

PCN Decision making guidance - Example 2

WARNING: These clauses are provided for indicative purposes only. They are provided to assist in informing discussions between members of a Primary Care Network (PCN) when it comes to completing certain variable elements of Schedule 1 of the Network Agreement. No warranty is therefore given as to their suitability for use by any particular PCN and you should seek your own professional advice.

These indicative provisions may be considered in circumstances where the Network consist of Core Network Practices and other Members (i.e. practices that have opted to take the PCN DES alongside others). These indicative provisions are likely to be more suitable for larger Networks involving multiple parties.

You will see that the indicative clauses start at clause 7. This is because the provisions governing decision making in the Network Agreement start at clause 7 of Schedule 1.



7. MEETINGS OF THE CORE NETWORK PRACTICES.

- 7.1 Each Core Network Practice shall nominate a representative [who shall be [PRE CONDITIONS FOR APPOINTMENT– e.g. registered medical practitioner/ owner, partner or practice manager of the practice] to attend and vote at meetings on their behalf (the “Practice Representatives”).
- 7.2 To ensure that meetings of and decisions by the Core Network Practices are managed in an orderly and efficient manner, the Practice Representatives, together with the person who is from time to time nominated as the Clinical Director, shall attend meetings and vote on matters requiring the consent of the Core Network Practices under this Agreement. Together they shall be called the “Executive Practice Committee”.
- 7.3 Given the independent role of the Clinical Director, no person from time to time nominated as the Clinical Director may also be nominated as a Practice Representative.
- 7.4 In order to ensure that all owners and staff of the Core Network Practices are made aware of the actions and proposed actions of the Executive Practice Committee and the development, operations and opportunities of or for the Network as whole, the Executive Practice Committee shall provide updates to the Core Network Practices at such reasonable intervals and in a reasonable format as the Clinical Director shall reasonably decide.
- 7.5 A Core Network Practice may, by written notice to the Clinical Director, nominate a replacement representative to act as their Practice Representative.
- 7.6 In respect of the Practice Representatives:
- (a) [Subject to clause 7.12], [E/e]ach Core Network Practice warrants that the Practice Representative they, from time to time, nominate has sufficient authority to bind them;
 - (b) The Clinical Director shall or shall procure that a list of the Practice Representatives is maintained;
 - (c) A person shall cease to be a Practice Representative if, at any time:
 - (i) they cease to [IDENTIFY ANY PRE-CONDITIONS FOR APPOINTMENT];
 - (ii) they resign by giving notice to the Clinical Director;
 - (iii) [OTHER]
 - (d) A person wishing to resign as a Practice Representative must give no less than [NUMBER] months’ notice to the Clinical Director;
 - (e) Where a person ceases to be a Practice Representative the Core Network Practice they represented shall appoint an alternate and identify such alternative to the Clinical Director.
- 7.7 Meetings of the Executive Practice Committee shall be held as often as is necessary.

