Working with you to make Sheffield HEALTHIER

NHS Sheffield Clinical Commissioning Group

Managing Conflicts of Interest
Revised Statutory Guidance for CCGs

Item 18d

Governing Body meeting

5 May 2016

Author(s)	Margaret Saunders, Head of Governance and Planning
Sponsor	Tim Furness, Director of Delivery

Is your report for Approval / Consideration / Noting

This report is for noting.

Audit Requirement

CCG Objectives

5. Organisational development to ensure CCG meets organisational health and capability requirements

Principal Risk 5.3 Inadequate adherence to principles of good governance and legal framework leading to breach of regulations and consequent reputational or financial damage.

Equality impact assessment

Have you carried out an Equality Impact Assessment and is it attached? No

If not, why not? Not Applicable

PPE Activity

How does your paper support involving patients, carers and the public? Maintains the accountability and transparency of the CCG.

Recommendations

The Governing Body is asked to:

- Note NHS England Managing Conflicts of Interest: Revised Statutory Guidance for CCGs Draft for Discussion document
- Note the response from NHS Sheffield CCG to the Draft for Discussion document.

NHS
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1. Introduction

NHS bodies are already legally required to manage conflicts of interest (COI) in December 2014, NHS England developed and published strengthened statutory guidance to support the delegation of primary care commissioning to CCGs from 1 April 2015. During 2015/16 NHS England undertook an audit of COI management in ten co-commissioning arrangements. Following this audit and in conjunction with senior leaders in CCGs, internal audit and the NHS England legal team a number of change reforms have been identified to respond to these challenges. On 1 April 2016 NHS England launched the Managing Conflicts of Interest: Revised Statutory Guidance for CCGs Draft for discussion document, Appendix A. The closing date for responses was Friday 29 April 2016.

NHS England intends to take final guidance to the May Board, with a view to publishing in early June 2016. CCGs will be required to review their processes in line with the guidance and strengthen them, where required, by the end of November 2016.

The proposed key changes within the Revised Statutory Guidance for CCGs Draft for discussion document are detailed below:

1. an increase of lay membership on governing bodies to a minimum of three lay members

2. the introduction of a COI guardian

3. inclusion of an annual audit of COI management within internal audit plans with outcomes incorporated into the annual governance statement

4. strengthening the management of gifts and hospitality, including prompt declarations and a publicly available register

5. strengthening the provisions concerning decision-making where a conflict is identified

6. ensure robust processes for managing COI breaches and publish any breaches on the CCG's website

7. introduction of mandatory online COI training for all CCG staff and staff of member practices with face-to-face training sessions for CCG leads in key decision-making roles.

2. NHS Sheffield CCG Response

The response from NHS Sheffield CCG to the proposed key changes is available at Appendix B. Currently the CCG meets the requirements of key change 1, with four lay members and Key Change 4, with the Gifts and Hospitality Register available on the website.

In the event the key changes are implemented the CCG will be required to:

- appoint an COI guardian which the Draft for Discussion Document states should be undertaken by the audit chairs
- liaise with the internal auditors to incorporate within internal audit plans an annual audit of COI and reference within the annual governance statement
- review the COI Protocol within the Constitution to strengthening provisions concerning decision-making where a conflict is identified and for managing COI breaches.
- Publish any breaches on the CCG's website
- Introduce NHS England provided mandatory online COI training for all CCG staff and staff of member practices
- Engage with the face-to-face training sessions for CCG leads in key decision-making roles.

At this stage it is not envisaged the above will require a specific resource to re-align existing processes.

3. Recommendations

The Governing Body is asked to:

- Note NHS England Managing Conflicts of Interest: Revised Statutory Guidance for CCGs Draft for Discussion document
- Note the response from NHS Sheffield CCG to the Draft for Discussion document.

Paper prepared by: Margaret Saunders, Head of Governance and Planning

On behalf of: Tim Furness, Director of Delivery

25 April 2016

Appendix A

MANAGING CONFLICTS OF INTEREST: REVISED STATUTORY GUIDANCE FOR CCGs

Draft for discussion

Managing Conflicts of Interest: Statutory Guidance for CCGs

Version number: 3 DRAFT FOR DISCUSSION

First published: March 2013

Updated: April 2016 as a Draft for Discussion

Prepared by: Commissioning Strategy Directorate

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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. A conflict of interest occurs where an individual's ability to exercise judgement, or act in a role, is or could be impaired or otherwise influenced by his or her involvement in another role or relationship.

