

Annual Governance Statements

A Discussion Paper



Introduction

This paper reviews the 2017/18 Annual Governance Statements (AGS's) from a sample of Providers and Commissioners across the East Midlands and Yorkshire. Given the breadth of the documents reviewed, the paper summarises broad findings and is not a detailed or exhaustive analysis.

This paper outlines the following:

1. Background to the AGS
2. Review of the 2017/18 AGS guidance and compliance
3. What is a significant control issue?
4. Breadth of responses
5. Evidence provided
6. Completeness of answers
7. Questions for the Audit Committee
8. Key messages

1. Background to the AGS

AGS's are a present day response to a number of enquiries into serious corporate governance failures.

The forerunner to the AGS, the Statement on Internal Control (SIC), was introduced in 2001/2002 in response to Turnbull and was a requirement of HM Treasury on all government departments. NHS organisations had until 1st April 2004 to have an effective system 'in place that had been operating for a full 12 months'. As now, the SIC was signed on behalf of the Board/Governing Body by the Accountable/Accounting Officer, was reviewed by the Audit Committee and External Auditor and supported by an opinion from Internal Audit.

NHS organisations followed the same proforma guidance, being required to submit their SIC, Board Assurance Framework and Head of Audit Opinion to their Strategic Health Authority (SHA). The SHA performed a 'gatekeeper role', undertook a consistency review and formed an opinion prior to submission to the Department of Health.

AGS's replaced the SIC in 2011/2012 in line with changes to HM Treasury Guidance. The NHS Chief Executive required Accountable Officers to give them

assurance about the ‘stewardship of their organisations and allow for the completion of an overarching NHS governance statement’. Guidance was provided on what constitutes a ‘significant control issue’ and also who could advise an organisation if any had occurred, including the view of the Audit Committee, External or Internal Audit. In this first year, there was a role for the SHA in collating information and signposting significant issues that would ‘warrant attention’ at a national level.

2. Review of the 2017/2018 AGS Guidance and Compliance

Providers and Clinical Commissioning Groups (CCG's) follow separate guidance, which includes model templates from NHS Improvement (NHSI) and NHS England (NHSE) respectively. The templates contain elements of mandated statements and 'narrative guided' entries and vary in size (per Table 1).

Table 1 - Provider/ CCG template returns

CCG's		Providers	
1	Introduction and context	1	Scope of responsibility
2	Scope and responsibility	2	The purpose of the system of internal control
3.	Governance arrangements and effectiveness	3	Capacity to handle risk
3a	UK Corporate Governance Code	4	The risk and control framework
3b	Discharge of statutory functions	5	Review of 3 E's and use of resource
4	Risk management arrangements and effectiveness	6	Information Governance
4a	Capacity to handle risk	7	Annual Quality Account
4b	Risk assessment	8	Review of Effectiveness
5a	Internal control framework	9	Conclusion
5b	Annual audit of conflicts of interest		
5c	Data Quality		
5d	Information Governance		
5e	Business critical models		
5f	Third party assurances		
6	Control issues		
7	Review of 3 E's & use of resources		
7a	Delegation of functions		
7b	Counter fraud arrangements		
8	Head of internal audit opinion		
9	Review of the effectiveness		
9a	Conclusion		

Key



Mandated to use a precise form of words

Hybrid of mandated words and guided free text

Guided free text

NHSI Provider Guidance

NHSI issue Provider guidance as a model template with covering letter. The 2017/18 letter sets out the purpose of the AGS and reminds Providers to complete a concluding section, stating explicitly whether there have or have not been any 'Significant Control Issues', as this had not been clear in the past. Providers were advised to disclose;

- serious information governance incidents,
- information on Boards Committee structure and changes, and
- comments on elective waiting time data.