- 7.8 Each Core Network Practice shall procure that, save in cases of illness or incapacity, that their Practice Representative [in person or by proxy] attends meetings of the Executive Team.
- 7.9 Meetings of the Executive Practice Committee shall be governed by the following provisions:
- (a) whilst the committee members shall use all reasonable endeavours to attend meetings in person, attendance may also be by telephone or video conference;
 - (b) a meeting may be called by any Practice Representative or the Clinical Director;
 - (c) a meeting shall be held at such reasonable time and place as the Practice Representative(s) or Clinical Director calling the meeting thinks fit;
 - (d) a notice of a meeting shall be served on all Practice Representatives and Clinical Director specifying the place, day and time of the meeting and containing a statement of the matters to be discussed at the meeting;
 - (e) except in the case of an emergency not less than [NUMBER] weeks' notice of a meeting shall be given to all Practice Representatives and Clinical Director, provided that shorter notice shall be valid if all the Practice Representatives and Clinical Director [in person or by proxy] attend the meeting or if it is ratified by the Practice Representatives and Clinical Director at a subsequent meeting;
 - (f) any notice of a meeting shall be accompanied by an agenda identifying the matters to be discussed and decided upon albeit any Practice Representative or the Clinical Director shall be able to add an item to the agenda of any particular meeting up to [NUMBER] days before the relevant meeting takes place;
 - (g) a copy of the relevant agenda for any given meeting shall be provided to all Practice Representatives and the Clinical Director along with copies of any papers to be discussed at the such meeting;
 - (h) matters not on the agenda, or business conducted in relation to those matters, may not be raised at a meeting unless all the Practice Representatives and the Clinical Director are in attendance [(in person or by proxy)];
 - (i) [without prejudice to the ability for the Clinical Director to attend any meeting] only one individual from each Core Network Practice shall be able to attend meetings and to this regard that individual shall be their Practice Representative [or their proxy];
 - (j) [the Practice Representatives in attendance at any meeting shall, by a majority vote of those in attendance, appoint a chairman of meetings [but such chairman shall not have a casting vote] OR [and such chairman will have a casting vote] OR [the Clinical Director shall be appointed the chairman of meetings [but shall not have a casting vote] OR [and shall have a casting vote]. In the event that the Clinical Director is unable to attend the Practice Representatives in attendance at the relevant meeting shall, by a majority vote of those in attendance, appoint a chairman [but such chairman shall not have a casting vote] OR [and such chairman will have a casting vote]];
 - (k) [each Practice Representative present in person [or proxy] at a meeting shall be entitled to one vote] OR

[votes of the Practice Representatives present in person [or proxy] shall be weighted by reference to [the registered patient list of the Core Network Practice they represent (and for the purpose of determining their registered patient list, the list as at [DATE – e.g. the 1st January preceding the relevant meeting] shall be assumed] OR

[OTHER];

- (l) [in addition to the votes cast by the Practice Representatives, the Clinical Director shall be entitled to one vote OR [OTHER];]
 - (m) the quorum for a meeting is [the Clinical Director alongside] [NUMBER%] or more of the Practices Representatives OR a number of Practice Representatives who collectively hold [NUMBER]% or more of the voting rights] who are present in person [or by proxy];
 - (n) where the appropriate quorum is not present within 15 minutes of the start time stated in the notice of the meeting, the meeting may commence but no resolution passed at the inquorate meeting shall be deemed to be passed unless it is ratified later by the required majority in attendance at a duly convened quorate meeting; and
 - (o) minutes shall be prepared of all meetings and shall be approved by the chairman of the meeting as evidence of the proceedings.
- 7.10 [A Practice Representative [and the Clinical Director] may appoint a proxy to attend and vote on his behalf at any meeting of the Executive Practice Committee.] OR [No Practice Representative OR Neither the Clinical Director nor a Practice Representative may appoint a proxy to attend and vote on his behalf at any meeting of the Executive Practice Committee].
- 7.11 Where a matter (other than one referred to in clause 11 of this Schedule 1) requires the decision of the Core Network Practices under this agreement, such matter shall be determined by the Executive Practice Committee by simple majority vote at a duly convened meeting of the Executive Practice Committee.
- 7.12 [A Practice Representative shall only vote in favour of any matter referred to in clause 11 of this Schedule 1 where they have discussed with, and obtained the necessary authority from, the partners, shareholders or owners of the Core Network Practice that they represent pursuant to the terms of any agreement governing how decisions can be taken.]
- 7.13 A written resolution signed by all the Practice Representatives and the Clinical Director shall be valid as if it had been passed at a meeting of the Executive Practice Committee.
- 7.14 [Where a Core Network Practice has been suspended from the Network, their Practice Representative will not be entitled to receive notice of or attend and vote in person or by proxy at a meeting of the Executive Practice Committee].
- 7.15 [Where the Clinical Director has been suspended from the Network, he will not be entitled to receive notice of or attend and vote in person or by proxy at a meeting of the Executive Practice Committee.]

- 7.16 [The Clinical Director] [a/A] Core Network Practice, their Practice Representative or [(in any case)] their proxy shall not be entitled to vote on any resolution if it affects them to the exclusion of the other Core Network Practices.