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, providers and Parliament that CCG commissioning decisions are robust, fair and transparent and offer value for money. Failure to manage conflicts of interest severely undermines public trust in the NHS and can lead to legal challenge and even criminal action in the event of fraud, bribery and corruption.

3. Section 14O 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 support all CCGs to manage these risks, we have issued this guidance as statutory guidance under sections 14O and 14Z8 of the Act. We expect all CCGs to fully implement this guidance. Should any CCGs wish to deviate from any requirement of the guidance for local reasons, they would need to seek prior approval from NHS England.

5. CCGs will also need to adhere to relevant guidance on conflicts of interest, issued by GP professional bodies such as the British Medical Association (BMA)[1], the General Medical Council (GMC) [2] and the Royal College of General Practitioners (RCGP)[3], and to procurement rules including The Public Contract Regulations 2015 [4] and The National Health Service (procurement, patient choice and competition) (no.2) regulations 2013[5], as well as the Bribery Act 2010[6].

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[1] *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

[2] *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

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

[4] *The Public Contract Regulations 2015* http://www.legislation.gov.uk/uksi/2015/102/regulation/57/made

[5] *The NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013* http://www.legislation.gov.uk/uksi/2013/500/contents/made

[6] *The Bribery Act 2010* http://www.legislation.gov.uk/ukpga/2010/23/contents

6. This guidance aims 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;
- Safeguard clinically led commissioning, whilst ensuring objective investment decisions;
- Uphold the confidence and trust between patients and GPs;
- 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.

7. This guidance supersedes *Managing Conflicts of Interest Statutory Guidance*, which was published in December 2014. We have strengthened the guidance in light of findings from a recent co-commissioning conflicts of interest sample audit, the National Audit Office's (NAO's) report on conflicts of interest management in CCGs,[7] and feedback received from a range of stakeholders and partners, including CCG lay members and members of the public. We intend to publish separate detailed and comprehensive guidance to specifically address further developments in care models and integrated care organisations that may cause particular challenges with regard to conflicts of interest.

8. The key changes set out in this latest update of the guidance are:

- The recommendation for CCGs to have a minimum of **three lay members** on the Governing Body, in order to support with conflicts of interest management;
- The introduction of a **conflicts of interest guardian** in CCGs. We expect that CCG audit chairs will assume this role, which will be an important point of contact for any conflicts of interest queries or issues;
- The requirement for CCGs to include a robust process for managing any **breaches** within their conflict of interest policy and for any breaches to be published on the CCG's website;
- Strengthened provisions around **decision-making when a member of the governing body, or committee or sub-committee is conflicted**;

[7] *Managing conflicts of interest in NHS clinical commissioning groups* https://www.nao.org.uk/report/managing-conflicts-of-interest-in-nhs-clinical-commissioning-groups/

- Strengthened provisions around the management of **gifts and hospitality**, including the need for prompt declarations and a publicly accessible register of gifts and hospitality;

- A requirement for CCGs to include an **annual audit of conflicts of interest management** within their internal audit plans and to include the findings of this audit within their **annual end-of-year governance statement**;

- A requirement for all CCG staff, governing body and committee members, and GP members to complete **mandatory online conflicts of interest training,** which will be provided by NHS England. The online training will be supplemented by a series of face-to-face training sessions for CCG leads in key decision-making roles.

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 Conduct 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;
- Declaring interests;
- Registers of interest;
- 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;
- Conflicts of interest training.

Definition of an interest

11. An individual does not need to exploit his or her position or obtain an actual benefit, financial or otherwise, for a conflict of interest to occur.

12. 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, as clinical commissioners may here find themselves in a position of being at once commissioner and provider of primary medical services. Conflicts of interest can arise throughout the whole commissioning cycle from needs assessment, to procurement exercises, to contract monitoring.

13. Interests can be captured in four different categories:

- **Financial interests:** This is where an individual may get direct financial benefits from the consequences of a commissioning decision. This could 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;
  - A shareholder (of more than [5%] of the issued shares), partner or owner of a private or not for profit company, business or consultancy which is doing, or which is likely, or possibly seeking to do, business with health or social care organisations.
  - A consultant for a provider;
  - In secondary employment (see paragraph 52-53)
  - In receipt of a grant 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:** 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 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.
- A member of a particular specialist professional body (although routine GP membership of the 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);
- A medical researcher.

