



**MANAGING CONFLICTS
OF INTEREST:
REVISED STATUTORY
GUIDANCE FOR CCGs
2017**

NHS England INFORMATION READER BOX**Directorate**

Medical	Operations and Information	Specialised Commissioning
Nursing	Trans. & Corp. Ops.	Commissioning Strategy
Finance		

Publications Gateway Reference:		06768
Document Purpose	Guidance	
Document Name	Managing conflicts of interest: Revised statutory guidance for CCGs 2017	
Author	Strategy and Innovation Directorate	
Publication Date	16 June 2017	
Target Audience	CCG Clinical Leaders, CCG Accountable Officers, CSU Managing Directors	
Additional Circulation List	NHS England Regional Directors, NHS England Directors of Commissioning Operations	
Description	This guidance aims to support CCGs to identify and manage conflicts of interest. A number of minor amendments have been made to ensure it is fully aligned with "Managing Conflicts of Interest in the NHS", which was published in February 2017. This guidance is a practical toolkit, which includes templates and case studies to support CCGs with conflicts of interest management.	
Cross Reference	Managing Conflicts of Interest in the NHS	
Superseded Docs (if applicable)	Managing Conflicts of Interest: Revised Statutory Guidance for CCGs (June 2016)	
Action Required	N/A	
Timing / Deadlines (if applicable)	N/A	
Contact Details for further information	Strategy & Innovation Directorate NHS England Quarry House Leeds LS1 7UE Email: england.co-commissioning@nhs.net https://www.england.nhs.uk/commissioning/pc-co-comms/coi/	
Document Status		
<p>This is a controlled document. Whilst this document may be printed, the electronic version posted on the intranet is the controlled copy. Any printed copies of this document are not controlled. As a controlled document, this document should not be saved onto local or network drives but should always be accessed from the intranet.</p>		

Managing Conflicts of Interest: Revised Statutory Guidance for CCGs

Version number: 7

First published: March 2013

Updated: June 2017

Prepared by: Strategy and Innovation Directorate

Contents

Introduction.....	6
Definition of an interest.....	10
Principles.....	14
Identification and management of conflicts of interest.....	16
Gifts and Hospitality.....	18
Gifts	18
Hospitality	19
Sponsored events.....	20
Declaring interests and gifts and hospitality	22
Register(s) of interests and gifts and hospitality	25
Register(s) of Interests.....	25
Register(s) of Gifts and Hospitality	25
Publication of registers.....	26
Appointments and roles and responsibilities in the CCG	28
Appointing governing body or committee members and senior employees	28
CCG lay members	29
Conflicts of Interest Guardian	30
Primary Care Commissioning Committee Chair	30
Managing conflicts of interest at meetings.....	33
Chairing arrangements and decision-making processes	33
Primary care commissioning committees and sub-committees	35
Membership of primary care commissioning committees (for joint and delegated arrangements)	36
Primary care commissioning committee decision-making processes and voting arrangements.....	37
Minute-taking	38
Managing conflicts of interest throughout the commissioning cycle	39
Designing service requirements.....	39
Provider engagement.....	39
Specifications	40
Procurement and awarding grants.....	40
Register of procurement decisions	42
CCG Improvement and Assessment Framework	45
Internal audit.....	47
Raising concerns and breaches	48
Reporting breaches.....	48
Fraud or Bribery	49
Impact of non-compliance	50
Conflicts of interest training	52
Glossary	53
Annexes	54
Annex A: Template Declaration of interests for CCG members and employees ...	56
Annex B: Template Register of interests	58

Annex C: Template Declaration of gifts and hospitality59

Annex D: Template Register of gifts and hospitality60

Annex E: Template declarations of interest checklist61

 Template for recording any interests during meetings63

 Template to record interests during the meeting.....64

Annex F: Template for recording minutes.....65

Annex G: Procurement checklist67

Annex H: Template Register of procurement decisions and contracts awarded ...70

Annex I: Template Declaration of conflict of interests for bidders/contractors71

Annex J: Conflicts of interest policy checklist73

Annex K: Summary of key aspects of the guidance on managing conflicts of interest relating to commissioning of new care models79

Introduction

“If conflicts of interest are not managed effectively by CCGs, confidence in the probity of commissioning decisions and the integrity of clinicians involved could be seriously undermined. However, with good planning and governance, CCGs should be able to avoid these risks.”

Royal College of General Practitioners’ (RCGP) and NHS Confederation’s briefing paper on managing conflicts of interest, September 2011

1. For the purposes of this guidance, a “conflict of interest” is defined as “a set of circumstances by which a reasonable person would consider that an individual’s ability to apply judgement or act, in the context of delivering, commissioning, or assuring taxpayer funded health and care services is, or could be, impaired or influenced by another interest they hold”.¹
2. Clinical commissioning groups (CCGs) manage conflicts of interest as part of their day-to-day activities. Effective handling of conflicts of interest is crucial to give confidence to patients, tax payers, healthcare providers and Parliament that CCG commissioning decisions are robust, fair and transparent and offer value for money. It is essential in order to protect healthcare professionals and maintain public trust in the NHS. Failure to manage conflicts of interest could lead to legal challenge and even criminal action in the event of fraud, bribery and corruption.
3. Conflicts of interest are inevitable in commissioning. It is how we manage them that matters. Section 140 of the National Health Service Act 2006 (as amended by the Health and Social Care Act 2012) (“the Act”) sets out the minimum requirements of what both NHS England and CCGs must do in terms of managing conflicts of interest.
4. To further support CCGs to manage the risks of conflicts of interest, we have issued this statutory guidance under sections 140 and 14Z8 of the Act. We expect all CCGs to fully implement this guidance. Where a CCG has decided not to comply with this statutory guidance, they must include within their next annual self-certification statement the reasons for deciding not to do so (see paragraph 140 for further details).
5. This guidance supersedes *Managing Conflicts of Interest Statutory Guidance*, published in June 2016.² We have made a small number of amendments to the 2016 guidance to ensure that it is fully aligned with the new cross-system guidance on *Managing Conflicts of Interest in the NHS*, which was published in February 2017 and sets out a series of common principles and rules for managing conflicts of interest and gifts and hospitality across the whole NHS. We have also incorporated further advice on managing conflicts of interest in the commissioning of new care models, drawing from the existing requirements and experiences of CCGs.

¹ Managing conflicts of interests in the NHS: Guidance for staff and organisations.2017.
<https://www.england.nhs.uk/wp-content/uploads/2017/02/guidance-managing-conflicts-of-interest-nhs.pdf>

² [Managing conflicts of interest: Revised guidance for CCGs. 2016.](#)

6. The key changes (from the June 2016 version of the guidance) are:

- **Registers of interest:** A requirement that CCGs have systems in place to satisfy themselves on an *annual* basis that their registers of interest are accurate and up-to-date. Only the declared interests of decision-making staff are required to be included on the published register.
- **Gifts from suppliers or contractors:** Gifts of low value (up to £6), such as promotional items, can be accepted and do not need to be declared, but all other gifts from suppliers or contractors must be declined and declared.
- **Gifts from other sources:** Gifts under £50 can be accepted from non-suppliers and non-contractors, and do not need to be declared. Gifts with a value of over £50 can be accepted on behalf of an organisation, but not in a personal capacity and must be declared.
- **Hospitality - meals and refreshments:** Hospitality under £25 can be accepted and does not need to be declared. Hospitality between £25 and £75 can be accepted, but must be declared. If the value of the hospitality is over £75, it must be declared and should be refused unless senior approval is given.
- **Sponsored Events:** a new section on sponsored events.
- **New Care Models commissioning:** A new annex has been appended (annex K) which summarises key aspects of the guidance that need particular consideration within the context of new care models commissioning.

7. In addition to complying with this statutory guidance, CCGs will also need to adhere to relevant guidance issued by professional bodies on conflicts of interest, including the British Medical Association (BMA),³ the Royal College of General Practitioners,⁴ and the General Medical Council (GMC),⁵ and to procurement rules including The Public Contract Regulations 2015,⁶ and the National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013,⁷ as well as the Bribery Act 2010.⁸

8. This guidance aims to:

- Safeguard clinically led commissioning, whilst ensuring objective investment decisions;

³ BMA guidance on conflicts of interest for GPs in their role as commissioners and providers <http://www.bma.org.uk/support-at-work/commissioning/ensuring-transparency-and-probity>

⁴ Managing conflicts of interest in clinical commissioning groups: http://www.rcgp.org.uk/~media/Files/CIRC/Managing_conflicts_of_interest.ashx

⁵ GMC | Good medical practice (2013) http://www.gmc-uk.org/guidance/good_medical_practice.asp and http://www.gmc-uk.org/guidance/ethical_guidance/21161.asp and http://www.gmc-uk.org/guidance/ethical_guidance/21161.asp

⁶ The Public Contract Regulations 2015 <http://www.legislation.gov.uk/uksi/2015/102/regulation/57/made>

⁷ The NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013 <http://www.legislation.gov.uk/uksi/2013/500/contents/made>

⁸ The Bribery Act 2010 <http://www.legislation.gov.uk/ukpga/2010/23/contents>

- Enable commissioners to demonstrate that they are acting fairly and transparently and in the best interests of their patients and local populations;
 - Uphold confidence and trust in the NHS;
 - Support commissioners to understand when conflicts (whether actual or potential) may arise and how to manage them if they do;
 - Be a practical resource and toolkit with scenarios and a web link to comprehensive case studies to help CCGs identify conflicts of interest and appropriately manage them; and
 - Ensure that CCGs operate within the legal framework.
9. NHS England staff operating under a joint co-commissioning arrangement should adhere to the principles set out in this guidance, as well as NHS England's own internal Standards of Business Conduct⁹ and other relevant organisational policies.
10. The guidance is divided into the following parts:
- Definition of an interest;
 - Principles;
 - Identification and management of conflicts of interest;
 - Gifts and hospitality;
 - Declaring interests and gifts and hospitality;
 - Registers of interest and gifts and hospitality;
 - Appointments and roles and responsibilities in the CCG;
 - Managing conflicts of interest at meetings;
 - Managing conflicts of interest throughout the commissioning cycle;
 - CCG improvement and assessment framework and internal audit;
 - Raising concerns and breaches;
 - Impact of non-compliance; and
 - Conflicts of interest training.
11. To accompany this guidance, we have published a series of [2-page summary guides](#) for different professional groups. This includes GPs in commissioning

⁹ NHS Commissioning Board (2012) *Standards of Business Conduct* <https://www.england.nhs.uk/wp-content/uploads/2012/11/stand-bus-cond.pdf>

roles, the Conflicts of Interest Guardian, CCG lay members, CCG governance lead, administrative staff and Healthwatch members of the primary care commissioning committee. In addition, we have published a series of [case studies](#) to highlight potential conflicts of interest scenarios that could arise in CCGs, with advice on how to mitigate the risks.

Definition of an interest

12. For the purposes of this guidance a conflict of interest is defined as “a set of circumstances by which a reasonable person would consider that an individual’s ability to apply judgement or act, in the context of delivering, commissioning, or assuring taxpayer funded health and care services is, or could be, impaired or influenced by another interest they hold”¹⁰.

13. A conflict of interest may be:

Actual	Potential
There is a material conflict between one or more interests.	There is the possibility of a material conflict between one or more interests in the future.

14. Staff may hold interests for which they cannot see potential conflict. However, caution is always advisable because others may see it differently. It will be important to exercise judgement and to declare such interests where there is otherwise a risk of imputation of improper conduct. The perception of an interest can be as damaging as an actual conflict of interest.

15. Conflicts of interest can arise in many situations, environments and forms of commissioning, with an increased risk in primary care commissioning, out-of-hours commissioning and involvement with integrated care organisations and new care models, as CCG staff may here find themselves in a position of being both commissioner and provider of services. Conflicts of interest can arise throughout the whole commissioning cycle from needs assessment, to procurement exercises, to contract monitoring. Where in this guidance we refer to ‘new care models’, we are referring to Multi-speciality Community Providers (MCP), Primary and Acute Care Systems (PACS) or other arrangements of a similar scale or scope.

16. Interests fall into the four categories outlined below. A benefit may arise from the making of a gain or the avoidance of a loss:

- i. **Financial interests:** This is where an individual may get direct financial benefits from the consequences of a commissioning decision. This could, for example, include being:
 - A director, including a non-executive director, or senior employee in a private company or public limited company or other organisation which is doing, or which is likely, or possibly seeking to do, business with health or social care organisations. This includes involvement with a potential provider of a new care model;
 - A shareholder (or similar ownership interests), a partner or owner of a private or not-for-profit company, business, partnership or consultancy which is doing, or which is likely, or possibly seeking to do, business with health or social care organisations;

¹⁰ Managing conflicts of interests in the NHS: Guidance for staff and organisations.2017.
<https://www.england.nhs.uk/wp-content/uploads/2017/02/guidance-managing-conflicts-of-interest-nhs.pdf>

- A management consultant for a provider; or
- A provider of clinical private practice.

This could also include an individual being:

- In employment outside of the CCG (see paragraph 79-81);
- In receipt of secondary income;
- In receipt of a grant from a provider;
- In receipt of any payments (for example honoraria, one-off payments, day allowances or travel or subsistence) from a provider;
- In receipt of research funding, including grants that may be received by the individual or any organisation in which they have an interest or role; and
- Having a pension that is funded by a provider (where the value of this might be affected by the success or failure of the provider).

ii. **Non-financial professional interests:** This is where an individual may obtain a non-financial professional benefit from the consequences of a commissioning decision, such as increasing their professional reputation or status or promoting their professional career. This may, for example, include situations where the individual is:

- An advocate for a particular group of patients;
- A GP with special interests e.g., in dermatology, acupuncture etc.;
- An active member of a particular specialist professional body (although routine GP membership of the Royal College of General Practitioners (RCGP), British Medical Association (BMA) or a medical defence organisation would not usually by itself amount to an interest which needed to be declared);
- An advisor for the Care Quality Commission (CQC) or the National Institute for Health and Care Excellence (NICE);
- Engaged in a research role;
- The development and holding of patents and other intellectual property rights which allow staff to protect something that they create, preventing unauthorised use of products or the copying of protected ideas; or

- GPs and practice managers, who are members of the governing body or committees of the CCG, should declare details of their roles and responsibilities held within their GP practices.

iii. **Non-financial personal interests:** This is where an individual may benefit personally in ways which are not directly linked to their professional career and do not give rise to a direct financial benefit. This could include, for example, where the individual is:

- A voluntary sector champion for a provider;
- A volunteer for a provider;
- A member of a voluntary sector board or has any other position of authority in or connection with a voluntary sector organisation;
- Suffering from a particular condition requiring individually funded treatment;
- A member of a lobby or pressure group with an interest in health and care.

iv. **Indirect interests:** This is where an individual has a close association with an individual who has a financial interest, a non-financial professional interest or a non-financial personal interest in a commissioning decision (as those categories are described above) for example, a:

- Spouse / partner;
- Close family member or relative e.g., parent, grandparent, child, grandchild or sibling;
- Close friend or associate; or
- Business partner.