8. MEETINGS OF ALL MEMBERS.

- 8.1 Each Member shall nominate a representative [who shall be [QUALIFICATION]] to attend and vote at meetings of the Members on their behalf (the “Member Representatives”). [For the avoidance of doubt, the Member Representative for any Core Network Practice [may/will] be the same individual who acts as their Practice Representative].
- 8.2 To ensure that meetings of and decisions by all Members are managed in an orderly and efficient manner, the Member Representatives, alongside the person who is from time to time nominated as the Clinical Director, shall attend meetings and vote on matters requiring the consent of the Members under this Agreement. Together they shall be called the “Executive Member Committee”.
- 8.3 Given the independent role of the Clinical Director, no person from time to time nominated as the Clinical Director may also be nominated as a Member Representative.
- 8.4 In order to ensure (as the case may be) that all relevant owners, committees, boards and staff of the Members are made aware of the actions and proposed actions of the Executive Member Committee and the development, operations and opportunities of or for the Network as whole, the Executive Member Committee shall provide updates to the Core Network Practices and other Members at such reasonable intervals and in a reasonable format as the Clinical Director shall reasonably decide.
- 8.5 A Member may, by written notice to the Clinical Director, nominate a replacement representative to act as their Member Representative.
- 8.6 In respect of the Member Representatives:
- (a) [Subject to clause 8.12,] [E/e]ach Member warrants that the Member Representative they, from time to time, nominate has sufficient authority to bind them;
 - (b) The Clinical Director shall or shall procure that a list of the Member Representatives is maintained;
 - (c) A person shall cease to be a Member Representative if, at any time:
 - (i) they cease to [IDENTIFY ANY PRE CONDITIONS FOR APPOINTMENT];
 - (ii) they resign by giving notice to the Clinical Director;
 - (iii) [OTHER]
 - (d) A person wishing to resign as a Member Representative must give no less than [NUMBER] months’ notice to the Clinical Director;
 - (e) Where a person ceases to be a Member Representative the Member they represented shall appoint an alternate and identify such alternative to the Clinical Director.

- 8.7 Meetings of the Members Executive Committee shall be held as often as necessary.
- 8.8 Each Member shall procure that, save in cases of illness or incapacity, that their Member Representative [in person or by proxy] attends meetings of the Executive Member Committee.
- 8.9 Meetings of the Members Executive Committee shall be governed by the following provisions:
- (a) whilst the committee members shall use all reasonable endeavours to attend meetings in person, attendance may also be by telephone or video conference;
 - (b) a meeting may be called by any Member Representative or the Clinical Director;
 - (c) a meeting shall be held at such reasonable time and place as the Member Representative(s) or Clinical Director calling the meeting thinks fit;
 - (d) a notice of a meeting shall be served on all Member Representatives specifying the place, day and time of the meeting and containing a statement of the matters to be discussed at the meeting;
 - (e) except in the case of an emergency not less than [NUMBER] weeks' notice of a meeting shall be given to all Member Representatives and the Clinical Director, provided that shorter notice shall be valid if all the Member Representatives and Clinical Director attend the meeting [in person or by proxy] or if it is ratified by them at a subsequent meeting;
 - (f) any notice of a meeting shall be accompanied by an agenda identifying the matters to be discussed and decided upon albeit any Member Representative or the Clinical Director shall be able to add an item to the agenda of any particular meeting up to [NUMBER] days before the relevant meeting takes place;
 - (g) a copy of the relevant agenda for any given meeting shall be provided to all Member Representatives and the Clinical Director along with copies of any papers to be discussed at the such meeting;
 - (h) matters not on the agenda, or business conducted in relation to those matters, may not be raised at a meeting unless all the Member Representatives and the Clinical Director are in attendance [(in person or by proxy)];
 - (i) [without prejudice to the ability for the Clinical Director to attend any meeting] only one individual from each Member shall be able to attend meetings and to this regard that individual shall be their Member Representative [or their proxy]];
 - (j) [the Member Representatives in attendance at any meeting shall, by a majority vote of those in attendance, appoint a chairman of meetings [but such chairman shall not have a casting vote] OR [and such chairman will have a casting vote] OR [the Clinical Director shall be appointed the chairman of meetings [but shall not have a casting vote] OR [and shall have a casting vote]. In the event that the Clinical Director is unable to attend the Member Representatives in attendance at the relevant meeting shall, by a majority vote of those in attendance, appoint a chairman [but such chairman shall not have a casting vote] OR [and such chairman will have a casting vote]]];
 - (k) [each Member Representative present in person [or proxy] at a meeting of the Members shall be entitled to one vote] OR