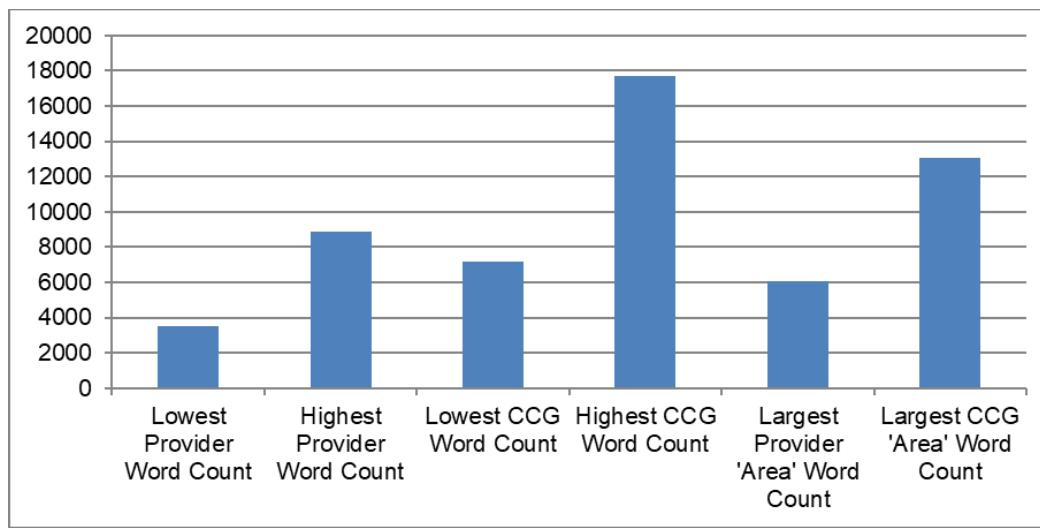
NHSI note that the model AGS should be adapted to reflect the particular circumstances of the NHS Trust.

NHSE Commissioners Guidance

NHSE guidance is contained as part of the 'Annual Template' and the Governance Statement forms part of this guidance. CCG's are encouraged to format the 'Annual Template' to suit their own branding and style guidelines with the '*exception of the Annual Governance Statement*'.

The designated areas within the template AGS's mainly cross-reference to the Provider template, the major difference is the number of areas that are either additional or are areas separated out for Commissioners. This evidences itself most clearly in the scope and relative size of the AGS's reviewed, per Table 2 below.

Table 2 - Provider and CCG AGS word count



Analysis of AGS's identified a significant variation in the size of documents being produced;

- For Providers, word count ranged from 3,529 to 8,870 words
- CCG's ranged from 7,200 to 17,709 words,

making the CCG's up to 5 times the size of the shortest Provider AGS.

For Providers 'The Risk and Control Framework' was the longest section, to a maximum of 6,076 words, being 70% of the total AGS word count for that particular Provider.

For CCG's 'Governance Arrangements and Effectiveness' was the longest section, to a maximum of 13,044 words being 75% of the total AGS for that particular CCG and 3.7 times the size of the shortest Provider AGS.

From review of the layout and order of the AGS's we found;

- Mandated words were not always used or were added to/amended.
- CCG's mainly comply with template order, make good use of sub-headings but occasionally change order of sub-headings and more seldom omit them altogether.
- Providers, though generally compliant, could radically amend template order and use their own headings.

The AGS was always much easier to follow if well set out, having clear headings/sub-headings and effective use of tables and diagrams and written in a succinct manner.

3. What is a significant control issue?

Both Providers and CCG's are required to either declare that 'no significant control issues have been identified' or 'refer to 'significant control issues' identified in the main body of the AGS'. This is done in the 'conclusion' section, which should comprise a single sentence or a list of issues designated 'significant' by the organisation.

NHSI and NHSE provide guidance on what constitutes a 'significant control issue'. The guidance provides a series of 'questions' the organisation can ask itself to prompt whether a significant control issue has arisen and also to highlight those whose views should be sought as follows.

Could the issue undermine the integrity or reputation of the NHS?
Could delivery of the standards expected of the Accountable Officer be at risk?
Has the issue made it harder to resist fraud or other misuse of resources?
Did the issue divert resources from another significant aspect of the business?
Could the issue have a material impact on the accounts?
Might national or data security or integrity be put at risk?
Might the issue prejudice achievement of priorities?
What view does the Audit Committee take on this point?
What advice has internal or external audit given?

NHSI note the guidance is not intended to be 'exhaustive' and NHSE note that the control issues should be built on the issues identified via the month 9 Governance Statement return.