GPs and practice managers sitting on the governing body or committees of the CCG should declare details of their roles and responsibilities held within member practices of the CCG.

- **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;
  - A member of a political party;
  - Suffering from a particular condition requiring individually funded treatment;
  - A financial advisor.

- **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). This should include:

  - Spouse / partner
  - Close relative e.g., parent, [grandparent], child, [grandchild] or sibling;
  - Close friend;
  - Business partner.

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

  Annex A sets out a non-exhaustive list of examples illustrating possible conflicts for these categories.

14. 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: **[link to be inserted once guidance is finalised].**

15. The above categories and examples are not exhaustive and the CCG should exercise discretion on a case by case basis, having regard to the principles set out in the next section of this guidance, in deciding whether any other role, relationship or interest which the public could perceive would impair or otherwise influence the individual's judgement or actions in their role within the CCG should be declared and appropriately managed.

Principles

16. This section sets out a series of principles for those who are elected to CCG governing bodies, serve on CCG committees or take decisions where they are acting on behalf the public or spending public money.

17. CCGs should observe the principles of good governance in the way they do business. These include:

- The Nolan Principles[8] (as set our below);
- The Good Governance Standards for Public Services (2004), Office for Public Management (OPM) and Chartered Institute of Public Finance and Accountancy (CIPFA)[9];
- The seven key principles of the NHS Constitution[10];
- The Equality Act 2010[11];
- The UK Corporate Governance Code[12].

18. All those with a position in public life should adhere to the Nolan principles, 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;

- **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;

[8] *The 7 principles of public life* https://www.gov.uk/government/publications/the-7-principles-of-public-life
[9] *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*
[10] *The seven key principles of the NHS Constitution* http://www.nhs.uk/NHSEngland/thenhs/about/Pages/nhscoreprinciples.aspx
[11] *The Equality Act 2010* http://www.legislation.gov.uk/ukpga/2010/15/contents
[12] *UK Corporate Governance Code* https://www.frc.org.uk/Our-Work/Codes-Standards/Corporate-governance/UK-Corporate-Governance-Code.aspx

- **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.

19. 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, for instance by:

    - Considering potential conflicts of interest when electing or selecting individuals to join the governing body or other decision-making bodies;

    - Ensuring individuals receive proper induction and training so that they understand their obligations to declare conflicts of interest;

    - Agreeing in advance how a range of possible conflicts of interest situations and scenarios will be handled, rather than wait until they arise.

- **Be balanced 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.

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

20. Conflicts of interest are a common and sometimes unavoidable part of the delivery of health care. As such, it may not be reasonable or desirable to completely eliminate the risk of conflicts. Instead, it will be preferable to recognise the associated risks and put measures in place to identify and manage conflicts when they do arise. As a minimum, CCGs should have robust systems in place to identify and manage conflicts of interest rather than to eliminate them.

21. This will involve encouraging CCG staff, governing body and committee members, and GP member practices 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. As such, CCGs should implement this statutory guidance in a manner that is clear and robust, but not overly prescriptive or complex.

22. CCGs should identify a team or individual - such as e.g., the Head of Governance - within their organisation, 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 63 onwards);
- Providing advice, support, and guidance on how conflicts of interest should be managed; and
- Ensuring that appropriate administrative processes are put in place.

23. 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 K sets out a conflicts of interest checklist for CCG to follow when developing their conflicts of interest policy.

24. Such a team or individual should be appropriately trained and their identity well publicised so that their expertise can be called up when required.

25. 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.

26. 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., secondary employment or involvement with an organisation which benefits financially from contracts for the supply of goods and services to a CCG) it is likely that CCGs will want to consider whether, practically, such an interest is manageable at all. 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, letters of engagement and 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.

27. The following sections set out the other steps that CCGs should put in place to support the appropriate management of conflicts of interest.

Declaring interests

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.

28. CCGs will need to ensure that, as a matter of course, declarations of interest are made and regularly confirmed or updated. A template declaration of interest form is appended at Annex B.

29. All persons referred to in paragraph 32 (Register of Interests) must declare any interests. Such declarations should be made as soon as reasonably practicable after the interest arises, including:

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.

Quarterly:
CCGs should have systems in place to satisfy themselves on a quarterly basis that their register of interests is accurate and up-to-date. Declarations of interest should be obtained from all relevant individuals every quarter and where there are no interests or changes to declare, a "nil return" should be 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 90-91 for further advice on record keeping).