- [OTHER];
- (l) [in addition to the votes cast by the Member Representatives, the Clinical Director shall be entitled to one vote OR [OTHER];]
 - (m) the quorum for a meeting is [the Clinical Director alongside] [NUMBER%] or more of the Member Representatives OR a number of Member Representatives who collectively hold [NUMBER]% or more of the voting rights] who are present in person [or by proxy];
 - (n) where the appropriate quorum is not present within 15 minutes of the start time stated in the notice of the meeting, any resolution passed at the inquorate meeting is deemed to have been passed if it is ratified later by the required majority in attendance at a duly convened quorate meeting; and
 - (o) minutes shall be prepared of all meetings and shall be approved by the chairman of the meeting as evidence of the proceedings.
- 8.10 [A Member Representative [and the Clinical Director] may appoint a proxy to attend and vote on his behalf at any meeting of the Executive Member Committee.] OR [No Member Representative OR Neither the Clinical Director nor a Member Representative may appoint a proxy to attend and vote on his behalf at any meeting of the Executive Member Committee].
- 8.11 Where a matter (other than one referred to in clause 11 of this Schedule 1) requires the decision of the Members under this agreement, such matter shall be determined by the Executive Member Committee by simple majority vote at a duly convened meeting of the Executive Member Committee.
- 8.12 [A Member Representative shall only vote in favour of any matter referred to in clause 11 of this Schedule 1 where they have discussed with, and obtained the necessary authority from Member that they represent pursuant to the terms of any agreements, rules, constitutions or otherwise governing how decisions can be taken.]
- 8.13 A written resolution signed by all the Member Representatives and the Clinical Director shall be valid as if it had been passed at a meeting of the Executive Member Committee.
- 8.14 [Where a Member has been suspended from the Network, their Member Representative will not be entitled to receive notice of or attend and vote in person or by proxy at a meeting of the Executive Member Committee].
- 8.15 [Where the Clinical Director has been suspended from the Network, he will not be entitled to receive notice of or attend and vote in person or by proxy at a meeting of the Executive Member Committee.]
- 8.16 [The Clinical Director] [a/A] Member, their Member Representative or [(in any case)] their proxy shall not be entitled to vote on any resolution if it affects them to the exclusion of the other Members.

9. DELEGATED AUTHORITY

POSSIBLE OPTION 1

- 9.1 Notwithstanding any provision to the contrary, the Members may, (where agreed pursuant to clause 11 of this Schedule 1), delegate certain decisions and matters to an individual or sub-committee.
- 9.2 Any individuals or sub committees that are granted delegated authority pursuant to clause 9.1 shall have such duties and responsibilities in respect of the operational, financial or other matters of the Network the Members shall decide in writing from time to time. In respect of such duties and responsibilities, and unless any specific limits are introduced at the time of deciding the same, the individuals and sub-committees with delegated authority shall have delegated authority to make decisions without reference to the Members.

POSSIBLE OPTION 2

Executive Operational Committee

- 9.1 Notwithstanding any provision to the contrary, and to facilitate an orderly running of the Network, the Members may (where agreed pursuant to clause 11 of this Schedule 1), establish an Executive Operational Committee who, subject to those decisions that must be taken by the Members or Core Network Practices pursuant to clause 11 of this Schedule 1, shall have responsibility for the running and operations of the Network.
- 9.2 The Executive Operational Committee shall provide updates to the Core Network Practices and Members at such reasonable intervals and in a reasonable format so as to ensure that all Members are aware of the actions and proposed actions of the Executive Committee and the development, operations and opportunities of or for the Network as whole.

Constitution & elections of the Executive Operational Committee.

