

Managing Conflicts of Interest

Governing Body meeting

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8 January 2015

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Is your report for Approval / Consideration / Noting	
This report is for consideration with a view to any necessary and appropriate challenge	
Audit Requirement	
<p>CCG Objective: 5.5 Organisational development to ensure CCG meets organisational health and capability requirements set out in the 6 domains (Annex C NHS England CCG Assurance Framework)</p> <p>Principal Risk Inadequate adherence to CCG Constitution and other governance arrangements to support Nolan Principles and e.g. protect against conflicts of interests (Domain 4).</p>	
Equality impact assessment	
<p>Have you carried out an Equality Impact Assessment and is it attached? NO</p> <p>If not, why not? There is no evidence to suggest that managing conflicts of interest will adversely impact on any of the nine protected characteristics</p>	
PPE Activity	
<p>How does your paper support involving patients, carers and the public? Management of conflicts of interest will positively impact on Patient and Public Engagement activity</p>	
Recommendations	
<p>CCG Governing Body members are asked to:</p> <ol style="list-style-type: none"> 1 Note the legislation and guidance with regard to managing conflicts of interest, and the further work to be undertaken to update the CCG's current protocol for the management of conflicts of interest. 2 Consider what this means for Governing Body and CET members and for member practices. 3 Abide by the principles and processes outlined. 	

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1. Introduction

As required by the Health and Social Care Act 2006, NHS Sheffield Clinical Commissioning Group (CCG) has in place a Conflicts of Interest Protocol. The document sets out the arrangements made by the CCG to identify, manage and record conflicts and potential conflicts of interest to ensure that decisions made by the CCG will be taken and seen to be taken without any possibility of the influence of external or private interest. The CCG recognises that a conflict of interest, or perceived conflict of interest, in its role as a commissioner of healthcare services, is a key risk that requires careful management and handling whether this is a direct or indirect conflict, pecuniary or otherwise.

There has been much debate nationally and locally about the potential for conflicts of interest (actual and perceived) for those, particularly clinicians, who are involved in CCGs. More recently, the focus has turned to where GP practices are potential providers of CCG commissioned services, particularly with regard to CCGs' potential role in co-commissioning of primary care with NHS England. Equally, individual GPs may also be conflicted in specific decisions about primary care commissioning.

This paper offers a brief overview of the issues, makes reference to a number of relevant publications and the CCG's Conflicts of Interest Protocol which is appended to the CCG's Constitution at Appendix I

<http://www.sheffieldccg.nhs.uk/Downloads/CCG%20Corporate/CCG%20CONSTITUTION%20revised%20July%202014.pdf>

It should be noted that the overarching guidance in this paper is relevant to all CCG Governing Body and Commissioning Executive Team (CET) members, and member practices, and reflects the seven principles of public life promulgated by the Nolan Committee (see Appendix A).

2. What is a Conflict of Interest?

Conflicts of interest may arise where an individual's personal interests or loyalties or those of a connected person (a relative, close friend or business associate) conflict with those of the CCG. Such conflicts may create problems such as inhibiting free discussion which could result in decisions or actions being taken which are not in the interests of the CCG, and risk giving the impression that the CCG has acted improperly.

"For the purposes of Regulation 6 (*National Health Service (Procurement, Patient Choice and Competition) (no.2) Regulations 2013*)¹ a conflict will arise where an individual's ability

¹ <http://www.legislation.gov.uk/uksi/2013/257/contents/made>

to exercise judgement or act in their role in the **commissioning of services** is impaired or influenced by their interests in the **provision of those services.**”

Monitor - Substantive guidance on the Procurement, Patient Choice and Competition Regulations (December 2013)

A conflict of interest is not specifically defined in any relevant guidance or legislation but may include:

- a **direct pecuniary interest**: where an individual may financially benefit from the consequences of a commissioning decision (for example, as a provider of services);
- an **indirect pecuniary interest**: for example, where an individual is a partner, member or shareholder in an organisation that will benefit financially from the consequences of a commissioning decision;
- a **non-pecuniary interest**: where an individual holds a non-remunerative or not-for profit interest in an organisation, that will benefit from the consequences of a commissioning decision (for example, where an individual is a trustee of a voluntary provider that is bidding for a contract);
- a **non-pecuniary personal benefit**: where an individual may enjoy a qualitative benefit from the consequence of a commissioning decision which cannot be given a monetary value (for example, a reconfiguration of hospital services which might result in the closure of a busy clinic next door to an individual’s house); and
- **where an individual is closely related to, or in a relationship, including a business relationship or friendship**, with an individual who fits into one of the above categories.