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 or enters into a new business or relationship), 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.

30. Whenever interests 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. This individual should ensure that the register of interests is updated accordingly. Paragraph 34 onwards sets out further information on maintaining a register of interests.

Register(s) of interests

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.

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

32. Register(s) of interest should be maintained for:

- **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 14A (1) of the 2006 Act. Declarations should be made by all employees of the practice, regardless of whether they are directly involved with CCG commissioning or not, including:
    - GP partners (or where the practice is a company, each director);
    - GP locums;
    - Practice managers;
    - Practice nurses etc.

33. All interests declared must be promptly transferred to the relevant CCG register(s) by the team or individual who has designated responsibility for maintaining registers of interest. ***[Engagement question: our working***

assumption is that individual GP practices should collect this information, record it, and transfer it to their host CCG for wider publication. An alternative view is that practices should collect, record and publish this information themselves on their own websites. Views on the best approach are requested?]

Conflict of Interest registers

34. CCGs should maintain one or more registers detailing actual or potential conflicts of interest pertaining to the individuals listed in paragraph 32 above. A template conflict of interest declaration form and conflict of interest register for use by CCGs are appended at Annexes B and C. These templates can be adapted by CCGs but, as a minimum, they should contain the following information (which constitutes best practice):

- 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;
- Dates interest relates to, from to; and
- The actions to be taken to mitigate risk, these should be agreed with your line manager.

Gifts and Hospitality registers

35. CCGs should maintain one or more registers of gifts and hospitality for the individuals listed in paragraph 32 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.

36. All the individuals listed in section 32 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.

Gifts

37. A 'gift' is defined as any item of cash or goods, or any service, which is provided for personal benefit at less than its commercial value.

38. All gifts of any nature offered to CCG staff, governing body and committee members and individuals within GP member practices by suppliers or

contractors linked (currently or prospectively) to the CCG's business should be declined, whatever their value. 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.

39. Gifts offered from other sources should also be declined if accepting them might give rise to perceptions of bias or favouritism, and a common sense approach should be adopted to whether or not this is the case. The only exceptions to the presumption to decline gifts relates to items of little financial value (i.e., less than £10) such as diaries, calendars, stationery and other gifts acquired from meetings, events or conferences, and items such as flowers and small tokens of appreciation from members of the public for work well done which may be accepted. Gifts of this nature do not need to be declared to the team or individual who has designated responsibility for maintaining register of gifts and hospitality, nor recorded on the register.

40. **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.

Hospitality

41. A blanket ban on accepting or providing hospitality is neither practical nor desirable from a business point of view. However, individuals should be able to demonstrate the acceptance or provision of hospitality would benefit the NHS or CCG.

42. Modest hospitality provided in normal and reasonable circumstances may be acceptable, although it should be on a similar scale to that which the CCG might offer in similar circumstances (e.g., tea, coffee, light refreshments at meetings). A common sense approach should be adopted to whether or not hospitality offered is modest or not. Hospitality of this nature does not need to be declared to the team or individual who has designated responsibility for maintaining register of gifts and hospitality, nor recorded on the register.

43. Unacceptable hospitality should be politely refused. Particular caution should be applied to:

- Hospitality offered by suppliers or contractors linked (currently or prospectively) to the CCG's business;
- Hospitality of a value of above £25; and
- In particular, offers of foreign travel and accommodation.

The presumption is that all such offers should be refused and, if acceptance is contemplated, prior approval from a senior member of CCG staff should be

required. Hospitality of this nature should be declared to the team or individual who has designated responsibility for maintaining the register of gifts and hospitality, and recorded on the register, whether accepted or not.

Commercial sponsorship

44. CCG staff, governing body and committee members, and GP member practices may be offered commercial sponsorship for courses, conferences, post/project funding, meetings and publications in connection with the activities which they carry out for or on behalf of the CCG or their GP practices. All such offers (whether accepted or declined) must be declared so that they can be included on the CCG's register of interests, and the team or individual designated by the CCG to provide advice, support, and guidance on how conflicts of interest should be managed should provide advice on whether or not it would be appropriate to accept any such offers. If such offers are reasonably justifiable and otherwise in accordance with this statutory guidance then they may be accepted. CCGs should consider whether they wish to adopt a system of prior approval for acceptance of such sponsorship from a member of the CCG with appropriate seniority.