Provider Analysis

From the 25 Provider AGS's reviewed the following statements were made:

Concluding statement made	No. of AGS	Comments
No concluding statement	1	
Mandated statement used	6	1 stated 'none', but used a form of words that capped the period the statement covered: 'In my opinion no significant internal control issues have been identified for the period 1/4/2017 to 31/3/2018'.
Stated no significant control issues in concluding statement but added dialogue	12	The dialogue added was mostly to support their assertion that there were none, to acknowledge there were issues but these were not considered significant or to state that in recording 'none', they were always looking to strengthen the control environment regardless
Yes (there is a significant control issue)	6	All had significant control issues, see comment below.

For those statements declaring significant control issues, a summary of the issues are provided below:

- One conclusion included reference to CQC inspections, Coroner reports, red rated serious incidents, in-patient deaths, information governance, health and safety incidents, and limited assurance internal audit reports. They ended their conclusion by stating that their review confirms that they have a 'generally sound system of internal control'.
- One stated they had 4 issues relating to failure to meet A and E target, failure to meet 62 day cancer target, financial target achieved no better than the agreed control total and that there were a number of estate infrastructure significant risks. They go on to state that, notwithstanding this, the HOIAO provides significant assurance on the Trust's systems of internal control.
- One remained in special measures following a CQC inspection which assessed the Trust as inadequate and highlighted a range of issues which it needed to tackle, the Trust faced significant financial challenges and was placed in special measures, the Trust had failed to meet constitutional standards (performance), had significant recruitment and retention

challenges and had been subject of fire enforcement notices for some of its sites.

- One stated finances and more specifically failure to achieve their CIP target.
- One noted their being in breach of their licence under finance and stability, not being fully compliant with CQC registration requirements, non-achievement of A&E 4 hour wait, failure to achieve 62 day cancer targets and Referral to Treatment and Outpatient Department targets. Reference was made to the impact of a focus on ED, coupled with capacity issues, vacancies and sickness had compounded their performance.
- One noted their being in breach of their NHSI licence found during an investigation. Action plan in place agreed at Board.

CCG Analysis

From the 27 CCG's examined:

Concluding statement made	No. of AGS	Comments
No concluding statement	2	
Mandated statement used	6	
Mandated Statement used with additional narrative	15	Dialogue was added to support assertion that there were not but acknowledged issues not considered to be significant.
Stated 2 issues but not clear if significant	1	The CCG stated they had two issues but was not clear in the narrative if they were significant or not.
Yes (there is a significant control issue)	3	The significant issues related to: <ul style="list-style-type: none"> • directions • significant deterioration in finances • failure to discharge statutory duties

Providers and CCG's are required to provide a brief description of their organisation's major risks and to set out how these will be managed. Providers set this out in the 'Risk and Control Framework' section and CCG's in the 'Risk Assessment' section. It is noticeable that issues which have been presented as 'significant control issues' for some organisations have not been interpreted that way by others. There is always an element of judgement in these matters and it could be that for some, the failure to attain targets, for example, was more as a result of system control weakness than issues to do with funding and excess demand?

What is also noticeable is that the majority of issues raised and the examples provided by NHSI and NHSE are an outcome i.e. something has gone wrong. Weaknesses in governance will not always result in an actual or immediate issue that can trigger a 'significant concern', good governance would be to identify issues that could result in a 'significant control issue'.

The AGS's completed by NHSI on behalf of Monitor and the TDA for 2017/18 did not identify any significant control issues.

4. Breadth of Responses

There is a range in the level of detail provided and the following examples are provided to demonstrate this.

Example 1: CCG's - AGS 3 - Governance Arrangements and Effectiveness - guided question

CCG's are asked to list the Committees/Sub-Committees of the Membership/Governing Body outlining their:

- Key responsibilities
- Membership and attendance records
- Highlights of their work

There was a range of answers provided varying in word count from 167 to just over 13,000 words and with an average of 4,188 words. CCG's who focussed on the key Committees/Sub-Committees (usually between 5 and 6), their key responsibilities, made effective use of tables and finished by focussing on key highlights provided information that was easy to follow. For some, the content was too wide making this section of the AGS hard to follow. One CCG referenced 23 Committees/Sub-Committees and though of interest, was beyond the intention of this section.

