

Response to
A Consultation on the NHS Constitution
from the
UK Policy Governance Association

15 October, 2008 *[deadline 17 October]*

Submitted to: NHS Constitution Room, 611a Richmond House, 79 Whitehall, London SW1A 2NS
via email to: nhsconstitution@dh.gsi.gov.uk

The UK Policy Governance Association (UKPGA) is a non-profit organisation committed to promoting owner-accountable, ethical and effective governance using the Carver Policy Governance^{®1} model. The Carver Policy Governance model is built upon a foundation of principles that we believe can help to illuminate many of the issues that this Constitution raises for NHS boards. The following reflections on Policy Governance will help to illustrate why:

“John Carver has given board effectiveness a unifying vision, a logical and coherent base – an integrated theory of governance.” – Sir Adrian Cadbury²

“[Policy Governance is] a fully integrated and coherent system of governance... as near a universal theory of governance as we at present have” – Sir Adrian Cadbury³

“The most comprehensive and logical definition of the difference between direction and management is to be found in the works of Dr John Carver.” – Sir Adrian Cadbury⁴

“a clear, convincing and comprehensive framework for corporate governance” – Robert A.G. Monks⁵

“probably the single best manual for directorial functioning in an Anglo-American context is the work of John Carver” – Robert A.G. Monks⁶

“an unparalleled contribution to this essential subject” - Judith Hanratty⁷

“...John Carver[’s].....model of ‘policy governance’ is admirably clear” – Professor Paul Stanton⁸

*“John Carver’s book *Boards That Make a Difference* “offer[s] the most relevant and sensible advice [to NHS boards] focussed on the public/not for profit sector, and widely respected.” - Council for Healthcare Regulatory Excellence⁹*

The UK Policy Governance Association welcomes the NHS Constitution as a statement of the fundamental principles upon which the NHS should be operated. We believe that this is an important step towards bringing greater coherence to the huge and important force for public good that the NHS represents.

We have focused our response to this Consultation on two related issues that we believe are fundamental to realising the potential of an NHS Constitution:

- 1) Accountability
- 2) Latitude for local determination of needs

ACCOUNTABILITY – CONSULTATION QUESTION 13

The UKPGA wishes to make the following points on Consultation Question 13:

a) Need for a Statement of Accountability

We believe that a statement of accountability would ideally be a central plank of the Constitution which should represent the terms on which the public's authority is passed to the organisations that, together, comprise the NHS. In the absence of its inclusion in the Constitution however, we would strongly support the proposal to publish a separate statement of accountability.

b) Content of a Statement of Accountability

We believe that the proposed Statement of Accountability needs to:

I. Give guidance to enable NHS boards to deal with the competing demands for accountability from:

- i. Parliament as representative of the national public interest
- ii. Government as the executive of Parliament
- iii. NHS regulators as monitors of compliance with parliamentary legislation and government policy
- iv. Local communities as representative of the local public interest
- v. Patients as consumers of NHS services
- vi. Staff as employees of NHS organisations
- vii. Other stakeholders.

The starting point we believe needs to involve distinguishing between the public as owners of the NHS and the public as consumers of NHS services. We believe that many of the problems that beset today's NHS can be traced back to the lack of this distinction as reflected in Questions 5 -12 of the Consultation which are grouped together under the heading "Patients and the Public". Whilst it is perfectly right and proper for the NHS to be accountable to the public-as-consumers for any promises it makes to them, it is also vital that it is accountable to the public-as-owners for making only those promises that it can afford to keep if it is to remain a sustainable organisation. We would welcome the opportunity to discuss this distinction further and how it could aid NHS board effectiveness.

II. Reflect principles of accountable delegation, which require:

1. all expectations to be clearly pre-stated;
2. responsibility for meeting those expectations to be clearly allocated to a person or body that has sufficient freedom to do the job; and
3. rigorous monitoring.

In order to operate the NHS, the government needs to delegate authority to NHS organisation boards while remaining accountable for the use of its authority. In order to operate NHS organisations, NHS organisation boards need to delegate authority to their Chief Executives while remaining accountable for the use of that authority. We believe that dual accountability (e.g. of NHS organisations to the Secretary of State AND to Parliament, and of NHS trust Chief Executives to their boards AND to the NHS Chief Executive) is a significant impediment to accountability. Simply put, we believe that for true accountability to exist in the NHS the truth of the old adage "a slave with two masters is a free man" needs to be recognised.