45. Notwithstanding the above, acceptance of commercial sponsorship should not in any way compromise commissioning decisions of the CCG or be dependent on the purchase or supply of goods or services. Sponsors should not have any influence over the content of an event, meeting, seminar, publication or training event. The CCG should not endorse individual companies or their products. It should be made clear that the fact of sponsorship does not mean that the CCG endorses a company's products or services. During dealings with sponsors there must be no breach of patient or individual confidentiality or data protection legislation. Furthermore, no information should be supplied to a company for their commercial gain unless there is a clear benefit to the NHS. As a general rule, information which is not in the public domain should not normally be supplied.

Declaration of offers and receipt of gifts and hospitality

46. A draft template for declaring gifts and hospitality is appended at Annex D. All hospitality or gifts declared must be promptly transferred to a register of gifts and hospitality that all CCGs should maintain. A template gifts and hospitality register for use by CCGs is appended at Annex E. These templates can be adapted by CCGs but, as a minimum, they should contain the following information (which constitutes best practice):

- Recipient's name;
- Current position(s) held by the individual (within the CCG);
- Date of offer and/or receipt;
- Details of the gifts of hospitality
- The estimated value of the gifts 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;
- Whether the offer was accepted or not; and
- Reasons for accepting or declining the offer.

Publication of registers

47. CCGs should publish the register(s) of interest and register(s) of gifts and hospitality referred to above in a prominent place on the CCG's website.

48. 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). This should be agreed with the team or individual who has designated responsibility for maintaining registers of interest and 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).

49. All persons who are required to make a declaration of interests or a declaration of gifts or hospitality should be made aware that the register(s) will be published.

50. The register(s) of interests (including the register of gifts and hospitality) must be published as part of the CCG's Annual Report and Annual Governance Statement.

Appointments and roles and responsibilities in the CCG

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

Secondary employment

52. 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 engaged in, or wish to engage in, secondary employment in addition to their work with the CCG. 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 include:

- Employment with another NHS body;
- Employment with another organisation which might be in a position to supply goods/services to the CCG; and
- Self-employment, including private practice, 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.

53. **CCGs should require that express prior permission to engage in secondary employment is required, and reserve the right to refuse permission where it believes a conflict will arise.** CCGs should ensure that they have clear and robust organisational policies in place to manage issues arising from secondary 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.

Appointing governing body or committee members and senior employees

54. 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.

55. 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 32) 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.

56. 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.

57. 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 commissioning support services, or otherwise) should not be a member of the governing body or of a committee or sub-committee of the CCG 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.

58. 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 Groups.

CCG lay members

59. Lay members have 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.

60. 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 matters[13] and serve as the chair of the audit committee [14] ; 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 functions[15]). In light of their expanding role in primary care co-commissioning, we 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.

61. Where there are difficulties in recruiting additional lay members, CCGs could consider:

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[13] *Section 12(3) NHS (CCG) Regulations 2012*
http://www.legislation.gov.uk/uksi/2012/2996/pdfs/uksi_20122996_en.pdf
[14] *Section 14(2) NHS (CCG) Regulations 2012*
http://www.legislation.gov.uk/uksi/2012/2996/pdfs/uksi_20122996_en.pdf
[15] *Section 12(4) NHS (CCG) Regulations 2012*
http://www.legislation.gov.uk/uksi/2012/2996/pdfs/uksi_20122996_en.pdf

- 'Sharing' lay members between, for instance, CCGs in the same Sustainability and Transformation area. In such circumstances, CCGs must still ensure that at least one appointed lay member has knowledge of the geographical area covered in the CCG constitution; and/or

- Additional governing body members who are not classified as lay members, so that the statutory eligibility criteria applicable to lay members of the governing body would not apply to those appointments (although these rules would still apply to the minimum of two lay member posts on the governing body).

[Engagement question: what are your views on "sharing" CCG lay members and appointing governing body members who are not classified as lay members]

62. 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.

Conflicts of Interest Guardian

63. 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.

64. The Conflicts of Interest Guardian should:

- Act as a conduit for members of the public who have any concerns with regards to conflicts of interest;
- Be a safe point of contact for whistleblowing;
- Support the rigorous application of conflict of interest principles and policies;
- Provide independent advice and judgment 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.

65. 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

66. The Primary Care Commissioning Committee (PCCC) 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 PCCC. 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.