A declaration of interest for a “business partner” in a GP partnership should include all relevant collective interests of the partnership, and all interests of their fellow GP partners (which could be done by cross referring to the separate declarations made by those GP partners, rather than by repeating the same information verbatim).

Whether an interest held by another person gives rise to a conflict of interest will depend upon the nature of the relationship between that person and the individual, and the role of the individual within the CCG.

17. CCGs should provide clear guidance to their employees, members and governing body and committee members on what might constitute a conflict of interest, providing examples of situations that may arise. A range of conflicts of interest case studies can be found [here](#).

18. The above categories and examples are not exhaustive and a common sense approach should be adopted. The CCG should exercise discretion on a case by case basis, including in relation to new care model arrangements, having regard to the principles set out in the next section of this guidance, in deciding whether any other role, relationship or interest may impair or otherwise influence the individual's judgement or actions in their role within the CCG. If so, this should be declared and appropriately managed.

Principles

19. This section sets out a series of principles for those who are serving as members of CCG governing bodies, CCG committees or take decisions where they are acting on behalf of the public or spending public money.
20. CCGs should observe the principles of good governance in the way they do business. These include:

- The 7 principles of public life (known as the Nolan Principles as set out below)¹¹;
- The Good Governance Standards for Public Services (2004), Office for Public Management (OPM) and Chartered Institute of Public Finance and Accountancy (CIPFA);¹²
- The seven key principles of the NHS Constitution;¹³
- The Equality Act 2010;¹⁴
- The UK Corporate Governance Code¹⁵;
- Standards for members of NHS boards and CCG governing bodies in England.¹⁶

21. All those with a position in public life should adhere to the 7 principles of public life, which are:

- **Selflessness** – Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends;
- **Integrity** – Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties;
- **Objectivity** – In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit;

¹¹ The 7 principles of public life <https://www.gov.uk/government/publications/the-7-principles-of-public-life>

¹² The Good Governance Standards for Public Services , 2004, OPM and CIPFA
<http://www.opm.co.uk/wp-content/uploads/2014/01/Good-Governance-Standard-for-Public-Services.pdf>

¹³ The seven key principles of the NHS Constitution
<http://www.nhs.uk/NHSEngland/thenhs/about/Pages/nhscoreprinciples.aspx>

¹⁴ The Equality Act 2010 <http://www.legislation.gov.uk/ukpga/2010/15/contents>

¹⁵ UK Corporate Governance Code <https://www.frc.org.uk/Our-Work/Codes-Standards/Corporate-governance/UK-Corporate-Governance-Code.aspx>

¹⁶ Standards for members of NHS boards and CCG governing bodies in England
<http://www.professionalstandards.org.uk/publications/detail/standards-for-members-of-nhs-boards-and-clinical-commissioning-group-governing-bodies-in-england>

- **Accountability** – Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office;
- **Openness** – Holders of public office should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands;
- **Honesty** – Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest;
- **Leadership** – Holders of public office should promote and support these principles by leadership and example.

22. In addition, to support the management of conflicts of interest, CCGs should:

- **Do business appropriately:** Conflicts of interest become much easier to identify, avoid and/or manage when the processes for needs assessments, consultation mechanisms, commissioning strategies and procurement procedures are right from the outset, because the rationale for all decision-making will be clear and transparent and should withstand scrutiny;
- **Be proactive, not reactive:** Commissioners should seek to identify and minimise the risk of conflicts of interest at the earliest possible opportunity;
- **Be balanced, sensible and proportionate:** Rules should be clear and robust but not overly prescriptive or restrictive. They should ensure that decision-making is transparent and fair whilst not being overly constraining, complex or cumbersome;
- **Be transparent:** Document clearly the approach and decisions taken at every stage in the commissioning cycle so that a clear audit trail is evident;
- Create an **environment and culture** where individuals feel supported and confident in declaring relevant information and raising any concerns.

23. In addition to the above, CCGs need to bear in mind:

- A perception of wrongdoing, impaired judgement or undue influence can be as detrimental as any of them actually occurring;
- If in doubt, it is better to assume the existence of a conflict of interest and manage it appropriately rather than ignore it;
- For a conflict of interest to exist, financial gain is not necessary.

Identification and management of conflicts of interest

24. Conflicts of interest are a common and sometimes unavoidable part of the delivery of healthcare. As such, it may not be possible or desirable to completely eliminate the risk of conflicts. Instead, it may be preferable to recognise the associated risks and put measures in place to manage the conflicts appropriately when they do arise.
25. As a minimum, CCGs should have robust systems in place to identify and manage conflicts of interest. This will involve creating an environment in which CCG staff, governing body and committee members, and member practices feel able, encouraged and obliged to be open, honest and upfront about actual or potential conflicts. Transparency in this regard will lead to effective identification and management of conflicts. The effect should be to make everyone aware of what to do if they suspect a conflict and ensure decision-making is efficient, transparent and fair. To this end, CCGs should implement this statutory guidance in a manner that is clear and robust, but not overly prescriptive or complex.
26. The Accountable Officer has overall accountability for the CCG's management of conflicts of interest. CCGs should identify a team or individual within their organisation, such as the CCG's governance lead, with responsibility for:

- The day-to day management of conflicts of interest matters and queries;
- Maintaining the CCG's register(s) of interest and the other registers referred to in this Guidance;
- Supporting the Conflicts of Interest Guardian to enable them to carry out the role effectively (see paragraph 74 onwards);
- Providing advice, support, and guidance on how conflicts of interest should be managed; and
- Ensuring that appropriate administrative processes are put in place.

27. Through this team or individual, CCGs should provide clear guidance to their staff, governing body and committee members, and GP member practices on what might constitute a conflict of interest, including examples of possible conflicts and situations in which a conflict may arise. This may be achieved through training and wide promotion of the CCG's policy on conflicts of interest management. Annex J sets out a conflicts of interest checklist for CCGs to follow when developing their conflicts of interest policy.
28. Such a team or individual should be appropriately trained and their identity well publicised so that their expertise can be called upon when required.
29. There will be occasions where an individual declares an interest in good faith but, upon closer consideration, it is clear that this does not constitute a genuine conflict of interest. The team or individual who has designated responsibility for

maintaining the registers of interest should provide advice on this and decide whether it is necessary for the interest to be declared.

30. There will be other occasions where the conflict of interest is profound and acute. In such scenarios (such as where an individual has a direct financial interest which gives rise to a conflict, e.g., employment outside the CCG or involvement with an organisation which benefits financially from contracts for the supply of goods and services to a CCG or aspires to be a new care model provider) it is likely that CCGs will want to consider whether, practically, such an interest is manageable at all. CCGs should note that this can arise in relation to both clinical and non-clinical staff/roles. If it is not, the appropriate course of action may be to refuse to allow the circumstances which gave rise to the conflict to persist. This may require an individual to step down from a particular role and/or move to another role within the CCG. CCGs should ensure that their HR policies, governing body and committee terms of reference and standing orders are reviewed to ensure that they enable the CCG to take appropriate action to manage conflicts of interest robustly and effectively in such circumstances.

Gifts and Hospitality

Gifts

31. Staff in the NHS offer support during significant events in people's lives. For this work they may sometimes receive gifts as a legitimate expression of gratitude. We should be proud that our services are so valued. But situations where the acceptance of gifts could give rise to conflicts of interest should be avoided. CCG staff and members should be mindful that even gifts of a small value may give rise to perceptions of impropriety and might influence behaviour if not handled in an appropriate way.
32. A 'gift' is defined as any item of cash or goods, or any service, which is provided for personal benefit, free of charge or at less than its commercial value.
33. **Overarching principles:**
 - CCG staff should not accept gifts that may affect, or be seen to affect, their professional judgement. This overarching principle should apply in all circumstances;
 - Any personal gift of cash or cash equivalents (e.g. vouchers, tokens, offers of remuneration to attend meetings whilst in a capacity working for or representing the CCG) must always be declined, whatever their value and whatever their source, and the offer which has been declined must be declared to the team or individual who has designated responsibility for maintaining the register of gifts and hospitality and recorded on the register.
34. **Gifts from suppliers or contractors:**
 - Gifts from suppliers or contractors doing business (or likely to do business) with the CCG should be declined, whatever their value (subject to this, low cost branded promotional aids may be accepted and not declared where they are under the value of a common industry standard of £6¹⁷). The person to whom the gifts were offered should also declare the offer to the team or individual who has designated responsibility for maintaining the register of gifts and hospitality so the offer which has been declined can be recorded on the register.
35. **Gifts from other sources** (e.g. patients, families, service users):
 - CCG staff should not ask for any gifts;
 - Modest gifts under a value of £50 may be accepted and do not need to be declared;

¹⁷ The ABPI Code of Practice for the Pharmaceutical Industry:
<http://www.pmcpa.org.uk/thecode/Pages/default.aspx>

- Gifts valued at over £50 should be treated with caution and only be accepted on behalf of an organisation (i.e. to an organisation's charitable funds), not in a personal capacity. These should be declared by staff;
- A common sense approach should be applied to the valuing of gifts (using an actual amount, if known, or an estimate that a reasonable person would make as to its value);
- Multiple gifts from the same source over a 12 month period should be treated in the same way as single gifts over £50 where the cumulative value exceeds £50.

Hospitality

36. Delivery of services across the NHS relies on working with a wide range of partners (including industry and academia) in different places and, sometimes, outside of 'traditional' working hours. As a result, CCG staff will sometimes appropriately receive hospitality. Staff receiving hospitality should always be prepared to justify why it has been accepted, and be mindful that even hospitality of a small value may give rise to perceptions of impropriety and might influence behaviour.
37. Hospitality means offers of meals, refreshments, travel, accommodation, and other expenses in relation to attendance at meetings, conferences, education and training events etc.
38. **Overarching principles:**
- CCG staff should not ask for or accept hospitality that may affect, or be seen to affect, their professional judgement;
 - Hospitality must only be accepted when there is a legitimate business reason and it is proportionate to the nature and purpose of the event;
 - Particular caution should be exercised when hospitality is offered by actual or potential suppliers or contractors, these can be accepted if modest and reasonable, but individuals should always obtain senior approval and declare these.
39. **Meals and Refreshments:**
- Under a value of £25 may be accepted and need not be declared;
 - Of a value between £25 and £75¹⁸ may be accepted and must be declared;

¹⁸ The ABPI Code of Practice for the Pharmaceutical Industry:
<http://www.pmcpa.org.uk/thecode/Pages/default.aspx>

- Over a value of £75 should be refused unless (in exceptional circumstances) senior approval is given. A clear reason should be recorded on an organisation's register(s) of interest as to why it was permissible to accept;
- A common sense approach should be applied to the valuing of meals and refreshments (using an actual amount, if known, or an estimate that a reasonable person would make as to its value).

40. **Travel and Accommodation:**

- Modest offers to pay some or all of the travel and accommodation costs related to attendance at events may be accepted and must be declared;
- Offers which go beyond modest, or are of a type that the CCG itself might not usually offer, need approval by senior staff (e.g. the CCG governance lead or equivalent), should only be accepted in exceptional circumstances, and must be declared. A clear reason should be recorded on an organisation's register(s) of interest as to why it was permissible to accept travel and accommodation of this type;
- A non-exhaustive list of examples includes:
 - Offers of business class or first class travel and accommodation (including domestic travel); and
 - Offers of foreign travel and accommodation.

Sponsored events

41. Sponsorship of NHS events by external parties is valued. Offers to meet some or part of the costs of running an event secures their ability to take place, benefiting NHS staff and patients. Without this funding there may be fewer opportunities for learning, development and partnership working. However, there is potential for conflicts of interest between the organiser and the sponsor, particularly regarding the ability to market commercial products or services. As a result there should be proper safeguards in place to prevent conflicts occurring.
42. When sponsorships are offered, the following principles must be adhered to:
- Sponsorship of CCG events by appropriate external bodies should only be approved if a reasonable person would conclude that the event will result in clear benefit for the CCG and the NHS;
 - During dealings with sponsors there must be no breach of patient or individual confidentiality or data protection rules and legislation;

- No information should be supplied to the sponsor from which they could gain a commercial advantage, and information which is not in the public domain should not normally be supplied;
- At the CCG's discretion, sponsors or their representatives may attend or take part in the event but they should not have a dominant influence over the content or the main purpose of the event;
- The involvement of a sponsor in an event should always be clearly identified in the interest of transparency;
- CCGs should make it clear that sponsorship does not equate to endorsement of a company or its products and this should be made visibly clear on any promotional or other materials relating to the event;
- Staff should declare involvement with arranging sponsored events to their CCG.

Other forms of sponsorship:

43. Organisations external to the CCG or NHS may also sponsor posts or research. However, there is potential for conflicts of interest to occur, particularly when research funding by external bodies does or could lead to a real or perceived commercial advantage, or if sponsored posts cause a conflict of interest between the aims of the sponsor and the aims of the organisation, particularly in relation to procurement and competition. There needs to be transparency and any conflicts of interest should be well managed. For further information, please see [Managing Conflicts of Interest in the NHS: Guidance for staff and organisations](#).

Declaring interests and gifts and hospitality

Statutory requirements

*CCGs must make arrangements to ensure individuals declare any conflict or potential conflict in relation to a decision to be made by the group as soon as they become aware of it, and in any event within 28 days. CCGs must record the interest in the registers as soon as they become aware of it.*¹⁹

44. CCGs will need to ensure that, as a matter of course, declarations of interest are made and regularly confirmed or updated. An example template declaration of interest form is annexed at Annex A.
45. Declarations of interest and gifts and hospitality should be made by the following :

- **All CCG employees**, including:
 - All full and part time staff;
 - Any staff on sessional or short term contracts;
 - Any students and trainees (including apprentices);
 - Agency staff; and
 - Seconded staff.

In addition, any self-employed consultants or other individuals working for the CCG under a contract for services should make a declaration of interest in accordance with this guidance, as if they were CCG employees.

- **Members of the governing body:** All members of the CCG's committees, sub-committees/sub-groups, including:
 - Co-opted members;
 - Appointed deputies; and
 - Any members of committees/groups from other organisations.

Where the CCG is participating in a joint committee alongside other CCGs, any interests which are declared by the committee members should be recorded on the register(s) of interest of each participating CCG.

- **All members of the CCG (i.e., each practice)**

This includes each provider of primary medical services which is a member of the CCG under Section 14O (1) of the 2006 Act. Declarations should be made by the following groups:

 - GP partners (or where the practice is a company, each director);
 - Any individual directly involved with the business or decision-making of the CCG.