LATITUDE FOR LOCAL DETERMINATION OF NEEDS – CONSULTATION SECTION “ACCESS TO HEALTHCARE SERVICES”

The UKPGA wishes to make the following point on the section of the Consultation headed “Access to Healthcare Services”:

No person or institution can be held accountable for something over which they have no authority. Thus NHS organisations cannot be accountable to their local communities if they have no authority to vary their nationally prescribed responsibilities. The third right proposed on Page 14 of the Consultation under “Access to healthcare services” is “*You have the right to expect your local NHS to assess the health requirements of the local community and to put in place the services to meet those needs as considered necessary.*” We believe that is critical that local NHS boards have the freedom to interpret the phrase “as considered necessary” and are thus able to prioritise and interpret nationally prescribed responsibilities in the light of local community needs.

FURTHER INFORMATION

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REFERENCES

¹ Policy Governance® is the registered service mark of John Carver. Used with permission. The ® after Policy Governance is a symbol used to protect the integrity of the principles and practices that make up the Policy Governance model. Its use does not imply any financial obligation to the service mark owner. The authoritative website for the Policy Governance model can be found at www.carvergovernance.com

² Sir Adrian Cadbury in a review of: *John Carver on Board Leadership: Selected Writings From the Creator of the World's Most Provocative and Systematic Governance Model* (Jossey-Bass, 2001). Sir Adrian Cadbury is director of the Bank of England (1970-1994), retired chairman of Cadbury-Schweppes, Chancellor of Aston University, chairman of the Committee on Financial Aspects of Corporate Governance in the UK (*The “Cadbury Report”*), and author of *The Company Chairman*.

³ Sir Adrian Cadbury in the Foreword to: *Corporate Boards That Create Value: Governing Company Performance from the Boardroom*, John Carver with Caroline Oliver (Jossey-Bass, July, 2002).

⁴ Sir Adrian Cadbury in: *Corporate Governance and Chairmanship – A Personal View*, Adrian Cadbury (Oxford University Press, 2002)

⁵ Robert AG Monks in a review of: *Corporate Boards That Create Value: Governing Company Performance from the Boardroom*, John Carver with Caroline Oliver (Jossey-Bass, July, 2002). Robert AG Monks is founder of Institutional Investor Services and the investment fund LENS. He is also the board chairman of Governance for Owners the London and U.S. based share-ownership services venture. He is the author of *Corporacy and The New Global Investors*, and with Nell Minow, *Watching the Watchers, Corporate Governance and Power & Accountability*. He was the recipient of the Award for Outstanding Financial Executive from the Financial Management Association in 2007.

⁶ Robert A.G. Monks in a review of: *From Conformance to Performance, Best Corporate Practices for Asian Companies*, Editor Mak Yuen Teen, Singapore. (McGraw Hill, July 2005).

⁷ Judith Hanratty in a review of: *Corporate Boards That Create Value: Governing Company Performance from the Boardroom*, John Carver with Caroline Oliver (Jossey-Bass, July, 2002). Judith Hanratty was Company Secretary of BP plc until her retirement in 2004. She was also a Member of the Competition Commission and of the Takeover Panel; and has been a Director of London Electricity, the British Standards Group, and of Partnerships UK. She was a Bank of England Nominated Member of the Council of Lloyd's of London, and Chairman of the Market Supervision Committee for 9 years ending in August 2007. She is currently a Director of Partner Re Limited, Charles Taylor Consulting plc, Chairman of the Commonwealth Education Trust, an Honorary Fellow of Lucy Cavendish College, Cambridge University, a Fellow of the Royal Society for the Arts, Manufactures and Commerce and a non-executive member of the Gas and Electricity Markets Authority.

⁸Paul Stanton in an article: *NHS boards' duty to the public*, published in the Health Services Journal, 30 July 2008. Paul Stanton, formerly Director of board development, National Clinical Governance Support Team (CGST) is a visiting professor in the School of Health, Education and Community Studies at Northumbria University.

⁹ From Appendix 3 of: *Implementing the White Paper Trust, Assurance and Safety: Enhancing confidence in healthcare professional regulators. Final Report of the Working Group chaired by Niall Dickson*. Department of Health, July 2008.