- 9.3 Where the decision is taken to establish an Executive Operational Committee, the person from time to time nominated as the Clinical Director shall automatically be appointed to such committee.
- 9.4 The Executive Operational Committee shall consist of no more than [NUMBER] or less than [NUMBER] individuals. Those individuals over and above the Clinical Director shall be chosen by a process of election.
- 9.5 Elections for those individuals that are to be elected onto the Executive Operational Committee shall occur every [NUMBER] years at a meeting of the Members with the first such election taking place on the [NUMBER] anniversary of the commencement of the network pursuant to clause 1 of the main body of the Agreement.

- 9.6 The following provisions shall apply to the elections held pursuant to clause 9.5:
- (a) a Member may nominate a maximum of one person to stand for election to the Executive Operational Committee;
 - (b) no more than one person from each Member may sit on the Executive Operational Committee;
 - (c) unless otherwise agreed by the Core Network Practices pursuant to clause 11 of this Schedule 1, no less than [NUMBER] of the individuals on the Executive Operational Committee shall be individuals nominated by the Core Network Practices;
 - (d) each Member at the relevant Members meeting where the elections are held shall [be entitled to one vote to be cast by their relevant Member Representative] OR [OTHER];
 - (e) those spaces for elected individuals on the Executive Operational Committee shall, subject to clause 9.6 (b) and 9.6 (c), be filled by the individuals with the most votes.
- 9.7 The elected members of the Executive Operational Committee shall sit for a maximum period of [NUMBER] years before needing to be re-elected. For the avoidance of doubt, any elected member to the Executive Operational Committee shall remain in post whilst the election process carried out pursuant to clause 9.6 concludes.
- 9.8 A person shall cease to be a member of the Executive Operational Committee if, at any time:
- (a) he ceases to [IDENTIFY ANY PRE-CONDITIONS FOR APPOINTMENT];
 - (b) he resigns by giving at least [NUMBER] months' notice to the Clinical Director;
 - (c) he is removed and replaced pursuant to a resolution to that effect passed by a simple majority of the Members;
 - (d) (where applicable) the Member within which they are an owner, partner, shareholder, employee, or otherwise engaged ceases to be a member of the Network;
 - (e) attendance at Board meetings is less than [NUMBER]% in a year, based on the date of appointment, unless such absence is due to certified absence through illness or incapacity;
 - (f) [OTHER]

Further delegation.

- 9.9 Subject to decisions reserved for the Core Network Practices or Members pursuant to clause 11, the Executive Operational Committee shall have power to:
- (a) delegate some of their powers to the sub-committees or specified individuals in accordance with any terms of reference approved by the Executive Operational Committee;
 - (b) establish policies and procedures applicable to the running, operations and development of the Network; and
 - (c) [OTHER].

Meetings and decision making.

- 9.10 Meetings of the Executive Operational Committee shall occur once every [month] on the [date of the month] or such other date as the committee members agree.
- 9.11 Meetings of the Executive Operational Committee shall be governed by the following provisions:
- (a) whilst the committee members shall use all reasonable endeavours to attend meetings in person, attendance may also be by telephone or video conference;
 - (b) a meeting outside of the [monthly] meetings may be called by any committee member;
 - (c) meetings shall be held at [LOCATION] or such other location as is specified in the minutes of the previous meeting;
 - (d) a set agenda will be established for the [monthly] meetings albeit any committee member shall be able to add an item to the agenda of any particular meeting up to [NUMBER] days before the relevant meeting takes place;
 - (e) a notice of a meeting which is outside of the [monthly] meetings shall be served on all committee members specifying the place, day and time of the meeting and containing a statement of the matters to be discussed at the meeting;
 - (f) except in the case of an emergency not less than [NUMBER] weeks' notice of a meeting outside of the [monthly] meetings shall be given to all committee members, provided that shorter notice shall be valid if all the committee members attend the meeting or if it is ratified by the committee members at a subsequent meeting;
 - (g) the Clinical Director shall be appointed the chairman of meetings [but shall not have a casting vote] OR [and shall have a casting vote]. In the event that the Clinical Director is unable to attend the committee members in attendance at the relevant meeting shall, by a majority vote of those in attendance, appoint a chairman [but such chairman shall not have a casting vote] OR [and such chairman will have a casting vote];
 - (h) [each committee member present in person [or proxy] at a meeting of the Executive Operational Committee shall be entitled to one vote] OR [OTHER];
 - (i) the quorum for a meeting is [NUMBER] or more of the committee members who are present in person [or by proxy];
 - (j) where the appropriate quorum is not present within 15 minutes of the start time stated in the notice of the meeting, the meeting may commence but no resolution passed at the inquorate meeting shall be deemed to be passed unless it is ratified later by the required majority in attendance at a duly convened quorate meeting; and
 - (k) minutes shall be prepared of all meetings and shall be approved by the chairman of the meeting as evidence of the proceedings.
- 9.12 Where a matter (other than one referred to in clause 11 of this Schedule 1 as requiring the approval of the Practice Representatives or Member Representatives) requires the decision of the Executive Operational Committee under this agreement, such matter shall be determined by the Executive