46. GPs and other staff within the CCG's member practices are not required to declare offers/receipt of gifts and hospitality to the CCG which are unconnected

¹⁹ National Health Service Act 2006 (as amended by the Health and Social Care Act 2012) section 140(3)

with their role or involvement with the CCG, and this statutory guidance does not apply to such situations. However GP staff will need to adhere to other relevant guidance issued by professional bodies (see paragraph 7).

47. Declarations of interest should be made as soon as reasonably practicable and by law within 28 days after the interest arises (this could include an interest an individual is pursuing). Further opportunities to make declarations include:

On appointment:

Applicants for any appointment to the CCG or its governing body or any committees should be asked to declare any relevant interests. When an appointment is made, a formal declaration of interests should again be made and recorded.

At meetings:

All attendees are required to declare their interests as a standing agenda item for every governing body, committee, sub-committee or working group meeting, before the item is discussed. Even if an interest has been recorded in the register of interests, it should still be declared in meetings where matters relating to that interest are discussed. Declarations of interest should be recorded in minutes of meetings (see paragraph 105-106 for further advice on record keeping).

When prompted by their organisation:

Because of their role in spending taxpayers' money, CCGs should ensure that, at least annually, staff are prompted to update their declarations of interest, or make a nil return where there are no interests or changes to declare.

On changing role, responsibility or circumstances:

Whenever an individual's role, responsibility or circumstances change in a way that affects the individual's interests (e.g., where an individual takes on a new role outside the CCG, enters into a new business or relationship, starts a new project/piece of work or may be affected by a procurement decision e.g. if their role may transfer to a proposed new provider), a further declaration should be made to reflect the change in circumstances as soon as possible, and in any event *within 28 days*. This could involve a conflict of interest ceasing to exist or a new one materialising. It should be made clear to all individuals who are required to make a declaration of interests that if their circumstances change, it is their responsibility to make a further declaration as soon as possible and in any event within 28 days, rather than waiting to be asked. It should also be clear who such individuals should formally notify, and how that team or person can be contacted. CCGs may wish to consider including this requirement in employees' contracts.

48. CCGs should have systems in place to ensure that receipt of gifts and hospitality are made by all persons referred to in paragraph 45. Declarations of receipt of gifts and hospitality should be made as soon as reasonably practicable. A draft template for declaring gifts and hospitality is included at Annex C.
49. Whenever interests or offers of gifts and hospitality are declared, they should be promptly reported to the individual or team within the CCG who has designated responsibility for maintaining the register of interests and the register of gifts and hospitality. This individual should ensure that the register of interests is updated accordingly. Paragraph 51 onwards sets out further information on maintaining a register of interests and a register of gifts and hospitality.

Register(s) of interests and gifts and hospitality

Statutory requirements

CCGs must maintain one or more registers of interest of: the members of the group, members of its governing body, members of its committees or sub-committees of its governing body, and its employees. CCGs must publish, and make arrangements to ensure that members of the public have access to, these registers on request.

50. CCGs should maintain one or more registers of interest and one or more registers of gifts and hospitality.

Register(s) of Interests

51. An example declaration of interest(s) form and register of interests for use by CCGs are included at Annexes A and B. These templates can be adapted by CCGs but, as a minimum, they should contain the following information:

- Name of the person declaring the interest;
- Position within, or relationship with, the CCG (or NHS England in the event of joint committees);
- Type of interest e.g., financial interests, non-financial professional interests;
- Description of interest, including for indirect interests details of the relationship with the person who has the interest;
- The dates from which the interest relates; and
- The actions to be taken to mitigate risk - these should be agreed with the individual's line manager or a senior manager within the CCG.

Register(s) of Gifts and Hospitality

52. CCGs should maintain one or more registers of gifts and hospitality for the individuals listed in paragraph 45 above. CCGs should ensure that robust processes are in place to ensure that such individuals do not accept gifts or hospitality or other benefits, which might reasonably be seen to compromise their professional judgement or integrity.
53. A template gifts and hospitality register for use by CCGs is included at Annex D. These templates can be adapted by CCGs but, as a minimum, they should contain the following information:

- Recipient's name;
- Current position(s) held by the individual (within the CCG);
- Date of offer and/or receipt;
- Details of the gift or hospitality;
- The estimated value of the gift or hospitality;
- Details of the supplier/offeror (e.g. their name and the nature of their business);
- Details of previous gifts and hospitality offered or accepted by this offeror/supplier;
- Action taken to mitigate against a conflict, details of any approvals given and details of the officer reviewing/approving the declaration made and date;
- Whether the offer was accepted or not; and
- Reasons for accepting or declining the offer.

54. All the individuals listed in paragraph 45 need to consider the risks associated with accepting offers of gifts, hospitality and entertainment when undertaking activities for or on behalf of the CCG or their GP practice. This is especially important during procurement exercises, as the acceptance of gifts could give rise to real or perceived conflicts of interests, or accusations of unfair influence, collusion or canvassing.

Publication of registers

55. All staff listed in paragraph 45 should declare interests and offers/receipt of gifts and hospitality, but we recognise that some staff are more likely than others to have a decision making influence on the use of taxpayers' money, because of the requirements of their role. For the purposes of this guidance these people are referred to as '**decision making staff**'.

56. As a minimum, CCGs should publish register(s) of interests and gifts and hospitality of decision making staff at least annually in a prominent place on their website and make them available at their headquarters upon request.

57. CCGs should define decision making staff according to their own context, but this should be justifiable and capture those groups of staff that have a material influence on how taxpayers' money is spent.

58. The following non-exhaustive list describes who these individuals are likely to be:

- All governing body members;
- Members of advisory groups which contribute to direct or delegated decision making on the commissioning or provision of taxpayer funded services such as working groups involved in service redesign or stakeholder engagement that will affect future provision of services;
- Members of the Primary Care Commissioning Committee (PCCC);
- Members of other committees of the CCG e.g., audit committee, remuneration committee etc.;
- Members of new care models joint provider / commissioner groups / committees;
- Members of procurement (sub-)committees;
- Those at Agenda for Change band 8d and above;
- Management, administrative and clinical staff who have the power to enter into contracts on behalf of the CCG; and
- Management, administrative and clinical staff involved in decision making concerning the commissioning of services, purchasing of good, medicines, medical devices or equipment, and formulary decisions.

59. In exceptional circumstances, where the public disclosure of information could give rise to a real risk of harm or is prohibited by law, an individual's name and/or other information may be redacted from the publicly available register(s). Where an individual believes that substantial damage or distress may be caused, to him/herself or somebody else by the publication of information about them, they are entitled to request that the information is not published. Such requests must be made in writing. Decisions not to publish information must be made by the Conflicts of Interest Guardian for the CCG, who should seek appropriate legal advice where required, and the CCG should retain a confidential un-redacted version of the register(s).
60. All decision making staff should be made aware, in advance of publication, that the register(s) will be kept, how the information on the register(s) may be used or shared and that the register(s) will be published. This should be done by the provision of a fair processing notice that details the identity of the data controller, the purposes for which the registers are held and published, how the information on the register(s) may be used or shared and contact details for the data protection officer. This information should additionally be provided to individuals identified in the register(s) because they are in a relationship with the person making the declaration.
61. All staff who are not decision making staff but who are still required to make a declaration of interest(s) or a declaration of gifts or hospitality should be made aware that the register(s) will be kept and how the information on the register(s)

may be used or shared. This should be done by the provision of a separate fair processing notice that details the identity of the data controller, the purposes for which the register(s) are held, how the information on the register(s) may be used or shared and contact details for the data protection officer. This information should additionally be provided to individuals identified in the register(s) because they are in a relationship with the person making the declaration.

62. Interests (including offers of gifts and hospitality) of decision making staff should remain on the public register for a minimum of 6 months. In addition, the CCG must retain a private record of historic interests and offers/receipt of gifts and hospitality for a minimum of 6 years after the date on which it expired. The CCG's published register of interests should state that historic interests are retained by the CCG for the specified timeframe, with details of whom to contact to submit a request for this information.
63. The register(s) of interests and gifts and hospitality must be published as part of the CCG's Annual Report and Annual Governance Statement. A web link to the CCG's registers is acceptable.

Appointments and roles and responsibilities in the CCG

64. Everyone in a CCG has responsibility to appropriately manage conflicts of interest.

Appointing governing body or committee members and senior employees

65. On appointing governing body, committee or sub-committee members and senior staff, CCGs will need to consider whether conflicts of interest should exclude individuals from being appointed to the relevant role. This will need to be considered on a case-by-case basis but the CCG's constitution should reflect the CCG's general principles.
66. The CCG will need to assess the materiality of the interest, in particular whether the individual (or any person with whom they have a close association as listed in paragraph 16 and 45 could benefit (whether financially or otherwise) from any decision the CCG might make. This will be particularly relevant for governing body, committee and sub-committee appointments, but should also be considered for all employees and especially those operating at senior level.
67. The CCG will also need to determine the extent of the interest and the nature of the appointee's proposed role within the CCG. If the interest is related to an area of business significant enough that the individual would be unable to operate effectively and make a full and proper contribution in the proposed role, then that individual should not be appointed to the role.
68. Any individual who has a material interest in an organisation which provides, or is likely to provide, substantial services to a CCG (whether as a provider of healthcare, including 'new care model' providers, or healthcare commissioning support services, or otherwise) should recognise the inherent conflict of interest risk that may arise and should not be a member of the governing body or of a

committee or sub-committee of the CCG, in particular if the nature and extent of their interest and the nature of their proposed role is such that they are likely to need to exclude themselves from decision-making on so regular a basis that it significantly limits their ability to effectively perform that role. Specific considerations in relation to delegated or joint commissioning of primary care are set out below.

69. CCGs should set out in their constitution a statement of the conduct expected of individuals involved in the CCG, e.g. members of the governing body, members of committees, and employees, which reflect the safeguards in this guidance. This should reflect the expectations set out in the Standards for Members of NHS Boards and Clinical Commissioning Groups²⁰.

CCG lay members

70. Lay members play a critical role in CCGs, providing scrutiny, challenge and an independent voice in support of robust and transparent decision-making and management of conflicts of interest. They chair a number of CCG committees, including the Audit Committee and Primary Care Commissioning Committee.
71. By statute, CCGs must have at least two lay members (one of whom must have qualifications, expertise or experience such as to enable the person to express informed views about financial management and audit matters²¹ and serve as the chair of the audit committee²²; and the other, knowledge of the geographical area covered in the CCG's constitution such as to enable the person to express informed views about the discharge of the CCG's functions²³). In light of lay members' expanding role in primary care commissioning, we strongly recommend that all CCGs consider increasing this requirement within their constitution to a minimum of three lay members on their governing body. We would encourage CCGs to consider appointing more than three lay members, if they have the means to do so.
72. Where there are difficulties in recruiting additional lay members, CCGs could consider 'sharing' lay members between, for instance, CCGs in the same Sustainability and Transformation Partnership. The additional lay member should have knowledge and insight of the geographical area covered in the CCG constitution.
73. We would encourage all three CCG lay members to attend the primary care commissioning committee; the additional third lay member could assume the role of the Chair or Vice-Chair of this committee.

²⁰ *Standards for members of NHS boards and CCG governing bodies in England*
<http://www.professionalstandards.org.uk/publications/detail/standards-for-members-of-nhs-boards-and-clinical-commissioning-group-governing-bodies-in-england>

²¹ *Section 12(3) NHS (CCG) Regulations 2012*
http://www.legislation.gov.uk/ukxi/2012/2996/pdfs/ukxi_20122996_en.pdf

²² *Section 14(2) NHS (CCG) Regulations 2012*
http://www.legislation.gov.uk/ukxi/2012/2996/pdfs/ukxi_20122996_en.pdf

²³ *Section 12(4) NHS (CCG) Regulations 2012*
http://www.legislation.gov.uk/ukxi/2012/2996/pdfs/ukxi_20122996_en.pdf

Conflicts of Interest Guardian

74. To further strengthen scrutiny and transparency of CCGs' decision-making processes, all CCGs should have a Conflicts of Interest Guardian (akin to a Caldicott Guardian). This role should be undertaken by the CCG audit chair, provided they have no provider interests, as audit chairs already have a key role in conflicts of interest management. They should be supported by the CCG's Head of Governance or equivalent, who should have responsibility for the day-to-day management of conflicts of interest matters and queries. The CCG Head of Governance (or equivalent) should keep the Conflicts of Interest Guardian well briefed on conflicts of interest matters and issues arising.
75. The Conflicts of Interest Guardian should, in collaboration with the CCG's governance lead:
- Act as a conduit for GP practice staff, members of the public and healthcare professionals who have any concerns with regards to conflicts of interest;
 - Be a safe point of contact for employees or workers of the CCG to raise any concerns in relation to this policy;
 - Support the rigorous application of conflict of interest principles and policies;
 - Provide independent advice and judgment to staff and members where there is any doubt about how to apply conflicts of interest policies and principles in an individual situation;
 - Provide advice on minimising the risks of conflicts of interest.
76. Whilst the Conflicts of Interest Guardian has an important role within the management of conflicts of interest, executive members of the CCG's governing body have an on-going responsibility for ensuring the robust management of conflicts of interest, and all CCG employees, governing body and committee members and member practices will continue to have individual responsibility in playing their part on an ongoing and daily basis.

Primary Care Commissioning Committee Chair

77. The primary care commissioning committee must have a lay chair and lay vice chair. To ensure appropriate oversight and assurance, and to ensure the CCG audit chair's position as Conflicts of Interest Guardian is not compromised, the audit chair should not hold the position of chair of the primary care commissioning committee. This is because CCG audit chairs would conceivably be conflicted in this role due to the requirement that they attest annually to the NHS England Board that the CCG has:
- Had due regard to the statutory guidance on managing conflicts of interest; and

- Implemented and maintained sufficient safeguards for the commissioning of primary care.

78. CCG audit chairs can however serve on the primary care commissioning committee provided appropriate safeguards are put in place to avoid compromising their role as Conflicts of Interest Guardian. Ideally the CCG audit chair would also not serve as vice chair of the primary care commissioning committee. However, if this is required due to specific local circumstances (for example where there is a lack of other suitable lay candidates for the role), this will need to be clearly recorded and appropriate further safeguards may need to be put in place to maintain the integrity of their role as Conflicts of Interest Guardian in circumstances where they chair all or part of any meetings in the absence of the primary care commissioning committee chair.