Example 2: Providers - AGS 3 - Capacity to Handle Risk

This section comprised 3 guided questions, the 2nd of which related to how staff were trained and equipped to manage risk. There was a range in the breadth of answers provided.

One Provider had a single sentence stating that 'staff are responsible for risk management mandatory training'. The vast majority noted the requirement for staff to attend mandatory training e.g. Fire, Safety, I G, Infection Control. As a 'next layer' some referenced specific risk management training and incident training, root cause, techniques to eliminate and minimise risk, including policies and guidelines. Mention was made of improvement in attendance at mandatory/risk training but did not specify the level of improvement.

A smaller group provided further detail including;

- Training needs analysis to target risk management training at appropriate staff
- Contact details for staff with specialist knowledge who can assist with risk management
- Programme of structured training sessions for Board/Senior Management/Divisions
- Lessons learned forums
- Risk for Managers leaflet

These responses provided a greater understanding of 'how' this element was being achieved. Further improvements could have been achieved by providing empirical evidence i.e. number of staff trained.

Example 3: Providers - AGS 4 - The Risk and Control Framework – Carbon Reduction Plans

The Risk and Control Framework was by far the largest section for all but one Provider AGS. The section required 4 mandated statements relating to:

- Compliance with the registration requirements of the CQC
- Membership of the NHS Pension Scheme
- Measures with regard to obligations under equality and diversity
- Risk Assessments and Carbon reduction Delivery Plans.

For 20/25 AGS's reviewed, the Carbon Reduction mandated words were used extant. 5 Providers set out succinct detail what they had done in 2017/18 to fulfil their obligation.

Example 4: Providers - AGS 5 - Review of Economy, Efficiency and Effectiveness and Use of Resources

Providers were asked to describe the 'key processes that have been applied to ensure that resources are used economically, efficiently and effectively'.

There was a range in the depth and breadth of answers provided. All organisations reference financial plans that contain the required efficiency savings which are monitored and scrutinised at Board level. Quite a few make an explicit statement about their requirement to deliver VFM.

Some set out how review and challenge takes place across the organisation with the Board supported by a Finance sub-committee.

There are, however, examples where there is more information for the reader – with factual data but succinctly presented including:

- External review of prices against industry standards and procurement review
- Participated in NHSI review of back –office functions
- Review against similar organisations to review support service delivery
- SOF scores and reasons for them
- Reference costs
- Use of model hospital/reference to Carter/Carter steering group
- Development of SLR/Plics
- % CIP target achieved and by value
- Benchmarking clubs/seeking best practice
- Quality impact assessments

5. Evidence

This analysis identified a range in the supporting evidence for statements made and the following examples demonstrate this.

Example 5: CCG's - AGS 3 - Governance Arrangements and Effectiveness

CCG's are asked to make comment on the performance of the Members Body/Governing Body and any assessment of effectiveness.

3/6 stated they had undertaken an assessment, one being externally facilitated. None clearly set out the outcome of the assessment.

Example 6: CCG's - AGS 5b - Annual Audit of Conflicts of Interest

CCG's are asked:

- Has the CCG carried out their annual internal audit of conflicts of interest?
- Has the outcome been summarised and what was it?
- Does it list the scope areas that were partially compliant/non-compliant and/or requiring improvement and what were they?

A review of 9 CCG returns identified that:

- 9/9 had completed the annual internal audit – 2 of which were chosen to be reviewed by Deloitte as part of a national testing programme.
- 1/9 provided a breakdown of compliance by each of the 5 areas and the overall opinion.
- 5/9 provide the overall opinion (significant).
- 3/9 don't say what the outcome was but do go on to set out recommendations.

Where actions are required, these are set out to varying levels but not in the manner prescribed i.e. by area.

Example 7: CCG's - AGS 5d - Information Governance

CCG's are asked to insert a mandated form of words and then asked to answer a series of questions, the first of which relates to the level of compliance with the IGT Toolkit.

9/9 used the mandated form of word. Regarding compliance the following was noted:

- 1/9 made no mention of either achieving a certain level, their % score or the opinion of their internal auditor.
- 2/9 noted they achieved level 2.
- 2/9 provided their internal auditors opinion.
- 3/9 provided their internal auditors opinion and their % score.
- 1/9 provided the level they achieved, their internal auditors' opinion and their % achieved over the past 5 years, with each successive year evidencing an improvement.