Operational Committee by simple majority vote at a duly convened meeting of the Executive Member Committee.

9.13 [A member of the Executive Operational Committee may appoint a proxy to attend and vote on his behalf at any meeting of the Executive Operational Committee.] OR [No member of the Executive Operational Committee may appoint a proxy to attend and vote on his behalf at any meeting of the Executive Operational Committee].

10 CONFLICTS OF INTEREST

10.1 The Clinical Director shall or shall procure that the Network maintains a register of any interests, and shall adopt a conflicts policy to determine whether the Clinical Director any Member, Member Representative, Core Network Practice, Practice Representative or committee member (as the case may be) with a relevant interest can participate in meetings concerning and/or in votes on that matter.

11 CATEGORIES OF DECISIONS

11.1 The following matters require the following level of approval of the Practice Representatives (on behalf of the Core Network Practices they represent). [For the avoidance of doubt, the Clinical Director shall [not] have a vote on these matters.]

Type of decision	Level of approval required	Decisions
Decisions reserved for the Core Network Practices	<p>Those decisions requiring approval of [NUMBER]% or more of [the Practice Representatives [and Clinical Director].</p> <p>OR a number of Practice Representatives who [alongside the Clinical Director] collectively hold [NUMBER]% or more of the voting rights at meetings of the Executive Practice Committee.</p>	
	<p>Those decisions requiring the unanimous approval of the Practice Representatives [and the Clinical Director].</p>	

Decisions reserved for the Members	<p>Those decisions requiring approval of [NUMBER]% or more of [the Members Representatives [and Clinical Director].</p> <p>OR a number of Member Representatives who [alongside the Clinical Director] collectively hold [NUMBER]% or more of the voting rights at meetings of the Executive Member Committee.</p>	
	<p>Those decisions requiring the unanimous approval of the Member Representatives [and the Clinical Director].</p>	

Examples of the possible types of decisions (note this is not an exhaustive list)

- The appointment of a new core network practice and/or member and the terms applicable to such appointment.
- The expulsion of a core network practice and/or member (including a decision to expel for non-fault grounds).
- The decision to serve notice to wind up the network.
- (In circumstances where, on the departure of a core network practice / member, the continuing members are to have an option to continue the network (as opposed to an obligation)), the decision to invoke the option.
- Any decision to delegate authority to an individual, subcommittee and/or to appoint an executive committee.
- The ratification of any terms of reference (and limits on authority) in connection with any approved delegation.
- (where applicable) A decision to vary the constitution of the executive committee so as to allow third parties to be appointed, the maximum number of people that can sit on the committee to be increased etc.
- The financial limits on any spend that may be made by the Network before it needs approval.
- The employment of staff by the network beyond those funded by the DES.

- Any decision to enter into or bid for contracts or other arrangements with third parties (including further NHS contracts or, as a possible example, contracts with digital providers).
 - The removal or replacement of the Clinical Director.
 - (where applicable) The removal or replacement of any member of the executive committee.
 - Any purchase of a capital item by or on behalf of the Network costing in excess of a set amount.
 - Any borrowing or lending by or on behalf of the Network or the giving of any guarantee or undertaking of the Network in respect of sums exceeding asset amount in aggregate.
 - Any decision to change the name, the operating model, service delivery split, work force and finance arrangements.
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END.