Outside employment

79. Outside employment means employment and other engagements, outside of formal employment arrangements. CCGs should take all reasonable steps to ensure that employees, committee members, contractors and others engaged under contract with them are aware of the requirement to inform the CCG if they are employed or engaged in, or wish to be employed or engaged in, any employment or consultancy work in addition to their work with the CCG (for example, in relation to new care model arrangements). The purpose of this is to ensure that the CCG is aware of any potential conflict of interest. Examples of work which might conflict with the business of the CCG, including part-time, temporary and fixed term contract work, include:

- Employment with another NHS body;
- Employment with another organisation which might be in a position to supply goods/services to the CCG including paid advisory positions and paid honorariums which relate to bodies likely to do business with the CCG;
- Directorships e.g. of a GP federation or non-executive roles;
- Self-employment, including private practice, charitable trustee roles, political roles and consultancy work, in a capacity which might conflict with the work of the CCG or which might be in a position to supply goods/services to the CCG.

80. The following principles and rules should be adhered to:

- CCGs should require that individuals obtain prior permission to engage in outside employment, and reserve the right to refuse permission where it believes a conflict will arise which cannot be effectively managed;
- Staff should declare any existing outside employment on appointment, and any new outside employment when it arises;

- CCGs may also have legitimate reasons within employment law for knowing about outside employment of staff; even if this does not give rise to risk of a conflict. Nothing in this guidance prevents such enquiries being made.
81. CCGs should ensure that they have clear and robust organisational policies in place to manage issues arising from outside employment. In particular, it is unacceptable for pharmacy advisers or other advisers, employees or consultants to the CCG on matters of procurement to themselves be in receipt of payments from the pharmaceutical or devices sector.

Managing conflicts of interest at meetings

Statutory requirements

CCGs must make arrangements for managing conflicts of interest, and potential conflicts of interest, in such a way as to ensure that they do not, and do not appear to, affect the integrity of the group's decision-making.

82. CCGs should review their governance structures and policies for managing conflicts of interest to ensure that they reflect the guidance and are appropriate. This should include consideration of the following:
- The **make-up of their governing body and committee structures** and processes for decision-making;
 - Whether there are sufficient management and internal controls to detect **breaches** of the CCG's conflicts of interest policy, including appropriate external oversight and adequate provision for **raising concerns under this policy**;
 - How **non-compliance** with policies and procedures relating to conflicts of interest will be managed (including how this will be addressed when it relates to contracts already entered into); and
 - Identifying and implementing **training** or other programmes to assist with compliance, including participation in the training offered by NHS England.

Chairing arrangements and decision-making processes

83. The chair of a meeting of the CCG's governing body or any of its committees, sub-committees or groups has ultimate responsibility for deciding whether there is a conflict of interest and for taking the appropriate course of action in order to manage the conflict of interest.
84. In the event that the chair of a meeting has a conflict of interest, the vice chair is responsible for deciding the appropriate course of action in order to manage the conflict of interest. If the vice chair is also conflicted then the remaining non-conflicted voting members of the meeting should agree between themselves how to manage the conflict(s).
85. In making such decisions, the chair (or vice chair or remaining non-conflicted members as above) may wish to consult with the Conflicts of Interest Guardian (see paragraph 74) or another member of the governing body.
86. It is good practice for the chair, with support of the CCG's Head of Governance or equivalent and, if required, the Conflicts of Interest Guardian, to proactively consider ahead of meetings what conflicts are likely to arise and how they should be managed, including taking steps to ensure that supporting papers for particular agenda items of private sessions/meetings are not sent to conflicted individuals in advance of the meeting where relevant.

87. To support chairs in their role, they should have access to a declaration of interest checklist prior to meetings, which should include details of any declarations of conflicts which have already been made by members of the group. A template declaration of interest checklist has been included at Annex E.
88. The chair should ask at the beginning of each meeting if anyone has any conflicts of interest to declare in relation to the business to be transacted at the meeting. Each member of the group should declare any interests which are relevant to the business of the meeting whether or not those interests have previously been declared. Any new interests which are declared at a meeting must be included on the CCG's relevant register of interests to ensure it is up-to-date.
89. Similarly, any new offers of gifts or hospitality (whether accepted or not) which are declared at a meeting must be included on the CCG's register of gifts and hospitality to ensure it is up-to-date.
90. It is the responsibility of each individual member of the meeting to declare any relevant interests which they may have. However, should the chair or any other member of the meeting be aware of facts or circumstances which may give rise to a conflict of interests but which have not been declared then they should bring this to the attention of the chair who will decide whether there is a conflict of interest and the appropriate course of action to take in order to manage the conflict of interest.
91. When a member of the meeting (including the chair or vice chair) has a conflict of interest in relation to one or more items of business to be transacted at the meeting, the chair (or vice chair or remaining non-conflicted members where relevant as described above) must decide how to manage the conflict. The appropriate course of action will depend on the particular circumstances, but could include one or more of the following:
 - Where the chair has a conflict of interest, deciding that the vice chair (or another non-conflicted member of the meeting if the vice chair is also conflicted) should chair all or part of the meeting;
 - Requiring the individual who has a conflict of interest (including the chair or vice chair if necessary) not to attend the meeting;
 - Ensuring that the individual concerned does not receive the supporting papers or minutes of the meeting which relate to the matter(s) which give rise to the conflict;
 - Requiring the individual to leave the discussion when the relevant matter(s) are being discussed and when any decisions are being taken in relation to those matter(s). In private meetings, this could include requiring the individual to leave the room and in public meetings to either leave the room or join the audience in the public gallery;
 - Allowing the individual to participate in some or all of the discussion when the relevant matter(s) are being discussed but requiring them to leave the meeting when any decisions are being taken in relation to those matter(s). This may be appropriate where, for example, the conflicted individual has

important relevant knowledge and experience of the matter(s) under discussion, which it would be of benefit for the meeting to hear, but this will depend on the nature and extent of the interest which has been declared;

- Noting the interest and ensuring that all attendees are aware of the nature and extent of the interest, but allowing the individual to remain and participate in both the discussion and in any decisions. This is only likely to be the appropriate course of action where it is decided that the interest which has been declared is either immaterial or not relevant to the matter(s) under discussion. The conflicts of interest [case studies](#) include examples of material and immaterial conflicts of interest.

92. Where the conflict of interest relates to outside employment and an individual continues to participate in meetings pursuant to the preceding two bullet points, he or she should ensure that the capacity in which they continue to participate in the discussions is made clear and correctly recorded in the meeting minutes. Where it is appropriate for them to participate in decisions they must only do so if they are acting in their CCG role.

Primary care commissioning committees and sub-committees

93. There are three - models for commissioning primary medical services:

- **Greater involvement** is simply an invitation to CCGs to collaborate more closely with their NHS England teams to ensure that decisions taken about healthcare services are strategically aligned across the local health economy.
- **Joint commissioning** enables one or more CCGs to assume responsibility for jointly commissioning primary medical services with their local NHS England team via a joint committee. It is a requirement for each joint committee to have a register of interests, and for the interests of both CCG and NHS England representatives to be included on this register. These interests should also be recorded on the CCG's main register(s) of interests.
- **Delegated commissioning** enables CCGs to assume responsibility for commissioning primary medical services.

94. Each CCG with joint or delegated primary medical services commissioning arrangements must establish a primary care commissioning committee for the discharge of their primary medical services functions. This committee should be separate from the CCG governing body. The interests of all primary care commissioning committee members must be recorded on the CCG's register(s) of interests.

95. The primary care commissioning committee should:

- For joint commissioning, take the form of a joint committee established between the CCG (or CCGs) and NHS England; and
- In the case of delegated commissioning, be a committee established by the CCG.

96. As a general rule, meetings of the primary care commissioning committee, including the decision-making and deliberations leading up to the decision, should be held in public unless the CCG has concluded it is appropriate to exclude the public where it would be prejudicial to the public interest to hold that part of the meeting in public. Examples of where it may be appropriate to exclude the public include:
- Information about individual patients or other individuals which includes sensitive personal data is to be discussed;
 - Commercially confidential information is to be discussed, for example the detailed contents of a provider's tender submission;
 - Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings is to be discussed;
 - To allow the meeting to proceed without interruption and disruption.

Membership of primary care commissioning committees (for joint and delegated arrangements)

97. CCGs (and NHS England with regards to joint arrangements) can agree the full membership of their primary care commissioning committees, within the following parameters:
- The primary care commissioning committee must be constituted to have a **lay and executive majority**, where lay refers to non-clinical. This ensures that the meeting will be quorate if all GPs had to withdraw from the decision-making process due to conflicts of interest;
 - The primary care commissioning committee should have a lay chair and lay vice chair (see paragraph 77-78 for further information);
 - **GPs** can, and should, be members of the primary care commissioning committee to ensure sufficient clinical input, but must not be in the majority. CCGs may wish to consider appointing retired GPs or out-of-area GPs to the committee to ensure clinical input whilst minimising the risk of conflicts of interest (and where the primary care commissioning committee is commissioning a new care model, the CCG should consider whether that committee has sufficient clinical expertise taking into account the range of services being commissioned, for example having at least one clinician without an interest in a potential new care model provider (e.g. a recently retired or out of area GP));
 - A standing invitation must be made to the CCG's **local HealthWatch** representative and a **local authority representative from the local Health and Wellbeing Board** to join the primary care commissioning committee as non-voting attendees, including, where appropriate, for items where the public is excluded for reasons of confidentiality;

- Other individuals could be invited to attend the primary care commissioning committee on an ad-hoc basis to provide **expertise** to support with the decision-making process.
98. CCGs could also consider reciprocal arrangements with other CCGs, for example exchanging GP representatives from their respective GP member practices, or sharing lay or executive members, in order to ensure a majority of lay and executive members and to support effective clinical representation within the primary care commissioning committee.
99. Where a CCG is engaged in joint commissioning arrangements alongside NHS England, the joint role of NHS England in decision-making will provide an additional safeguard in managing conflicts of interest. However, CCGs should still satisfy themselves that they have appropriate arrangements in place in relation to conflicts of interest with regard to their own role in the decision-making process. NHS England representatives need to take similar precautions.

Primary care commissioning committee decision-making processes and voting arrangements

100. The primary care commissioning committee is a decision-making committee, which should be established to exercise the discharge of the primary medical services functions. As such CCGs need to amend their constitution to include this committee.
101. The quorum requirements for primary care commissioning committee meetings must include a majority of lay and executive members in attendance with eligibility to vote.
102. In the interest of minimising the risks of conflicts of interest, it is recommended that GPs do not have voting rights on the primary care commissioning committee. The arrangements do not preclude GP participation in strategic discussions on primary care issues, subject to appropriate management of conflicts of interest. They apply to decision-making on procurement issues and the deliberations leading up to the decision.
103. Whilst sub-committees or sub-groups of the primary care commissioning committee can be established e.g., to develop business cases and options appraisals, ultimate decision-making responsibility for the primary medical services functions must rest with the primary care commissioning committee. For example, whilst a sub-group could develop an options appraisal, it should take the options to the primary care commissioning committee for their review and decision-making. CCGs should carefully consider the membership of sub-groups. They should also consider appointing a lay member as the chair of any sub-committee or sub-group.
104. It is important that conflicts of interests are managed appropriately within sub-committees and sub-groups. As an additional safeguard, it is recommended that sub-groups submit their minutes to the primary care commissioning committee, detailing any conflicts and how they have been managed. The primary care commissioning committee should be satisfied that conflicts of interest have been managed appropriately in its sub-committees and take action where there are concerns.

Minute-taking

105. It is imperative that CCGs ensure complete transparency in their decision-making processes through robust record-keeping. If any conflicts of interest are declared or otherwise arise in a meeting, the chair must ensure the following information is recorded in the minutes:

- **Who has the interest;**
- **The nature of the interest and why it gives rise to a conflict**, including the magnitude of any interest;
- **The items on the agenda to which the interest relates;**
- **How the conflict was agreed to be managed;** and
- **Evidence that the conflict was managed as intended** (for example recording the points during the meeting when particular individuals left or returned to the meeting).

106. An example of good minute keeping is included at Annex F

Managing conflicts of interest throughout the commissioning cycle

107. Conflicts of interest need to be managed appropriately throughout the whole commissioning cycle. At the outset of a commissioning process, the relevant interests of all individuals involved should be identified and clear arrangements put in place to manage any conflicts of interest. This includes consideration as to which stages of the process a conflicted individual should not participate in, and, in some circumstances, whether that individual should be involved in the process at all. The conflicts of interest case studies include examples of this. CCGs should identify and appropriately manage any conflicts of interest that may arise where staff are involved in both the management of existing contracts and the procurement of related / replacement contracts.
108. CCGs should also identify as soon as possible where staff might transfer to a provider (or their role may materially change) following the award of a contract. This should be treated as a relevant interest, and CCGs should ensure they manage the potential conflict.

Designing service requirements

109. The way in which services are designed can either increase or decrease the extent of perceived or actual conflicts of interest. Particular attention should be given to public and patient involvement in service development.
110. Public involvement supports transparent and credible commissioning decisions. It should happen at every stage of the commissioning cycle from needs assessment, planning and prioritisation to service design, procurement and monitoring. CCGs have legal duties under the Act to properly involve patients and the public in their respective commissioning processes and decisions.

Provider engagement

111. It is good practice to engage relevant providers, especially clinicians, in confirming that the design of service specifications will meet patient needs. This may include providers from the acute, primary, community, and mental health sectors, and may include NHS, third sector and private sector providers. Such engagement, done transparently and fairly, is entirely legal. However, conflicts of interest, as well as challenges to the fairness of the procurement process, can arise if a commissioner engages selectively with only certain providers (be they incumbent or potential new providers) in developing a service specification for a contract for which they may later bid. CCGs should be particularly mindful of these issues when engaging with existing / potential providers in relation to the development of new care models.
112. Provider engagement should follow the three main principles of procurement law, namely equal treatment, non-discrimination and transparency. This includes ensuring that the same information is given to all at the same time and procedures are transparent. This mitigates the risk of potential legal challenge.
113. As the service design develops, it is good practice to engage with a range of providers on an on-going basis to seek comments on the proposed design e.g.,

via the commissioners website and/or via workshops with interested parties (ensuring a record is kept of all interaction). NHS Improvement²⁴ has issued guidance on the use of provider boards in service design.²⁵

114. Engagement should help to shape the requirement to meet patient need, but it is important not to gear the requirement in favour of any particular provider(s). If appropriate, the advice of an independent clinical adviser on the design of the service should be secured.
115. CCGs should ensure they meet any obligations to document their decisions including, but not limited to, any obligations they have under the National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations 2013 and the Public Contracts Regulations 2015.

Specifications

116. Commissioners should seek, as far as possible, to specify the outcomes that they wish to see delivered through a new service, rather than the process by which these outcomes are to be achieved. As well as supporting innovation, this helps prevent bias towards particular providers in the specification of services. However, they also need to ensure careful consideration is given to the appropriate degree of financial risk transfer in any new contractual model.
117. Specifications should be clear and transparent, reflecting the depth of engagement, and set out the basis on which any contract will be awarded.