Managing conflicts of interest appropriately is needed to protect the integrity of the commissioning system as well as CCGs and GP practices from any perceptions of wrong doing. The need to identify and manage conflicts of interest is not new, nor is it possible to avoid conflicts of interest. However, by recognising where and how they arise and dealing with them appropriately, the CCG will be able to ensure proper governance, robust decision making, and appropriate decisions about the use of public money.

For CCG clinicians, a conflict of interest is most likely to arise when the CCG is considering commissioning services of which GP practices are potential providers. The likelihood of a conflict occurring increases the more influence the CCG has in commissioning primary care together with NHS England.

3. Legislative Requirements

The Health and Social Care Act sets out clear requirements of CCGs to make arrangements for managing conflicts of interest and potential conflicts of interest to ensure they do not affect or appear to affect the integrity of decision making processes. Specifically the Act:

- places a duty on NHS England to publish guidance for CCGs on managing conflicts and a duty on CCGs to have regard to such guidance; and
- requires that CCGs set out within their constitution their proposed arrangements for managing conflicts of interest. Appendix I of [NHS Sheffield CCG Constitution](#) sets out the CCG’s Conflicts of Interest Protocol.

Section 140 of the National Health Service Act 2006, inserted by the Health and Social Care Act 2012, sets out that each CCG 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;
- publish, or make arrangements to ensure that members of the public have access to these registers on request;
- make arrangements to ensure individuals declare any conflict or potential conflict in relation to a decision to be made by the group, and record them in the registers as soon as they become aware of it, and within 28 days; and
- make arrangements, set out in their Constitution, 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 processes.

Section 140 is supplemented by [The NHS \(Procurement, Patient Choice and Competition\) Regulations 2013](#). In particular, regulation 6 requires the following:

- 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 enters into, details of this should also be published by the CCG.)

An interest is defined for the purposes of regulation 6 as including an interest of the following:

- a member of the commissioner organisation;
- a member of the governing body of the commissioner;
- a member of its committee or sub-committees or sub-committees of its governing body; or
- an employee

4. Managing Conflicts of Interest: Statutory Guidance for CCGs

A national framework for conflicts of interest management in primary care co-commissioning has now been issued (December 2014)² and sets out how CCGs should manage conflicts of interest. It contains specific provisions in relation to co-commissioning primary care services but the guidance is relevant to CCG responsibilities generally.

The guidance has been developed following the opportunity offered by NHS England to CCGs, to take on increased responsibility for commissioning of primary care. In light of this development, the initial guidance for the management of conflicts has been strengthened. The guidance will therefore supplant the previously issued NHS England guidance for CCGs.

² <http://www.england.nhs.uk/wp-content/uploads/2014/12/man-confl-int-guid-1214.pdf>

The aims of the guidance are to:

- enable CCGs and clinicians in commissioning roles to demonstrate that they are acting fairly and transparently and in the best interest of their patients and local populations;
- ensure that CCGs operate within the legal framework, but without being bound by over-prescriptive rules that risk stifling innovation;
- safeguard clinically led commissioning, whilst ensuring objective investment decisions;
- provide the public, providers, Parliament and regulators with confidence in the probity, integrity and fairness of commissioners' decisions; and
- uphold the confidence and trust between patients and GP, in the recognition that individual commissioners want to behave ethically but may need support and training to understand when conflicts (whether actual or potential) may arise and how to manage them if they do.

The guidance includes:

- the make-up of the decision-making committee for primary care co-commissioning, which must have a lay and executive majority and have a lay chair;
- national training for CCG lay members to support and strengthen their role;
- external involvement of local stakeholders; the local Healthwatch and a Local Authority member of the local Health and Wellbeing Board will have the right to serve as observers on the decision-making committee;
- the public register of conflicts of interest will include information on the nature of the conflict and details of the conflicted parties. The register would form an obligatory part of the annual accounts and be signed off by external auditors; and
- CCGs are required to maintain and publish, on a regular basis, a register of procurement decisions.

