the Board are the result of inherited precedents from PCT days, lack of national direction, contradictions in both national NHS and specialist guidance and the importance given to the independence and autonomy of the LCCG to be its own master. The importance of having working procedures in operation prior to authorisation was also a factor. Since April 13 the Board has developed at a remarkable rate, both reflecting and enabling the growth in stature of the LCCG. Therefore it is clearly time to address and rectify such anomalies as can be put right.

In Summary

- There is, currently, no national standard or guidance on rates of Board Remuneration and CCGs are free to set their own terms and conditions within their running costs allowance- based on budgets. In Liverpool the current rates appear to be historical- based on the rates previously paid to members of the PCT's PEC. Within Merseyside and the Core Cities the average rate is £300.00 -£320.00 per session.
- Individual LCCG members are paid at different rates per session. GP members carrying additional, but non statutory responsibility, in the Locality and Neighbourhood Structures are paid at the same rate as the Governing Body GP members who carry significant legal and organisational responsibility, and are thus paid more than the non GP full Board members with statutory responsibility.
- Board members are paid per session and the number of sessions remunerated currently varies between two and six per week with an average of 4 per week. Board members by and large work more than they are remunerated for and their enthusiasm and commitment to the LCCG was inspiring to witness. It was evidenced by the production of detailed information concerning committee membership and other activities carried out on behalf of CCG.
- There is however insufficient documented supporting evidence for the number of sessions allocated to each board member.
- Currently, the Chair and Accountable Officer allocates the number of sessions per member based on CCG need, interviews, and assessment of estimated contribution to the CCG and the capacity of the individual concerned.
- The setting of a regular number of sessions per week has enabled members to negotiate with their individual practices/other concerns and provide some stability and certainty to all. Individuals are generally free to choose when they will work their sessions although some fixed points have emerged such as board meetings, committee meetings and various other operational/organisational activities such as away days, special group events etc.
- Board members are paid for 46 weeks averaged over 12 months.
- Many Governing Body members have their remuneration paid straight to their practices as a **gross** sum but just under half the Board are paid direct into their own personal bank accounts from CCG pay roll, and are paid, at the same rate but **net** of tax, N.I. and pension and some are paid half and half i.e. half gross to their practice and half net to themselves.
- Whether elected and remunerated, or appointed and remunerated Board Members are not considered to be employees of the CCG within Employment Law but are appointed remunerated members of the Board.

- There are significant issues to be addressed concerning tax law compliance as to whether or not members need to be considered as employees once they do more than 3 sessions per week and this is currently being taken under advisement. This may negatively affect some members, some may gain and some will be neutral.
- It seems likely that the remuneration paid to Board members should be considered by practices as superannuable income. Many practices do this already and make the appropriate arrangements to reflect the payments in their superannuation payments.
- Such practices consider that the superannuation element is contained within the £300.00 gross payment per session and is simply added to practice income to determine the level of superan.
- It is difficult at this time to say whether the CCG payment should be deemed as including or excluding an employer's superannuation contribution. Whatever the CCG decides has implications for the whole Board as it would be difficult to justify paying an additional Superannuation premium for one or two individuals or practices so the decision must be a CCG offer to **all** members and may be affected by which pension scheme individuals are in.
- Superannuation becomes less problematic when the status of Board members as employees is considered. If Board members are "employees" then superannuation is payable but it still leaves the issues of does the current payment include or exclude the employer's contribution.
- There is some issue as to whether the remuneration paid to practices is V.A.T.able income. This is not an issue for LCCG but must be up to each practice to determine with its own advisers.
- Most members do not have written terms of engagements or any documentation other than the written confirmation of their election/appointment.
- The overwhelming majority of board members were not unhappy with the current rate of £300 per session but a significant minority wanted to be paid for more sessions as they were doing more work than the number of remunerated sessions.

Non-remuneration issues

- Some members were puzzled as to why they had no access to car parks or iPods when others did.
- Some members were unhappy at the timetabling of informal board meetings, which always occur on the same weekday, and depending on calendar can mean members have two Board meetings in one week.