Procurement and awarding grants

118. CCGs will need to be able to identify and manage any conflicts or potential conflicts of interest that may arise in relation to the procurement of any services or the administration of grants. “Procurement” relates to any purchase of goods, services or works and the term “procurement decision” should be understood in a wide sense to ensure transparency of decision making on spending public funds. The decision to use a single tender action, for instance, is a procurement decision and if it results in the commissioner entering into a new contract, extending an existing contract, or materially altering the terms of an existing contract, then it is a decision that should be recorded.
119. NHS England and CCGs must comply with two different regimes of procurement law and regulation when commissioning healthcare services: NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013 (PPCCR 2013); and the Public Contracts Regulations 2015 (PCR 2015):
 - Made under Section 75 of the 2012 Act; apply only to NHS England and CCGs; enforced by NHS Improvement; and

²⁴ NHS Improvement is the organisation which brings together Monitor and the NHS Trust Development Authority, and is a combination of the continuing statutory functions and legal powers vested in those two bodies, including Monitor’s functions in relation to the National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013 (PPCCR)

²⁵ *Monitor, Case closure decision on Greater Manchester and Cheshire cancer surgery services, January 2014*

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284832/ManchesterCaseClosure.pdf

- The PCR 2015: apply to all public contracts enforced through the Courts.

Whilst the two regimes overlap in terms of some of their requirements, they are not the same – so compliance with one regime does not automatically mean compliance with the other.

120. The PPCCR 2013 state:

CCGs must not award a contract for the provision of NHS health care services where conflicts, or potential conflicts, between the interests involved in commissioning such services and the interests involved in providing them affect, or appear to affect, the integrity of the award of that contract; and

CCGs must keep a record of how it managed any such conflict in relation to NHS commissioning contracts it has entered into. [As set out in paragraph 125 below, details of this should also be published by the CCG.]

The National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013

121. Paragraph 24 of PCR 2015 states: “Contracting authorities shall take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all economic operators”. Conflicts of interest are described as “any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure”.
122. The PPCCR 2013 place requirements on commissioners to ensure that they adhere to good practice in relation to procurement, run a fair, transparent process that does not discriminate against any provider, do not engage in anti-competitive behaviour that is against the interest of patients, and protect the right of patients to make choices about their healthcare. Furthermore the PPCCR 2013 places requirements on commissioners to secure high quality, efficient NHS healthcare services that meet the needs of the people who use those services. The PCR 2015 are more focussed on ensuring a fair and open selection process for providers.
123. An obvious area in which conflicts could arise is where a CCG commissions (or continues to commission by contract extension) healthcare services, including GP services, in which a member of the CCG has a financial or other interest. This may arise in the context of commissioning of primary care, particularly with regard to delegated commissioning, where GPs are current or possible providers or in relation to the commissioning of new care models.
124. A procurement template, provided in Annex G, sets out factors that the CCG should address when drawing up their plans to commission general practice services. We expect the use of this or a similar template to help the CCG in providing evidence of their deliberations on conflicts of interest.

125. CCGs will be required to make the evidence of their management of conflicts publicly available, and the relevant information from the procurement template should be used to complete the register of procurement decisions. Complete transparency around procurement will provide:
- Evidence that the CCG is seeking and encouraging scrutiny of its decision-making process;
 - A record of the public involvement throughout the commissioning of the service;
 - A record of how the proposed service meets local needs and priorities for partners such as the Health and Wellbeing Boards, local Healthwatch and local communities;
 - Evidence to the audit committee and internal and external auditors that a robust process has been followed in deciding to commission the service, in selecting the appropriate procurement route, and in addressing potential conflicts.
126. External services such as commissioning support services (CSSs) can play an important role in helping CCGs decide the most appropriate procurement route, undertake procurements and manage contracts in ways that manage conflicts of interest and preserve the integrity of decision-making. When using a CSS, CCGs should have systems to assure themselves that the CSS's business processes are robust and enable the CCG to meet its duties in relation to procurement (including those relating to the management of conflicts of interest). This would require the CSS to declare any conflicts of interest it may have in relation to the work commissioned by the CCG.
127. A CCG cannot, however, lawfully delegate commissioning decisions to an external provider of commissioning support. Although CSSs are likely to play a key role in helping to develop specifications, preparing tender documentation, inviting expressions of interest and inviting tenders, the CCG itself will need to:
- Determine and sign off the specification and evaluation criteria;
 - Decide and sign off decisions on which providers to invite to tender; and
 - Make final decisions on the selection of the provider.

Register of procurement decisions

128. CCGs need to maintain a register of procurement decisions taken, either for the procurement of a new service or any extension or material variation of a current contract. This must include:
- The details of the decision;
 - Who was involved in making the decision (including the name of the CCG clinical lead, the CCG contract manager, the name of the decision making committee and the name of any other individuals with decision-making responsibility);

- A summary of any conflicts of interest in relation to the decision and how this was managed by the CCG (see paragraph 132 in relation to retaining the anonymity of bidders); and
- The award decision taken.

129. The register of procurement decisions must be updated whenever a procurement decision is taken. A draft register is included at Annex H. The Procurement, Patient Choice and Competition Regulations 9(1) place a requirement on commissioners to maintain and publish on their website a record of each contract it awards. The register of procurement decisions should be made publicly available and easily accessible to patients and the public by:

- Ensuring that the register is available in a prominent place on the CCG's website; and
- Making the register available upon request for inspection at the CCG's headquarters.

130. Although it is not a requirement to keep a register of services that may be procured in the future, it is good practice to ensure planned service developments and possible procurements are transparent and available for the public to see.

Declarations of interests for bidders / contractors

131. As part of a procurement process, it is good practice to ask bidders to declare any conflicts of interest. This allows commissioners to ensure that they comply with the principles of equal treatment and transparency. When a bidder declares a conflict, the commissioners must decide how best to deal with it to ensure that no bidder is treated differently to any other. Please see Annex I for a declaration of interests for bidders/ contractors template.
132. It will not usually be appropriate to declare such a conflict on the register of procurement decisions, as it may compromise the anonymity of bidders during the procurement process. However, commissioners should retain an internal audit trail of how the conflict or perceived conflict was dealt with to allow them to provide information at a later date if required. Commissioners are required under regulation 84 of the Public Contract Regulations 2015 to make and retain records of contract award decisions and key decisions that are made during the procurement process (there is no obligation to publish them). Such records must include “communications with economic operators and internal deliberations” which should include decisions made in relation to actual or perceived conflicts of interest declared by bidders. These records must be retained for a period of at least three years from the date of award of the contract.

Contract Monitoring

133. The management of conflicts of interest applies to all aspects of the commissioning cycle, including contract management.
134. Any contract monitoring meeting needs to consider conflicts of interest as part of the process i.e., the chair of a contract management meeting should invite declarations of interests; record any declared interests in the minutes of the meeting; and manage any conflicts appropriately and in line with this guidance. This equally applies where a contract is held jointly with another organisation such as the Local Authority or with other CCGs under lead commissioner arrangements.
135. The individuals involved in the monitoring of a contract should not have any direct or indirect financial, professional or personal interest in the incumbent provider or in any other provider that could prevent them, or be perceived to prevent them, from carrying out their role in an impartial, fair and transparent manner.
136. CCGs should be mindful of any potential conflicts of interest when they disseminate any contract or performance information/reports on providers, and manage the risks appropriately.

CCG Improvement and Assessment Framework

137. The management of conflicts of interest is a key indicator of the CCG Improvement and Assessment framework.

138. As part of the framework, CCGs will be required on an *annual* basis to confirm via self-certification:

- That the CCG has a clear policy for the management of conflicts of interest in line with the statutory guidance and a robust process for the management of breaches;
- That the CCG has a minimum of three lay members;
- That the CCG audit chair has taken on the role of the Conflicts of Interest Guardian;
- The level of compliance with the mandated conflicts of interest on-line training, as of 31 January annually.

139. In addition, CCGs will be required to report on a *quarterly* basis via self-certification whether the CCG:

- Has processes in place to ensure individuals declare any interests which may give rise to a conflict or potential conflict as soon as they become aware of it, and in any event within 28 days, ensuring accurate up to date registers are complete for:
 - Conflicts of interest;
 - Procurement decisions; and
 - Gifts and hospitality.
- Has made these registers available on its website and, upon request, at the CCG's headquarters.
- Is aware of any breaches of its policies and procedures in relation to the management of conflicts of interest and how many, including:
 - Confirmation that anonymised details of the breach have been published on the CCG website;
 - Confirmation that they been communicated to NHS England.

140. Where a CCG has decided not to comply with one or more of the requirements of this statutory guidance – whether in relation to any of the matters referred to in paragraphs 138 and 139 above or otherwise – we expect this to be discussed in advance with NHS England. CCGs must also include within their

self-certification statements the reasons for deciding not to do so, on a “comply or explain” basis. NHS England has produced [guidance on the submissions process](#) which can be found on NHS England’s website.

141. In addition there is a requirement for each CCG to undertake an annual internal audit on the management of conflicts of interest to provide further assurance about the degree of compliance with the statutory guidance (as set out in paragraph 142 onwards). Consideration of the indicator should form part of this audit.

Internal audit

142. All CCGs will need to undertake an audit of conflicts of interest management as part of their internal audit on an annual basis.
143. To support CCGs to undertake the audit and ensure consistency in the approach, NHS England has published a [template audit framework](#).
144. The results of the audit should be reflected in the CCG's annual governance statement and should be discussed in the end of year governance meeting with NHS regional teams.

Raising concerns and breaches

145. There will be situations when interests will not be identified, declared or managed appropriately and effectively. This may happen innocently, accidentally, or because of the deliberate actions of staff or organisations. For the purposes of this guidance these situations are referred to as 'breaches'.
146. It is the duty of every CCG employee, governing body member, committee or sub-committee member and GP practice member to speak up about genuine concerns in relation to the administration of the CCG's policy on conflicts of interest management, and to report these concerns. These individuals should not ignore their suspicions or investigate themselves, but rather speak to the designated CCG point of contact for these matters (the point of contact may vary in CCGs in accordance with the CCG's conflicts of interest and whistleblowing policies).
147. Any non-compliance with the CCG's conflicts of interest policy should be reported in accordance with the terms of that policy, and CCG's whistleblowing policy (where the breach is being reported by an employee or worker of the CCG) or with the whistleblowing policy of the relevant employer organisation (where the breach is being reported by an employee or worker of another organisation).
148. Effective management of conflicts of interest requires an environment and culture where individuals feel supported and confident in declaring relevant information, including notifying any actual or suspected breaches of the rules. In particular, the team or individual designated by the CCG to provide advice, support, and guidance on how conflicts of interest should be managed, should ensure that organisational policies are clear about the support available for individuals who wish to come forward to notify an actual or suspected breach of the rules, and of the sanctions and consequences for any failure to declare an interest or to notify an actual or suspected breach at the earliest possible opportunity.
149. Anonymised details of breaches should be published on the CCG's website for the purpose of learning and development.

Reporting breaches

150. All CCGs must have a clear process for managing breaches of their conflicts of interest policy. The process should be detailed in their policy (see Annex J for a checklist of suggested matters to include in the conflicts of interest policy) and should include information on:
 - How the breach should be recorded;
 - How it should be investigated;
 - The governance arrangements and reporting mechanisms;
 - How this policy links to whistleblowing and HR policies;

- Who to notify at NHS England and when to do so;
 - The process for publishing the breach on the CCG website;
 - What type of breaches should be recorded (the conflicts of interest case studies include examples of material and immaterial breaches).
151. CCGs should ensure that employees, governing body members, committee or sub-committee members and GP practice members are aware of how they can report suspected or known breaches of the CCG's conflicts of interest policies, including ensuring that all such individuals are made aware that they should generally contact the CCG's designated Conflicts of Interest Guardian in the first instance to raise any concerns. They should also be advised of the arrangements in place to ensure that they are able to contact the Conflicts of Interest Guardian on a strictly confidential basis.
152. The CCG's conflicts of interest policy should make it clear that anyone who wishes to report a suspected or known breach of the policy, who is not an employee or worker of the CCG, should also ensure that they comply with their own organisation's whistleblowing policy, since most such policies should provide protection against detriment or dismissal.
153. CCGs should also ensure that the Conflicts of Interest Guardian is in a position to cross refer to and comply with other CCG policies on raising concerns, counter fraud, or similar as and when appropriate.
154. All such notifications should be treated with appropriate confidentiality at all times in accordance with the CCG's policies and applicable laws, and the person making such disclosures should expect an appropriate explanation of any decisions taken as a result of any investigation.
155. Furthermore, providers, patients and other third parties can make a complaint to NHS Improvement²⁶ in relation to a commissioner's conduct under the Procurement Patient Choice and Competition Regulations. The regulations are designed as an accessible and effective alternative to challenging decisions in the courts.

Fraud or Bribery

156. Any suspicions or concerns of acts of fraud or bribery can be reported online via <https://www.reportnhsfraud.nhs.uk/> or via the NHS Fraud and Corruption Reporting Line on 0800 0284060. This provides an easily accessible and confidential route for the reporting of genuine suspicions of fraud within or affecting the NHS. All calls are dealt with by experienced trained staff and any caller who wishes to remain anonymous may do so.

²⁶ https://www.gov.uk/government/uploads/system/uploads/attachmenmonitor_data/file/283505/SubstantiveGuidanceDec2013_0.pdf

Impact of non-compliance

157. Failure to comply with the CCGs policies on conflicts of interest management, pursuant to this statutory guidance, can have serious implications for the CCG and individuals concerned.

Disciplinary sanctions

158. Staff who fail to disclose any relevant interests or who otherwise breach the CCG's rules and policies relating to the management of conflicts of interest are subject to investigation and, where appropriate, to disciplinary action. This may include:

- Informal action – such as reprimand or signposting to training and/or guidance;
- Formal action – such as formal warning, the requirement for additional training, re-arrangement of duties, re-deployment, demotion or dismissal;
- Referring incidents to regulators;
- Contractual action against organisations or staff.

Professional regulatory sanctions

159. Statutorily regulated healthcare professionals who work for, or are engaged by, organisations are under professional duties imposed by their relevant regulator to act appropriately with regard to conflicts of interest. CCGs should consider reporting statutorily regulated healthcare professionals to their regulator if they believe that they have acted improperly, so that these concerns can be investigated. These healthcare professionals should be made aware that the consequences for inappropriate action could include fitness to practise proceedings being brought against them, and that they could, if appropriate be struck off by their professional regulator as a result.