General Point

We identified a number of practices which could easily be replicated to evidence the completion of the AGS. For some, the AGS was concluded with the insertion of the name and title of the Accountable/Accounting Officer, making it a more personal statement. A number referenced that the Board had been engaged in the completion of the AGS and more particularly in the determination that the overall review and the issue of 'significant control issues' had been discussed at Board.

6. Completeness – answering/understanding the question

There is at times a lack of completeness in answering the whole question and the following examples demonstrate this.

Example 8: CCG's - AGS 4b - Risk Assessment

In this section CCG's are asked to describe:

- How risk has been assessed during the period and what is the risk profile?
- Have the major risks to governance, risk management and control been set out and what are they?
- Does it set out what the CCG has done to manage these and does it say how the outcomes will be assessed?

Our analysis found:

- 4/6 clearly set out the major risks
- 2/6 provide good detail of actions to manage risks
- None provide information on how outcomes will be assessed.

Example 9: CCG's - AGS 5c - Data Quality

CCG's are asked to comment on:

- Has information about the quality of the information being used by the Membership Body and Governing Body been provided?
- Does it confirm if they do or don't find it acceptable?

Our analysis found that 3/ 9 don't respond to the 2nd of these questions.

Example 10: Providers - AGS 4 - The Risk and Control Framework

As stated earlier, this is a large section requiring Providers to respond to 4 mandated areas and to respond to a significant number of 'describe the ways in which' statements. Amongst these is a question asking Providers to 'describe how the quality of performance information is assessed'.

Our analysis of 15 Provider AGS's identified:

- 9/15 made no mention of the quality of the performance information, but a good number referenced their review of performance per se.
- 6/15 addressed the question and provided some good answers including:
 - Quality of data triangulation
 - Formal Data Quality assessments using the 5 data quality domains
 - Positive use of internal audit resource to review Data Quality and the results
 - Role of the External Auditor

Example 11: Providers - AGS 6 - Information Governance

Providers were asked to:

'Describe any serious incidents relating to information governance including data loss or confidentiality breach. As a minimum this should include details of any incidents classified as Level 2 in the Information Governance Incident Reporting Tool. For these cases the trust should also disclose whether these cases have been reported to the Information Commissioner's Office (ICO) and detail any action taken by the ICO'.

19 Trusts reported level 2 IG incidents in 2017-18. Of these:

- 13 provided descriptions/ category of the incidents reported.
- 17 stated that the incident(s) had been reported to the ICO.
- 11 referred to the outcomes of the reported incident(s).
- In one case, no action was taken by ICO in respect of the reported incident. In one case, action was taken but not detailed. In one case, action was taken and detailed.

7. Questions for the Audit Committee

Example Terms of Reference contained within the latest edition of the Audit Committee Handbook state that 'In particular, the Committee will review the adequacy and effectiveness of all risk and control related disclosure statements (in particular the annual governance statement). They also state the Committee will report to the governing body at least annually on its work in support of the annual governance statement, specifically commenting on:

- The fitness for purpose of the assurance framework.
- The completeness and 'embeddedness' of risk management in the organisation.
- The integration of governance arrangements.
- The appropriateness of the evidence that shows the organisation is fulfilling regulatory requirements relating to its existence as a functioning business.
- The robustness of the processes behind the quality accounts.

Some questions for the Audit Committee to consider are:

- Is the Committee advised on the template and guidance provided for completion of the AGS?
- Do Audit Committees come to a view on the system of internal control and, in particular, answer the question of whether the assurance framework is fit for purpose?
- Is the Audit Committee Annual Report produced in time to inform the content of the AGS?

8. Key Messages

- There was a striking variation in the size of AGS's in overall word count and by section.
- Mandated words were not always used and sections of the template were not always present or the order was changed.
- A range of issues were identified in the concluding statement as 'Significant Control Issues' by some which for others were listed in an earlier section as major risks.
- There was a range in the breadth of responses to sections within the AGS.
- Opportunities exist for organisations to provide more evidence in support of their AGS.
- There was at times a lack of completeness in answering the template questions in their entirety.



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