67. 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 PCCC. 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 PCCC chair.

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.

68. 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 **whistleblowing**;
- 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

69. 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.

70. 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).

71. 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 63) or another member of the governing body.

72. 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 are not sent to conflicted individuals in advance of the meeting where relevant.

73. 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 appended at Annex F.

74. 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.

75. 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.

76. 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.

77. 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 some or all of 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 leave the discussions and join the audience;

- 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.

Primary care commissioning committees and sub-committees

78. There are three co-commissioning models:

- **Greater involvement** in primary care co-commissioning 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.

- The **joint commissioning** model 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 general practice services.

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

80. The PCCC 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.

81. 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)

82. 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 59 to 62 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 but minimise the risk of conflicts of interest.

- 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.

83. 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 PCCC.

84. 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

85. 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.

86. The quorum requirements for PCCC meetings must include a simple majority of lay and executive members in attendance and eligible to vote (i.e., not conflicted).

87. 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.

[Engagement note: in developing this guidance, we considered an alternative proposal, which was to not include GPs on the Primary Care Commissioning Committee, but to establish a separate GP-led "Clinical Advisory Sub-Committee" of the Primary Care Commissioning Committee. This sub-committee would be an advisory body without formal decision-making powers, be constituted with a majority of GPs and be consulted in relation to all strategic, needs analysis and service design issues relating to primary care services. We deemed this proposal to be too bureaucratic and resource intensive to administer, but would welcome your feedback during the engagement period.]

88. Whilst sub-committees or sub-groups of the primary care commissioning committee can be established to develop business cases and options appraisals, for instance, 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, ensuring appropriate representation from all providers. They should also consider appointing a lay member as the chair of the group,

89. 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

90. 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)

91. An example of good minute keeping is appended at Annex G.

Managing conflicts of interest throughout the commissioning cycle

Designing service requirements

92. The way in which services are designed can either increase or reduce the level of perceived or actual conflicts of interest. Particular attention should be given to public and patient involvement.

93. 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

94. 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.

95. 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.

96. 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). Monitor has issued guidance on the use of provider boards in service design[16].

97. 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.

[16] *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)

Specifications

98. 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.

99. 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

100. CCGs will need to be able to recognise 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.

101. CCGs must comply with two different strands of procurement law and regulation when commissioning healthcare services: The NHS procurement regime and the European Procurement Regime.

The NHS Procurement Regime:

- The NHS (Procurement, Patient Choice and Competition) Regulations (No. 2) 2013, issued under section 75 of the Act 17;
- The Public Contract Regulations 2015 (the “PCR 2015”)18; and
- Monitor’s guidance on the Procurement, Patient Choice and Competition Regulations19 .

The European procurement regime:

- EU Procurement rules (as transposed in to law in England and Wales by the Public Contracts Regulations 2006 (although after 18 April 2016 these will only apply to procurement exercises that began before that date) and Public Contracts Regulations 2015)20;

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[17] *The NHS (Procurement, Patient Choice and Competition) Regulations (No. 2) 2013, issued under section 75 of the HSCA* http://www.legislation.gov.uk/uksi/2013/500/contents/made

[18] *The Public Contract Regulations 2015 (the “PCR 2015”)* http://www.legislation.gov.uk/uksi/2015/102/pdfs/uksi_20150102_en.pdf

[19] *Monitor, Substantive guidance on the Procurement, Patient Choice and Competition Regulations, December 2013* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/283505/SubstantiveGuidanceDec2013_0.pdf

[20] *EU Procurement rules 2006* http://www.legislation.gov.uk/uksi/2006/5/pdfs/uksi_20060005_en.pdf

- The general principles arising under the Treaty on the Functioning of the European Union of equal treatment, transparency, mutual recognition, non-discrimination and proportionality.

102. The National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013[21] 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 111 below, details of this should also be published by the CCG.]*
>
> *The National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013*

103. The Procurement, Patient Choice and Competition Regulations also 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.

104. 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 most often arise in the context of co-commissioning of primary care, particularly with regard to delegated commissioning, where GPs are current or possible providers.

105. A procurement template, provided in Annex H, 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.

106. 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;

[21] *The National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013* http://www.legislation.gov.uk/uksi/2013/500/contents/made

- 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.

107. 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 a CSS' 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.

108. 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

109. 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 (i.e. governing body or committee members and others 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 114 in relation to retaining the anonymity of bidders); and
- The award decision taken.