160. Information and contact details for the healthcare professional regulators are accessible from the Professional Standard Authority website:
<http://www.professionalstandards.org.uk/what-we-do/our-work-with-regulators/find-a-regulator>

Civil sanctions

161. If conflicts of interest are not effectively managed, organisations could face civil challenges to decisions they make – for instance if interests were not disclosed that were relevant to the bidding for, or performance of contracts. In extreme cases, staff and other individuals could face personal civil liability, for example a claim for misfeasance in public office.

Criminal sanctions

162. Failure to manage conflicts of interest could lead to criminal proceedings including for offences such as fraud, bribery and corruption. This could have

implications for the organisation concerned and linked organisations, and the individuals who are engaged by them.

163. The Fraud Act 2006 created a criminal offence of fraud and defines three ways of committing it:

- Fraud by false representation;
- Fraud by failing to disclose information; and
- Fraud by abuse of position.

164. In these cases an offender's conduct must be dishonest and their intention must be to make a gain or cause a loss (or the risk of a loss) to another. Fraud carries a maximum sentence of 10 years imprisonment and/or a fine and can be committed by a body corporate.

165. The Bribery Act 2010 makes it easier to tackle this offence in public and private sectors. Bribery is generally defined as giving or offering someone a financial or other advantage to encourage a person to perform certain activities and can be committed by a body corporate. Commercial organisations (including NHS bodies) will be exposed to criminal liability, punishable by an unlimited fine, for failing to prevent bribery.

166. The offences of bribing another person or being bribed carries a maximum sentence of 10 years imprisonment and/or a fine. In relation to a body corporate the penalty for these offences is a fine.

Conflicts of interest training

167. All CCGs must ensure that training is offered to all employees, governing body members, members of CCG committees and sub-committees and practice staff with involvement in CCG business on the management of conflicts of interest. This is to ensure staff and others within the CCG understand what conflicts are and how to manage them effectively.

168. All such individuals should have training on the following:

- What is a conflict of interest;
- Why is conflict of interest management important;
- What are the responsibilities of the organisation you work for in relation to conflicts of interest;
- What should you do if you have a conflict of interest relating to your role, the work you do or the organisation you work for (who to tell, where it should be recorded, what actions you may need to take and what implications it may have for your role);
- How conflicts of interest can be managed;
- What to do if you have concerns that a conflict of interest is not being declared or managed appropriately;
- What are the potential implications of a breach of the CCG's rules and policies for managing conflicts of interest.

169. NHS England is developing an online training package for CCG employees, governing body members, members of CCG committees and sub-committees and practice staff with involvement in CCG business. This will be rolled out in 2017. This will need to be completed on a yearly basis to raise awareness of the risks of conflicts of interest and to support staff in managing conflicts of interest. The annual training will be mandatory and will need to be completed by all staff by 31 January of each year. CCGs will be required to record their completion rates as part of their annual conflicts of interest audit.

170. NHS England will also continue to provide face-to-face training on conflicts of interest to key individuals within CCGs and to share good practice across CCGs and NHS England.

Glossary

The Act: the National Health Service Act 2006 (as amended by the Health and Social Care Act 2012)

BMA: British Medical Association

CCG: Clinical Commissioning Group

CIPFA: The Chartered Institute for Public Finance and Accounting

CQC: Care Quality Commission

CSS: Commissioning Support Service

GMC: General Medical Council

GP: General Practitioner

NAO: National Audit Office

NICE: National Institute for Clinical Excellence

OPM: Office for Public Management

PCCC: Primary Care Commissioning Committee

PCR: Public Contract Regulations 2015

PPCCR: NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013

RCGP: Royal College of General Practitioners

Annexes

Annex A **Template Declaration of interests for CCG members and employees**

For CCG members and employees to complete when declaring any interest(s). The information should be transferred onto the CCG's register of interest(s) promptly.

Annex B **Template Register of interests for CCGs**

For CCGs to record all declared interests. Up-to-date registers should be maintained at all times. As a minimum, CCGs should publish register(s) of interests of decision making staff at least annually in a prominent place on their website and make them available at their headquarters upon request

Annex C **Template Declaration of gifts and hospitality**

For CCG members and employees to complete in the accordance with the requirements set out in the statutory guidance. The information should be promptly transferred onto the CCG's register of gifts and hospitality. Individuals should complete the template following discussion with their line manager or a senior manager in the CCG.

Annex D **Template Registers of gifts and hospitality**

For CCGs to record all declared gifts and hospitality. Up-to-date registers should be maintained at all times. As a minimum, CCGs should publish register(s) of gifts and hospitality of decision making staff at least annually in a prominent place on their website and make them available at their headquarters upon request

Annex E **Template Declarations of interest checklist**

For the chair of a governing body, committee and sub-committee meeting. The checklist will assist both the meeting Chair and the secretariat to give due consideration to managing conflicts of interest whilst planning and conducting the meeting. The checklist incorporates templates:

- For recording any new interests declared during the meeting;
- A summary report which should be reviewed by the chair in advance of the meeting to ensure they are aware of all associated discussions which take place at sub-committee and working group levels.

With thanks to NHS Fylde and Wyre CCG for their contribution in developing this template.

Annex F **Template for recording minutes**

For CCGs to use to record the minutes of a meeting. The headings should prompt the meeting Chair and secretariat to

include declarations of interest as a standard agenda item and record any information accordingly.

Annex G

Procurement checklist

For CCGs to implement when procuring services from providers, to ensure full due consideration is given to the process of procurement. CCGs are advised to address the factors set out in the procurement template when drawing up their plans to commission general practice services. The procurement template includes a template to record procurement decisions and contracts awarded. The information should be promptly transferred onto the CCG's register of procurement decisions and contracts awarded.

Annex H

Template Register of procurement decisions and contracts awarded

For CCGs to complete and maintain up to date records of all procurement decisions and contracts. The register must be updated whenever a procurement decision is taken. The register of procurement decisions and contracts awarded should be published on the CCG's website and made available at the CCG's headquarters.

Annex I

Template Declaration of interests for bidders/ contractors

For all bidders and/or contractors to declare any potential conflicts of interest that could arise if the Relevant Organisation was to take part in any procurement process and/or provide services under, or otherwise enter into any contract with, the CCG, or with NHS England.

Annex J

Conflicts of interest policy checklist

For CCGs to consider when developing their conflicts of interest policy. The checklist should initiate discussions on all the relevant sections to be included in the conflicts of interest policy. The conflict of interest policy should be reviewed on an annual basis. With thanks to Southwark CCG for their contribution in developing this template.

Annex K

Summary of key aspects of the guidance on managing conflicts of interest relating to commissioning of new care models

To support CCGs to manage conflicts of interest in the commissioning of new care models. The advice is drawn from the statutory guidance on managing conflicts of interest for CCGs.

These templates are intended to be a helpful resource and can be adapted to your individual CCG's needs. Word and excel versions of the templates are available on the NHS England [website](#).

Annex A: Template Declaration of interests for CCG members and employees

Name:				
Position within, or relationship with, the CCG (or NHS England in the event of joint committees):				
Detail of interests held (complete all that are applicable):				
Type of Interest* <small>*See reverse of form for details</small>	Description of Interest (including for indirect interests, details of the relationship with the person who has the interest)	Date interest relates From & To		Actions to be taken to mitigate risk (to be agreed with line manager or a senior CCG manager)

The information submitted will be held by the CCG for personnel or other reasons specified on this form and to comply with the organisation's policies. This information may be held in both manual and electronic form in accordance with the Data Protection Act 1998. Information may be disclosed to third parties in accordance with the Freedom of Information Act 2000 and, in the case of 'decision making staff' (as defined in the statutory guidance on managing conflicts of interest for CCGs) may be published in registers that the CCG holds.

I confirm that the information provided above is complete and correct. I acknowledge that any changes in these declarations must be notified to the CCG as soon as practicable and no later than 28 days after the interest arises. I am aware that if I do not make full, accurate and timely declarations then civil, criminal, or internal disciplinary action may result.

Decision making staff should be aware that the information provided in this form will be added to the CCG's registers which are held in hardcopy for inspection by the public and published on the CCG's website. Decision making staff must make any third party whose personal data they are providing in this form aware that the personal data will held in hardcopy for inspection by the public and published on the CCG's website and must inform the third party that the CCG's privacy policy is available on the CCG's website. If you are not sure whether you are a 'decision making' member of staff, please speak to your line manager before completing this form.

Signed:

Date:

Signed: **Position:**
(Line Manager or Senior CCG Manager)

Date:

Please return to <insert name/contact details for team or individual in CCG nominated to provide advice, support, and guidance on how conflicts of interest should be managed, and administer associated administrative processes>

Type of Interest	Description
Financial Interests	<p>This is where an individual may get direct financial benefits from the consequences of a commissioning decision. This could, for example, include being:</p> <ul style="list-style-type: none"> • A director, including a non-executive director, or senior employee in a private company or public limited company or other organisation which is doing, or which is likely, or possibly seeking to do, business with health or social care organisations. This includes involvement with a potential provider of a new care model; • A shareholder (or similar ownership interests), a partner or owner of a private or not-for-profit company, business, partnership or consultancy which is doing, or which is likely, or possibly seeking to do, business with health or social care organisations; • A management consultant for a provider; or • A provider of clinical private practice. <p>This could also include an individual being:</p> <ul style="list-style-type: none"> • In employment outside of the CCG (see paragraph 79-81); • In receipt of secondary income; • In receipt of a grant from a provider; • In receipt of any payments (for example honoraria, one-off payments, day allowances or travel or subsistence) from a provider; • In receipt of research funding, including grants that may be received by the individual or any organisation in which they have an interest or role; and • Having a pension that is funded by a provider (where the value of this might be affected by the success or failure of the provider).
Non-Financial Professional Interests	<p>This is where an individual may obtain a non-financial professional benefit from the consequences of a commissioning decision, such as increasing their professional reputation or status or promoting their professional career. This may, for example, include situations where the individual is:</p> <ul style="list-style-type: none"> • An advocate for a particular group of patients; • A GP with special interests e.g., in dermatology, acupuncture etc.: • An active member of a particular specialist professional body (although routine GP membership of the Royal College of General Practitioners (RCGP), British Medical Association (BMA) or a medical defence organisation would not usually by itself amount to an interest which needed to be declared); • An advisor for the Care Quality Commission (CQC) or the National Institute for Health and Care Excellence (NICE); • Engaged in a research role; • The development and holding of patents and other intellectual property rights which allow staff to protect something that they create, preventing unauthorised use of products or the copying of protected ideas; or • GPs and practice managers, who are members of the governing body or committees of the CCG, should declare details of their roles and responsibilities held within their GP practices.
Non-Financial Personal Interests	<p>This is where an individual may benefit personally in ways which are not directly linked to their professional career and do not give rise to a direct financial benefit. This could include, for example, where the individual is:</p> <ul style="list-style-type: none"> • A voluntary sector champion for a provider; • A volunteer for a provider; • A member of a voluntary sector board or has any other position of authority in or connection with a voluntary sector organisation; • Suffering from a particular condition requiring individually funded treatment; • A member of a lobby or pressure group with an interest in health and care.
Indirect Interests	<p>This is where an individual has a close association with an individual who has a financial interest, a non-financial professional interest or a non-financial personal interest in a commissioning decision (as those categories are described above) for example, a:</p> <ul style="list-style-type: none"> • Spouse / partner; • Close family member or relative e.g., parent, grandparent, child, grandchild or sibling; • Close friend or associate; or • Business partner.

Annex B: Template Register of interests

Name	Current position (s) held in the CCG i.e. Governing Body member; Committee member; Member practice; CCG employee or other	Declared Interest (Name of the organisation and nature of business)	Type of Interest			Is the interest direct or indirect?	Nature of Interest	Date of Interest		Action taken to mitigate risk
			Financial Interest	Non-Financial Professional Interest	Non-Financial Personal Interest			From	To	

Annex C: Template Declaration of gifts and hospitality

Recipient Name	Position	Date of Offer	Date of Receipt (if applicable)	Details of Gift / Hospitality	Estimated Value	Supplier / Offeror: Name and Nature of Business	Details of previous offers or Acceptance by this Offeror/ Supplier	Details of the officer reviewing and approving the declaration made and date	Declined or Accepted?	Reason for Accepting or Declining	Other Comments

The information submitted will be held by the CCG for personnel or other reasons specified on this form and to comply with the organisation's policies. This information may be held in both manual and electronic form in accordance with the Data Protection Act 1998. Information may be disclosed to third parties in accordance with the Freedom of Information Act 2000 and in the case of 'decision making staff' (as defined in the statutory guidance on managing conflicts of interest for CCGs), may be published in registers that the CCG holds.

I confirm that the information provided above is complete and correct. I acknowledge that any changes in these declarations must be notified to the CCG as soon as practicable and no later than 28 days after the interest arises. I am aware that if I do not make full, accurate and timely declarations then civil, criminal, professional regulatory or internal disciplinary action may result.

Decision making staff should be aware that the information provided in this form will be added to the CCG's registers which are held in hardcopy for inspection by the public and published on the CCG's website. Decision making staff must make any third party whose personal data they are providing in this form aware that the personal data will held in hardcopy for inspection by the public and published on the CCG's website and must inform the third party that the CCG's privacy policy is available on the CCG's website. If you are not sure whether you are a 'decision making' member of staff, please speak to your line manager before completing this form.

Signed:

Date:

Signed: _____ **Position:** _____
(Line Manager or a Senior CCG Manager)

Date:

Please return to <insert name/contact details for team or individual in CCG nominated to provide advice, support, and guidance on how conflicts of interest should be managed, and administer associated administrative processes>

Annex D: Template Register of gifts and hospitality

Name	Position	Date of Offer	Declined or Accepted?	Date of Receipt (if applicable)	Details of Gift /Hospitality	Estimated Value	Supplier / Offeror Name and Nature of business	Reason for Accepting or Declining

Annex E: Template declarations of interest checklist

Under the Health and Social Care Act 2012, there is a legal obligation to manage conflicts of interest appropriately. It is essential that declarations of interest and actions arising from the declarations are recorded formally and consistently across all CCG governing body, committee and sub-committee meetings. This checklist has been developed with the intention of providing support in conflicts of interest management to the Chair of the meeting- prior to, during and following the meeting. It does not cover the requirements for declaring interests outside of the committee process.