In addition to the above other significant anomalies to emerge are: -

- The Chair carries unique statutory and organisational responsibility and contributes significant leadership and support to the SMT and other Board members but is paid at the same rate as all other Board.
- The Deputy Chair carries unique statutory and organisational Responsibility, including chairing the only two statutory committees - Audit and Remuneration, but is paid less than the Vice Chair clinical and has less remunerated sessions per week despite being engaged on a wide range of issues at the operational level. (NB. If the number of DC sessions are increased this would mean the CCG provides a significant proportion of total income contrary to the general guidance referred to above.)
- Three board members carry the same level of legal and organisational responsibility as all other members but are paid significantly less per session.
- GPs in the community, not attending the Board and not carrying legal responsibility are paid at the same rate as full governing body members.

RECOMMENDATIONS:

1. All remunerated Board Members regardless of whether they are elected or appointed should be issued with written Terms of Engagement. The Terms of Engagement should comprise two halves – the one which is standard for all GB members and the other which is unique to the individual. The ToE should be signed off by the Chair of the Board and or the Chair of Remuneration, and the AO.
2. The rate of £300 gross per session should be uplifted to £320 and remain the same for the next twelve months (and possibly for two years ?) unless legislation, national guidance or other operational issues emerge which necessitate an immediate review.
3. The same rate per session should be paid to **all** remunerated Board members excluding the chair.
4. The number of sessions per individual should remain variable and be able to go up or down based on Board and Organisational requirements and the capacity of the individual concerned. The reasoning for the allocated sessions should be documented and open to Audit. The Chair and AO will agree with the individual the appropriate number of sessions which must be clearly understood as variable and agreed for twelve months only.
5. The Chair should be paid at £420 per session and the number of sessions should be re-examined by the Chair of Remuneration and the AO and varied as appropriate.
6. All Board members should be paid for 52 weeks not 46. This will give board members additional sessions which they are at liberty to negotiate with Chair/ AO /their own practices based on organisational needs.
7. The rate of remuneration for non-Board members operating on CCG business in the Community should be maintained at £300 per session for the next two years to enable a clearer distinction to be drawn between those carrying statutory responsibility and those who don't.
8. All members who attend the Board should be treated equitably concerning access to car park, administrative support for their operational engagement and access to IT etc.
9. Consideration should be given to the timing and frequency of informal board meetings in order to allow maximum participation from members who have fixed weekly external commitments.
10. If accepted all recommendations should be implemented as from 1st October 2013. A full Board Remuneration review should take place every two years but with no assumption of an automatic uplift in rates etc,
11. Once the Remuneration Committee is happy to accept or amend the recommendations a summary paper should be presented to the full Board in Private Business for acceptance. This would probably be at the 18th October Board but approved changes would be backdated to 1st October.

DOCUMENTS CONSULTED (NOT IN ANY ORDER OF PRIORITY)

- South Sefton CCG Remuneration Committee Minutes
- NHS Employer Newsletter April 2013 (Pensions)
- DH Letter from Sir David Nicholson August 2012
- CCG Remuneration Guidance The Hay Group for NW Cluster PCTs November 2012
- CCG governing body members: Role outlines, attributes and skills. NHS CB October 2012
- Briefing NHS Confederation June 2012
- CCG Remuneration Guidance for Chief Officers etc NHS Commissioning Board (undated but prior to April 13)
- Hutton Review of Fair Pay in the Public Sector: Final Report. HM Treasury March 2011
- CCG Posts FAQs . RSM Tenon Undated
- Technical Employment Status Guidance (re Tax, NI and Superannuation implications for GPs involved in CCG roles) RSM Tenon undated
- Managing Conflicts of Interest: Guidance for CCGs. NHS Commissioning Board Undated prior to April 13
- Managing Conflicts of interest in CCGs. RCGP Centre for Commissioning NHS Confederation Undated prior to April 13
- Core Cities Comparison Outline Information on Pay Rates post authorisation.
- LCCG Board current conditions, methods and payments
- LCCG Constitution

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