110. The register of procurement decisions must be updated whenever a procurement decision is taken. A draft register is included at Annex I. 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

111. 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

112. 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 J for a declaration of interests for bidders/ contractors template.

113. 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

114. The management of conflicts of interest applies to all aspects of the commissioning cycle, including contract management.

115. 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.

116. 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.

117. 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

118. NHS England is introducing a new Improvement and Assessment Framework for CCGs from 2016/17 onwards. The management of conflicts of interest is a key indicator of the new framework.

119. As part of the new 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 December annually.

120. 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 HQ.
- Is aware of any breaches of its policies and procedures in relation to the management of conflicts of interest and how many:
  - To include details of how they were managed;
  - Confirmation that they have been published on the CCG website;
  - Confirmation that they been communicated to NHS England.

121. Where a CCG has decided not to comply with this statutory guidance – whether in relation to any of the matters referred to in paragraphs 120 and 121 above or otherwise – they must seek NHS England's permission and include within the self-certification statement the reasons for deciding not to do so.

122. 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 124 onwards). Consideration of the indicator should form part of this audit.

Internal audit

123. All CCGs will need to undertake an audit of conflicts of interest management as part of their internal audit on an annual basis.

124. We will be communicating further guidance on the scope and remit of this audit in due course on NHS England's website. To ensure consistency in approach, NHS England will provide a template for the audit.

125. We would expect in 2016/17 that CCGs complete the audit in quarter three or quarter four of the financial year, to enable the updates in this guidance to be implemented prior to the audit taking place.

126. 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. A template annual governance statement for 2016/17 will be published on NHS England's website soon.

127. The conflicts of interest and procurement registers and registers of gifts and hospitality are also required to form part of the CCG's annual accounts and will thus need to be signed off by external auditors.

Raising concerns and breaches

128. 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, investigate themselves or tell colleagues or others about their suspicions. Any suspicions or concerns can be reported online via www.reportnhs.fraud.nhs.net.

129. 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 K 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;
- When and who to notify at NHS England; and
- The process for publishing the breach on the CCG website.

130. 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.

131. 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.

132. 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.

133. CCG staff and other relevant individuals should also be encouraged to call the NHS Fraud and Corruption Reporting Line on free phone 0800 028 40 60. 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.

134. 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.

Impact of non-compliance

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

Civil implications

136. If conflicts of interest are not effectively managed, CCGs could face civil challenges to decisions they make. For instance, if breaches occur during a service re-design or procurement, the CCG risks a legal challenge from providers that could potentially overturn the award of a contract, lead to damages claims against the CCG, and necessitate a repeat of the procurement process. This could waste public money, damage the CCG's reputation and delay the development of better services and care for patients. In extreme cases, staff and other individuals could face personal civil liability, for example a claim for misfeasance in public office.

Criminal implications

137. 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 CCGs and organisations, and the individuals who are engaged by them.

138. 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.

139. An essential ingredient of the offences is that, the 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 if convicted in the Crown Court or 6 months imprisonment and/or a fine in the Magistrates' Court. The offences can be committed by a body corporate.**

140. Bribery is generally defined as giving or offering someone a financial or other advantage to encourage that person to perform their functions or activities. The Bribery Act 2010 reformed the criminal law of bribery, making it easier to tackle this offence proactively in both the public and private sectors. It introduced a corporate offence which means that **commercial organisations, including NHS bodies, will be exposed to criminal liability, punishable by an unlimited fine, for failing to prevent bribery**. The offences of bribing another person, being bribed and bribery of foreign public officials can also be committed by a body corporate. The Act repealed the UK's previous anti-corruption legislation (the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Acts of 1906 and 1916 and the common law offence of bribery) and provides an updated and extended framework of offences to cover bribery both in the UK and abroad. The offences of bribing another

person, being bribed or bribery of foreign public officials **in relation to an individual carries a maximum sentence of 10 years imprisonment and/or a fine if convicted in the Crown Court and 6 months imprisonment and/or a fine in the Magistrates' Court. In relation to a body corporate the penalty for these offences is a fine.**

Disciplinary implications

141. CCGs should ensure that individuals 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 appropriate disciplinary action. CCG staff, governing body and committee members in particular should be aware that the outcomes of such action may, if appropriate, result in the termination of their employment or position with the CCG.