Timing	Checklist for Chairs	Responsibility
<p>In advance of the meeting</p>	<ol style="list-style-type: none"> 1. The agenda to include a standing item on declaration of interests to enable individuals to raise any issues and/or make a declaration at the meeting. 2. A definition of conflicts of interest should also be accompanied with each agenda to provide clarity for all recipients. 3. Agenda to be circulated to enable attendees (including visitors) to identify any interests relating specifically to the agenda items being considered. 4. Members should contact the Chair as soon as an actual or potential conflict is identified. 5. Chair to review a summary report from preceding meetings i.e., sub-committee, working group, etc., detailing any conflicts of interest declared and how this was managed. <p>A template for a summary report to present discussions at preceding meetings is detailed below.</p> <ol style="list-style-type: none"> 6. A copy of the members' declared interests is checked to establish any actual or potential conflicts of interest that may occur during the meeting. 	<p>Meeting Chair and secretariat</p> <p>Meeting Chair and secretariat</p> <p>Meeting Chair and secretariat</p> <p>Meeting members</p> <p>Meeting Chair</p> <p>Meeting Chair</p>

<p>During the meeting</p>	<p>7. Check and declare the meeting is quorate and ensure that this is noted in the minutes of the meeting.</p> <p>8. Chair requests members to declare any interests in agenda items- which have not already been declared, including the nature of the conflict.</p> <p>9. Chair makes a decision as to how to manage each interest which has been declared, including whether / to what extent the individual member should continue to participate in the meeting, on a case-by-case basis, and this decision is recorded.</p> <p>10. As minimum requirement, the following should be recorded in the minutes of the meeting:</p> <ul style="list-style-type: none"> • Individual declaring the interest; • At what point the interest was declared; • The nature of the interest; • The Chair’s decision and resulting action taken; • The point during the meeting at which any individuals retired from and returned to the meeting - even if an interest has not been declared. • Visitors in attendance who participate in the meeting must also follow the meeting protocol and declare any interests in a timely manner. <p>A template for recording any interests during meetings is detailed below.</p>	<p>Meeting Chair</p> <p>Meeting Chair</p> <p>Meeting Chair and secretariat</p> <p>Secretariat</p>
<p>Following the meeting</p>	<p>11. All new interests declared at the meeting should be promptly updated onto the declaration of interest form;</p> <p>12. All new completed declarations of interest should be transferred onto the register of interests.</p>	<p>Individual(s) declaring interest(s)</p> <p>Designated person responsible for registers of interest</p>

Template for recording any interests during meetings

Report from <insert details of sub-committee/ work group>	
Title of paper	<insert full title of the paper>
Meeting details	<insert date, time and location of the meeting>
Report author and job title	<insert full name and job title/ position of the person who has written this report>
Executive summary	<include summary of discussions held, options developed, commissioning rationale, etc.>
Recommendations	<include details of any recommendations made including full rationale> <include details of finance and resource implications>
Outcome of Impact Assessments completed (e.g. Quality IA or Equality IA)	<Provide details of the QIA/EIA. If this section is not relevant to the paper state 'not applicable'>
Outline engagement – clinical, stakeholder and public/patient:	<Insert details of any patient, public or stakeholder engagement activity. If this section is not relevant to the paper state 'not applicable'>
Management of Conflicts of Interest	<Include details of any conflicts of interest declared> <Where declarations are made, include details of conflicted individual(s) name, position; the conflict(s) details, and how these have been managed in the meeting> <Confirm whether the interest is recorded on the register of interests- if not agreed course of action>
Assurance departments/ organisations who will be affected have been consulted:	<Insert details of the people you have worked with or consulted during the process : Finance (insert job title) Commissioning (insert job title) Contracting (insert job title) Medicines Optimisation (insert job title) Clinical leads (insert job title) Quality (insert job title) Safeguarding (insert job title) Other (insert job title)>
Report previously presented at:	<Insert details (including the date) of any other meeting where this paper has been presented; or state 'not applicable'>
Risk Assessments	<insert details of how this paper mitigates risks- including conflicts of interest>

Template to record interests during the meeting.

Meeting	Date of Meeting	Chairperson (name)	Secretariat (name)	Name of person declaring interest	Agenda Item	Details of interest declared	Action taken

Annex F: Template for recording minutes

XXXX Clinical Commissioning Group Primary Care Commissioning Committee Meeting

Date: 16 June 2017
Time: 2pm to 4pm
Location: Room B, XXXX CCG

Attendees:

Name	Initials	Role
Sarah Kent	SK	XXX CCG Governing Body Lay Member (Chair)
Andy Booth	AB	XXX CCG Audit Chair Lay Member
Julie Hollings	JH	XXX CCG PPI Lay Member
Carl Hodd	CH	Assistant Head of Finance
Mina Patel	MP	Interim Head of Localities
Dr Myra Nara	MN	Secondary Care Doctor
Dr Maria Stewart	MS	Chief Clinical Officer
Jon Rhodes	JR	Chief Executive – Local Healthwatch

In attendance from 2.35pm

Neil Ford NF Primary Care Development Director

Item No	Agenda Item	Actions
1	Chairs welcome	
2	Apologies for absence <apologies to be noted>	
3	<p>Declarations of interest</p> <p><i>SK reminded committee members of their obligation to declare any interest they may have on any issues arising at committee meetings which might conflict with the business of XXX clinical commissioning group.</i></p> <p><i>Declarations made by members of the Primary Care Commissioning Committee are listed in the CCG's Register of Interests. The Register is available either via the secretary to the governing body or the CCG's website at the following link: http://xxxccg.nhs.uk/about-xxx-ccg/who-we-are/our-governing-body/</i></p> <p>Declarations of interest from sub committees. <i>None declared</i></p> <p>Declarations of interest from today's meeting</p>	

	<p><i>The following update was received at the meeting:</i></p> <ul style="list-style-type: none"> • <i>With reference to business to be discussed at this meeting, MS declared that he is a shareholder in XXX Care Ltd.</i> <p><i>SK declared that the meeting is quorate and that MS would not be included in any discussions on agenda item X due to a direct conflict of interest which could potentially lead to financial gain for MS.</i></p> <p><i>SK and MS discussed the conflict of interest, which is recorded on the register of interest, before the meeting and MS agreed to remove himself from the table and not be involved in the discussion around agenda item X.</i></p>	
4	Minutes of the last meeting <date to be inserted> and matters arising	
5	<p>Agenda Item <Note the agenda item></p> <p><i>MS left the meeting, excluding himself from the discussion regarding xx.</i></p> <p><conclude decision has been made></p> <p><Note the agenda item xx></p> <p><i>MS was brought back into the meeting.</i></p>	
6	Any other business	
7	Date and time of the next meeting	

Annex G: Procurement checklist

Service:	
Question	Comment/ Evidence
1. How does the proposal deliver good or improved outcomes and value for money – what are the estimated costs and the estimated benefits? How does it reflect the CCG’s proposed commissioning priorities? How does it comply with the CCG’s commissioning obligations?	
2. How have you involved the public in the decision to commission this service?	
3. What range of health professionals have been involved in designing the proposed service?	
4. What range of potential providers have been involved in considering the proposals?	
5. How have you involved your Health and Wellbeing Board(s)? How does the proposal support the priorities in the relevant joint health and wellbeing strategy (or strategies)?	
6. What are the proposals for monitoring the quality of the service?	
7. What systems will there be to monitor and publish data on referral patterns?	
8. Have all conflicts and potential conflicts of interests been appropriately declared and entered in registers?	
9. In respect of every conflict or potential conflict, you must record how you have managed that conflict or potential conflict. Has the management of all conflicts been recorded with a brief explanation of how they have been managed?	
10. Why have you chosen this procurement route e.g., single action tender? ²⁷	

²⁷Taking into account all relevant regulations (e.g. the NHS (Procurement, patient choice and competition) (No 2) Regulations 2013 and guidance (e.g. that of Monitor).

11. What additional external involvement will there be in scrutinising the proposed decisions?	
12. How will the CCG make its final commissioning decision in ways that preserve the integrity of the decision-making process and award of any contract?	
Additional question when qualifying a provider on a list or framework or pre selection for tender (including but not limited to any qualified provider) or direct award (for services where national tariffs do not apply)	
13. How have you determined a fair price for the service?	
Additional questions when qualifying a provider on a list or framework or pre selection for tender (including but not limited to any qualified provider) where GP practices are likely to be qualified providers	
14. How will you ensure that patients are aware of the full range of qualified providers from whom they can choose?	
Additional questions for proposed direct awards to GP providers	
15. What steps have been taken to demonstrate that the services to which the contract relates are capable of being provided by only one provider?	
16. In what ways does the proposed service go above and beyond what GP practices should be expected to provide under the GP contract?	
17. What assurances will there be that a GP practice is providing high-quality services under the GP contract before it has the opportunity to provide any new services?	

Template: Procurement decisions and contracts awarded

Ref No	Contract/ Service title	Procurement description	Existing contract or new procurement (if existing include details)	Procurement type – CCG procurement, collaborative procurement with partners	CCG clinical lead (Name)	CCG contract manger (Name)	Decision making process and name of decision making committee	Summary of conflicts of interest noted	Actions to mitigate conflicts of interest	Justification for actions to mitigate conflicts of interest	Contract awarded (supplier name & registered address)	Contract value (£) (Total) and value to CCG	Comments to note

To the best of my knowledge and belief, the above information is complete and correct. I undertake to update as necessary the information.

Signed:

On behalf of:

Date:

Please return to <insert name/contact details for team or individual in CCG nominated for procurement management and administrative processes>

Annex H: Template Register of procurement decisions and contracts awarded

Ref No	Contract/ Service title	Procurement description	Existing contract or new procurement (if existing include details)	Procurement type – CCG procurement, collaborative procurement with partners	CCG clinical lead	CCG contract manger	Decision making process and name of decision making committee	Summary of conflicts of interest declared and how these were managed	Contract awarded (supplier name & registered address)	Contract value (£) (Total)	Contract value (£) to CCG

Annex I: Template Declaration of conflict of interests for bidders/contractors

Name of Organisation:	
Details of interests held:	
Type of Interest	Details
Provision of services or other work for the CCG or NHS England	
Provision of services or other work for any other potential bidder in respect of this project or procurement process	
Any other connection with the CCG or NHS England, whether personal or professional, which the public could perceive may impair or otherwise influence the CCG's or any of its members' or employees' judgements, decisions or actions	

Name of Relevant Person	[complete for all Relevant Persons]	
Details of interests held:		
Type of Interest	Details	Personal interest or that of a family member, close friend or other acquaintance?
Provision of services or other work for the CCG or NHS England		
Provision of services or other work for any other potential bidder in respect of this project or procurement process		
Any other connection with the CCG or NHS England, whether personal or professional, which the public could perceive may impair or otherwise influence the CCG's or any of its members' or employees' judgements, decisions or actions		

To the best of my knowledge and belief, the above information is complete and correct. I undertake to update as necessary the information.

Signed:

On behalf of:

Date:

Annex J: Conflicts of interest policy checklist

In accordance with the Health and Social Care Act 2012, there is a legal requirement for Clinical Commissioning Groups (CCGs) to manage the process of conflicts of interest, both actual and perceived. The aim of the conflicts of interest policy checklist is to support CCGs to develop their conflict of interest policy. It is recommended that the CCG makes a commitment to review their conflicts of interest policy (subject to changes) annually to ensure all material is up to date. CCGs should refer to ***Managing Conflicts of Interest: Revised Statutory Guidance for CCGs*** when developing the conflicts of interest policy.

Conflicts of interest policy - checklist	Key areas for consideration
Introduction to the policy	<ul style="list-style-type: none"> • Introduction; • Aims and objectives of the policy; • Consider the CCG's constitution and specified requirements in terms of conducting business appropriately; • Consider the legal requirements in terms of managing conflicts of interest; • Consider any other appropriate regulations; • Scope of the policy <whom the policy applies to> • Commitment to review <include frequency>
Definition of an interest	<ul style="list-style-type: none"> • Definition of an interest: • Types of an interest, including: <ul style="list-style-type: none"> ○ Financial interests; ○ Non-financial professional interests ○ Non-financial personal interests; or ○ Indirect interests where an individual has a close association with an individual who has a financial interest, a non-financial professional interest or a non-financial personal interest in a commissioning decision <p>Refer to paragraphs 16 of the CCG Guidance for further information</p>
Principles	<ul style="list-style-type: none"> • Principles of good governance for consideration, include those set out in the following: <ul style="list-style-type: none"> ○ The Seven Principles of Public Life (commonly known as the Nolan Principles); ○ The Good Governance Standards of Public Services; ○ The Seven Key Principles of the NHS Constitution; ○ The Equality Act 2010.
Declaration of interests	<ul style="list-style-type: none"> • Consideration should be given to the statutory requirements; • Detail the types of interests to be declared - as

	<p>outlined in the <i>definition of an interest</i> section;</p> <ul style="list-style-type: none"> • Details of when a conflict of interest should be declared; • State the contact details of the nominated person to whom declarations of interest should be reported to; • Consider visual formats including a flowchart detailing the process of declaring conflicts of interest in various settings i.e. meetings, the transfer of information onto registers of interest, etc.; • Declarations of interest should be made by those listed in section 45 of the statutory guidance. <p>A declaration on interests template should be appended to the policy</p>
<p>Register(s) of interest</p>	<ul style="list-style-type: none"> • Consideration should be given to the statutory requirements. • CCGs should maintain one or more registers of interest for the individuals listed in paragraph 45 of the statutory guidance. • As a minimum, CCGs should publish register(s) of interests of decision making staff at least annually in a prominent place on their website and make them available at their headquarters upon request. • For the purposes of this guidance, decision-making staff are individuals who are more likely than others to have a decision making influence on the use of taxpayers' money, because of the requirements of their role. • The following non-exhaustive list describes who these individuals are likely to be: <ul style="list-style-type: none"> • All governing body members; • Members of advisory groups which contribute to direct or delegated decision making on the commissioning or provision of taxpayer funded services such as working groups involved in service redesign or stakeholder engagement that will affect future provision of services; • Members of the Primary Care Commissioning Committee (PCCC); • Members of other committees of the CCG e.g., audit committee, remuneration committee etc.; • Members of new care models joint provider / commissioner groups / committees; • Members of procurement (sub-)committees; • Those at Agenda for Change band 8d and above; • Management, administrative and clinical staff who have the power to enter into contracts on behalf of the CCG; and • Management, administrative and clinical staff involved in decision making concerning the