The CCG's Audit and Integrated Governance Committee Chair and CCG Accountable Officer will be required to provide direct formal attestation that the CCG has complied with conflict of interest guidance.

5. Key Publications

There are a number of publications, guidance and articles on the subject. Below are a few which are felt to be particularly relevant and helpful.

The British Medical Association (BMA) has published a paper, [Ensuring Transparency and Probity](#) (May 2011), which gives guidance on ensuring that honesty and transparency operates as part of clinically-led commissioning consortia. This document makes specific reference to issues where clinicians have an interest in a provider company, decision making and membership of professional bodies.

The RCGP and NHS Confederation have also produced a paper [Managing Conflicts of Interest in Clinical Commissioning Groups](#) (September 2011) which outlines the issues to consider, gives some scenarios and refers to a number of helpful documents including the General Medical Council *Good medical practice* document (2009).

The [NHS Commissioning Board: Standards of Business Conduct](#) requires CCG Committee and group members and officers to declare interests which are relevant and material to the group of which they are a member or the work that they do. All members should declare such interests. Robust processes will therefore be established to mitigate against these conflicts in the interests of the organisation and the individuals involved.

The Department of Health has introduced regulations to control the potential for problems. The [NHS \(Procurement, Patient Choice and Competition\) Regulations 2013](#) impose legal duties on NHS England (previously known as the NHS Commissioning Board) and on CCGs. The regulations state that NHS England and CCGs must:

- act with a view to securing the needs of people who use the NHS, improving the quality of services and improving efficiency in the provision of services;
- act in a transparent and proportionate way and treat providers equally and in a non-discriminatory way, including by not treating a provider more favourably than any other providers, in particular on the basis of ownership; and
- not award a contract for healthcare services where conflicts or potential conflicts of interest arise.

The NHS Commissioning Board published [Towards Establishment](#): Creating responsive and accountable CCGs Technical Appendix 1 (NHS Commissioning Board, October 2012).

The CCG also has a number of policies which include the Fraud Policy, Gifts and Hospitalities Policy, Commercial Sponsorship Policy and Whistleblowing Policy, which should all be adhered to by anyone acting on behalf of the CCG. Copies of the relevant policies are available on the CCG's website:

<http://www.sheffieldccg.nhs.uk/our-information/strategies-and-policies.htm>

6. Actions to take

CCG Governing Body members should work within *The Seven Principles of Public Life Framework* (Appendix A), the organisation's code of conduct, and their own professional code of conduct.

It is recognised that from time to time there may be conflicts of interest. Members are required to declare interests when they join a relevant committee or group, **on an annual basis** and when any changes to those circumstances occur. Individuals are required to keep their declarations up to date. A register is maintained by the Head of Governance and Planning which is accessible to patients and members of the public.

Declaration of interests will be a standing item on all committee and group agendas. Members who have any direct or indirect financial or personal interest in a specific agenda item, or if the practitioner is interested in providing a service in relation to that agenda item, should declare the interest. It will be at the discretion of the Chair to decide whether exclusion from the discussion/decision or from the meeting would be appropriate. The minutes should record all declarations of interest and actions taken in mitigation. If the Chair has a conflict of interest then the vice chair will be asked to take the decision on any exclusions.

Having a conflict of interest does not necessarily exclude people from being members of the CCG, the CCG Governing Body or the CET but could impact or be perceived to impact

on the individuals impartiality in making or influencing a decision. If members have any doubt about the relevance of an interest, this should be discussed with the Chair of the meeting, the Director of Business Planning and Partnerships or the Head of Governance and Planning.

7. Recommendations

CCG Governing Body members are asked to:

1. Note the legislation and guidance with regard to managing conflicts of interest, and the further work to be undertaken to up-date the CCG's current protocol for the management of conflicts of interest.
2. Consider what this means for Governing Body and CET members and for member practices
3. Abide by the principles and processes outlined.

Paper prepared by Sue Laing, Senior Associate: Risk and Governance, Yorkshire and Humber Commissioning Support

On behalf of Tim Furness, Director of Business Planning and Partnerships

December 2014

The Seven Principles of Public Life (also known as the Nolan Principles)

- **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.
- **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.