	<p>commissioning of services, purchasing of goods, medicines, medical devices or equipment, and formulary decisions.</p> <ul style="list-style-type: none"> • Stipulate the period of time within which registers of interest have to be updated- upon receiving a declaration of interest in line with the guidance; • Stipulate publication arrangements for registers of interests for decision making staff in line with the guidance. <p>A register of interests template should be appended to the policy</p>
<p>Declaration of gifts and hospitality</p>	<ul style="list-style-type: none"> • Consideration should be given to the statutory requirements; • Consideration of risks when accepting gifts and hospitality; • Define acceptable types of gifts and hospitality; • Define the process for reporting gifts and hospitality; • State the contact details of the nominated person to whom declarations of gifts and hospitality should be reported to; • Declarations of gifts and hospitality should be made by those listed in section 45 of the statutory guidance. <p>A declaration of gifts and hospitality form template should be appended to the policy.</p>
<p>Maintaining a register of gifts and hospitality</p>	<ul style="list-style-type: none"> • Consideration should be given to the statutory requirements. • CCGs should maintain one or more registers of gifts and hospitality for the individuals listed in paragraph 45 of the statutory guidance. • As a minimum, CCGs should publish register(s) of gifts and hospitality of decision making staff at least annually in a prominent place on their website and make them available at their headquarters upon request. See above for the meaning of ‘decision making staff.’ • Consideration should be given to the time period for updating the registers of gifts and hospitality upon receiving a declaration of gifts and hospitality in line with the guidance; • Stipulate publication arrangements for registers of gifts and hospitality in line with the guidance. <p>A register of gifts and hospitality template should be appended to the policy</p>
<p>Roles and responsibilities</p>	<ul style="list-style-type: none"> • Key considerations when appointing governing body or committee members including the following: <ul style="list-style-type: none"> ○ Whether conflicts of interest should exclude individuals from appointment;

	<ul style="list-style-type: none"> ○ Assessing materiality of interest; ○ Determining the extent of the interest. ● The role of CCG lay members in managing organisational conflicts of interest, including the following: <ul style="list-style-type: none"> ○ Conflicts of interest guardian; ○ Primary care commissioning committee chair.
<p style="text-align: center;">Governance arrangements and decision making</p>	<ul style="list-style-type: none"> ● Consider the CCG’s policy on outside employment and procedure for declaring details- how will this impact on appointing governing board members. ● Define the procedure to be followed in governing body, committee and sub-committee meetings, including: <ul style="list-style-type: none"> ○ Declarations of interest checklist (a template should be appended to the policy); ○ Register of interests declared to be available for the Chair in advance of the meeting; ○ Process for declaring interests during the meeting; ○ Recording minutes of the meeting including interests declared. ● Procedures to be followed for managing conflicts of interest which arise during a governing body, committee or sub-committee meeting, including, where appropriate: <ul style="list-style-type: none"> ○ Excluding the conflicted individual(s) from any associated discussions and decisions; ○ Actions to be taken if the exclusion affects the quorum of the meeting- including postponing the agenda item until a quorum can be achieved without conflict; ○ Clearly recording the agenda item for which the interest has been declared. <p>See paragraphs 82 – 106 of the CCG Guidance (Managing conflicts of interest at meetings) for further details</p> <ul style="list-style-type: none"> ● Consider openness and transparency in decision making processes through: <ul style="list-style-type: none"> ○ Effective record keeping in the form of clear minutes of the meeting. ○ All minutes should clearly record the context of discussions, any decisions and how any conflicts of interest were raised and managed. <p>A template for recording minutes of the meeting should be appended to the policy.</p>
<p style="text-align: center;">Managing conflicts of interest throughout the commissioning cycle</p>	<ul style="list-style-type: none"> ● Key areas for consideration include the following: ● Service design, this can either increase or reduce the level of perceived or actual conflicts of interest; <ul style="list-style-type: none"> ○ Consider public and patient involvement and provider engagement in service design; ○ Consider how you involve PPI in needs assessment,

	<p>planning and prioritisation to service design, procurement and monitoring;</p> <ul style="list-style-type: none"> ○ Consider how you will engage relevant providers, especially clinicians, in confirming the design of service specifications- ensuring an audit train/ evidence base is maintained; ○ Consider how you ensure provider engagement is in accordance with the three main principles of procurement law, namely equal treatment, non-discrimination and transparency; ○ Are specifications clear and transparent. <ul style="list-style-type: none"> ● Procurement, are there clear processes to recognise and manage any conflicts or potential conflicts of interest that may arise in relation to procurement <ul style="list-style-type: none"> ○ Consideration should be given to statutory regulations and guidance when procuring and contracting clinical services; ○ Consideration should be given to how you ensure transparency and scrutiny of decisions i.e. keeping records of any conflicts and how these were managed; ○ Maintaining register of procurement decisions detailing decisions taken, either for the procurement of a new service or any extension or material variation of a current contract. <p>A procurement template and register of procurement decisions should be appended to the policy.</p> <ul style="list-style-type: none"> ● Contract monitoring, consider conflicts of interest as part of the process i.e., the Chair of a contract management meeting should invite declarations of interests; <ul style="list-style-type: none"> ○ Process for recording any declared interests in the minutes of the meeting; and how these are managed; ○ Consider commercial sensitivity of information i.e. which information should be disseminated. <p>A template for recording minutes of the contract meeting should be appended to the policy.</p>
<p>Raising concerns</p>	<ul style="list-style-type: none"> ● Key areas for consideration: <ul style="list-style-type: none"> ○ When should a concern regarding conflicts of interest be reported; ○ What is the process for reporting concerns; ○ Who should concerns be raised with; ○ How will concerns be investigated; ○ Who is responsible for making the decision; ○ How do you ensure confidentiality; ○ Reporting requirements.
<p>Breach of conflicts of interest policy</p>	<ul style="list-style-type: none"> ● Consider and agree a clear, defined process for managing breaches of the CCG's conflicts of interest policy, including: <ul style="list-style-type: none"> ○ How the breach is recorded; ○ How it is investigated; ○ The governance arrangements and reporting mechanisms;

	<ul style="list-style-type: none">○ Clear links to whistleblowing and HR policies;○ Communications and management of any media interest;○ When and who to notify NHS England;○ Process for publishing the breach on the CCG website.
--	---

Annex K: Summary of key aspects of the guidance on managing conflicts of interest relating to commissioning of new care models

Introduction

1. Conflicts of interest can arise throughout the whole commissioning cycle from needs assessment, to procurement exercises, to contract monitoring. They arise in many situations, environments and forms of commissioning.
2. Where CCGs are commissioning new care models²⁸, particularly those that include primary medical services, it is likely that there will be some individuals with roles in the CCG (whether clinical or non-clinical), that also have roles within a potential provider, or may be affected by decisions relating to new care models. Any conflicts of interest must be identified and appropriately managed, in accordance with this statutory guidance.
3. This annex is intended to provide further advice and support to help CCGs to manage conflicts of interest in the commissioning of new care models. It summarises key aspects of the statutory guidance which are of particular relevance to commissioning new care models rather than setting out new requirements. Whilst this annex highlights some of the key aspects of the statutory guidance, CCGs should always refer to, and comply with, the full statutory guidance.

Identifying and managing conflicts of interest

4. The statutory guidance for CCGs is clear that any individual who has a material interest in an organisation which provides, or is likely to provide, substantial services to a CCG (whether as a provider of healthcare or provider of commissioning support services, or otherwise) should recognise the inherent conflict of interest risk that may arise and should not be a member of the governing body or of a committee or sub-committee of the CCG.
5. In the case of new care models, it is perhaps likely that there will be individuals with roles in both the CCG and new care model provider/potential provider. These conflicts of interest should be identified as soon as possible, and appropriately managed locally. The position should also be reviewed whenever an individual's role, responsibility or circumstances change in a way that affects the individual's interests. For example where an individual takes on a new role outside the CCG, or enters into a new business or relationship, these new interests should be promptly declared and appropriately managed in accordance with the statutory guidance.
6. There will be occasions where the conflict of interest is profound and acute. In such scenarios (such as where an individual has a direct financial interest which gives rise to a conflict, e.g., secondary employment or involvement with an organisation which benefits financially from contracts for the supply of goods and services to a CCG or aspires to be a new care model provider), it is likely that CCGs will want to consider whether, practically, such an interest is manageable

²⁸ Where we refer to 'new care models' in this note, we are referring to any Multi-speciality Community Provider (MCP), Primary and Acute Care Systems (PACS) or other arrangements of a similar scale or scope that (directly or indirectly) includes primary medical services.

at all. CCGs should note that this can arise in relation to both clinical and non-clinical members/roles. If an interest is not manageable, the appropriate course of action may be to refuse to allow the circumstances which gave rise to the conflict to persist. This may require an individual to step down from a particular role and/or move to another role within the CCG and may require the CCG to take action to terminate an appointment if the individual refuses to step down. CCGs should ensure that their contracts of employment and letters of appointment, HR policies, governing body and committee terms of reference and standing orders are reviewed to ensure that they enable the CCG to take appropriate action to manage conflicts of interest robustly and effectively in such circumstances.

7. Where a member of CCG staff participating in a meeting has dual roles, for example a role with the CCG and a role with a new care model provider organisation, but it is not considered necessary to exclude them from the whole or any part of a CCG meeting, he or she should ensure that the capacity in which they continue to participate in the discussions is made clear and correctly recorded in the meeting minutes, but where it is appropriate for them to participate in decisions they must only do so if they are acting in their CCG role.
8. CCGs should take all reasonable steps to ensure that employees, committee members, contractors and others engaged under contract with them are aware of the requirement to inform the CCG if they are employed or engaged in, or wish to be employed or engaged in, any employment or consultancy work in addition to their work with the CCG (for example, in relation to new care model arrangements).
9. CCGs should identify as soon as possible where staff might be affected by the outcome of a procurement exercise, e.g., they may transfer to a provider (or their role may materially change) following the award of a contract. This should be treated as a relevant interest, and CCGs should ensure they manage the potential conflict. This conflict of interest arises as soon as individuals are able to identify that their role may be personally affected.
10. Similarly, CCGs should identify and manage potential conflicts of interest where staff are involved in both the contract management of existing contracts, and involved in procurement of related new contracts.

Governance arrangements

11. Appropriate governance arrangements must be put in place that ensure that conflicts of interest are identified and managed appropriately, in accordance with this statutory guidance, without compromising the CCG's ability to make robust commissioning decisions.
12. We know that some CCGs are adapting existing governance arrangements and others developing new ones to manage the risks that can arise when commissioning new care models. We are therefore, not recommending a "one size fits" all governance approach, but have included some examples of governance models which CCGs may want to consider.
13. The principles set out in the general statutory guidance on managing conflicts of interest (paragraph 19-23), including the Nolan Principles and the Good

Governance Standards for Public Services (2004), should underpin all governance arrangements.

14. CCGs should consider whether it is appropriate for the Governing Body to take decisions on new care models or (if there are too many conflicted members to make this possible) whether it would be appropriate to refer decisions to a CCG committee.

Primary Care Commissioning Committee

15. Where a CCG has full delegation for primary medical services, CCGs could consider delegating the commissioning and contract management of the entire new care model to its Primary Care Commissioning Committee. This Committee is constituted with a lay and executive majority, and includes a requirement to invite a Local Authority and Healthwatch representative to attend (see paragraph 97 onwards of the CCG guidance).
16. Should this approach be adopted, the CCG may also want to increase the representation of other relevant clinicians on the Primary Care Commissioning Committee when new care models are being considered, as mentioned in Paragraph 98 of this guidance. The use of the Primary Care Commissioning Committee may assist with the management of conflicts/quorum issues at governing body level without the creation of a new forum/committee within the CCG.
17. If the CCG does not have a Primary Care Commissioning Committee, the CCG might want to consider whether it would be appropriate/advantageous to establish either:
 - a) A **new care model commissioning committee** (with membership including relevant non-conflicted clinicians, and formal decision making powers similar to a Primary Care Commissioning Committee (“NCM Commissioning Committee”)); or
 - b) A separate **clinical advisory committee**, to act as an advisory body to provide clinical input to the Governing Body in connection with a new care model project, with representation from all providers involved or potentially involved in the new care model but with formal decision making powers remaining reserved to the governing body (“NCM Clinical Advisory Committee”).

NCM Commissioning Committee

18. The establishment of a NCM Commissioning Committee could help to provide an alternative forum for decisions where it is not possible/appropriate for decisions to be made by the Governing Body due to the existence of multiple conflicts of interest amongst members of the Governing Body. The NCM Commissioning Committee should be established as a sub-committee of the Governing Body.
19. The CCG could make the NCM Commissioning Committee responsible for oversight of the procurement process and provide assurance that appropriate governance is in place, managing conflicts of interest and making decisions in relation to new care models on behalf of the CCG. CCGs may need to amend

their constitution if it does not currently contain a power to set up such a committee either with formal delegated decision making powers or containing the proposed categories of individuals (see below).

20. The NCM Commissioning Committee should be chaired by a lay member and include non-conflicted GPs and CCG members, and relevant non-conflicted secondary care clinicians.

NCM Clinical Advisory Committee

21. This advisory committee would need to include appropriate clinical representation from all potential providers, but have no decision making powers. With conflicts of interest declared and managed appropriately, the NCM Clinical Advisory Committee could formally advise the CCG Governing Body on clinical matters relating to the new care model, in accordance with a scope and remit specified by the Governing Body.
22. This would provide assurance that there is appropriate clinical input into Governing Body decisions, whilst creating a clear distinction between the clinical/provider side input and the commissioner decision-making powers (retained by the Governing Body, with any conflicts on the Governing Body managed in accordance with this statutory guidance and constitution of the CCG).
23. From a procurement perspective the Public Contracts Regulations 2015 encourage early market engagement and input into procurement processes. However, this must be managed very carefully and done in an open, transparent and fair way. Advice should therefore be taken as to how best to constitute the NCM Clinical Advisory Committee to ensure all potential participants have the same opportunity. Furthermore it would also be important to ensure that the advice provided to the CCG by this committee is considered proportionately alongside all other relevant information. Ultimately it will be the responsibility of the CCG to run an award process in accordance with the relevant procurement rules and this should be a process which does not unfairly favour any one particular provider or group of providers.
24. When considering what approach to adopt (whether adopting an NCM Commissioning Committee, NCM Clinical Advisory committee or otherwise) each CCG will need to consider the best approach for their particular circumstances whilst ensuring robust governance arrangements are put in place. Depending on the circumstances, either of the approaches in paragraph 17 above may help to give the CCG assurance that there was appropriate clinical input into decisions, whilst supporting the management of conflicts. When considering its options the CCG will, in particular, need to bear in mind any joint / delegated commissioning arrangements that it already has in place either with NHS England, other CCGs or local authorities and how those arrangements impact on its options.

Provider engagement

25. It is good practice to engage relevant providers, especially clinicians, in confirming that the design of service specifications will meet patient needs. This may include providers from the acute, primary, community, and mental health sectors, and may include NHS, third sector and private sector providers. Such

engagement, done transparently and fairly, is entirely legal. However, conflicts of interest, as well as challenges to the fairness of the procurement process, can arise if a commissioner engages selectively with only certain providers (be they incumbent or potential new providers) in developing a service specification for a contract for which they may later bid. CCGs should be particularly mindful of these issues when engaging with existing / potential providers in relation to the development of new care models and CCGs must ensure they comply with their statutory obligations including, but not limited to, their obligations under the National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations 2013 and the Public Contracts Regulations 2015.

Further support

26. If you have any queries about this advice, please contact: england.co-commissioning@nhs.net.