Professional regulatory implications

142. Statutorily regulated health professionals who work for, or are engaged by, CCGs are under professional duties imposed by their relevant regulator to act appropriately with regard to conflicts of interest. CCGs should report statutorily regulated health professionals to their regulator if they believe that they have acted improperly, so that these concerns can be investigated. Statutorily regulated health 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.

Conflicts of interest training

143. All CCGs must ensure that training is offered to all employees, governing body members, members of CCG committees and sub-committees and member practices on the management of conflicts of interest. This is to ensure staff and others within the CCG and practices understand what a conflict is and how to manage them effectively.

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

- What is a conflict of interest;
- Why is conflicts 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.

145. NHS England is developing an online training package which all CCG staff, governing body and committee members, as well as member practices' staff, will need to complete on a yearly basis to raise awareness of the risks of conflicts of interest and to support staff to manage conflicts of interest. This will be mandatory and will need to be completed by all staff by 31 December of each year. CCGs will be required to record their completion rates as part of their annual conflicts of interest audit.

146. 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.

[Engagement question: What further support would be helpful to assist CCGs to manage conflicts of interest? How can we best ensure our training offers are accessible? What type of training would be most helpful, and how should it be delivered?]

Glossary

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

BMA: British Medical Association

CASC: Clinical Advisory Sub-Committee

CCG: Clinical Commissioning Group

CIPFA: The Chartered Institute for Public Finance and Accounting

CQC: Care Quality Commission

CSS: Commissioning Support Service

RCGP: Royal College of General Practitioners

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

Annexes

Annex A — **Guidance: Potential conflicts of interest scenarios**

A non-exhaustive list of potential situations where conflicts of interest may arise in the context of a CCG's business.

Annex B — **Template: Declaration of conflicts of interest 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 C — **Template: Register of conflicts of interests for CCGs**

For CCGs to record all declared interests. Up to date registers should be maintained at all times. The register must be published on the CCG's website and made available at the CCG's head office.

Annex D — **Template: Declarations of gifts and hospitality**

For CCG members and employees to complete on the offer, whether accepted or declined, of a gift and/or hospitality. The information should be promptly transferred onto the CCG's register of gifts and hospitality. The template should be completed following discussion with your line manager.

Annex E — **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. The register must be published on the CCG's website and made available at the CCG's head office.

Annex F — **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 G — **Template: Recording accurate minutes of meeting.**

For CCGs to use to record the minutes of the 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 H **Template: Procurement**

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 I **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 head office.

Annex J **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 K **Template: 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 A Guidance: Potential conflicts of interest scenarios

Financial interests

Examples include:

- *An individual has a financial stake in a provider to which the CCG is considering awarding a contract;*
- *An individual has a financial stake in a provider which delivers services for the CCG and receives payment upon the achievement of a number of contractual indicators;*
- *An individual leases premises to a pharmaceutical company from which the CCG buys or considers buying drugs;*
- *A GP governing body member works as a locum for an out-of-hours service which the CCG commissions.*

Non-financial professional interests

Examples include:

- *A member of a CCG has an interest in the award of a contract for services because of the interests of a particular patient at that member's practice;*
- *A member of the CCG has an interest in the development of a particular service due to their medical research interests;*
- *An individual uses their position with the CCG to promote themselves and undertakes unpaid work for an organisation that they may have an interest in being employed by in the future or which would improve their reputation in a particular field of work;*
- *An individual, responsible for developing the CCG's primary care strategy, is an advocate for a particular group of patients.*

Non-financial personal interests

Examples include:

- *An individual is a trustee of a voluntary organisation seeking to do business with the NHS;*
- *An individual is a patient of a GP surgery where new services are being considered that could benefit their family members.*

Indirect interests

Examples include:

- *A relative has a financial interest in a local care home where the CCG is piloting a more holistic care package;*
- *A close acquaintance is a shareholder in a drugs company, whose drugs are being reviewed as part of a medicines management review;*
- *An individual's partner is a local councillor on the Health and Wellbeing Board.*

Annex B:

Template: Declaration of conflicts of interest 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* *See reverse of form for details	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)

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 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.

I **do / do not [delete as applicable]** give my consent for this information to published on registers that the CCG holds. If consent is NOT given please give reasons:

Signed: **Date**:

Signed: **Position:** **Date:**
(Line Manager)

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**

Types of conflicts of interest

Type of Interest	Description
Financial Interests	This is where an individual may get direct financial benefits from the consequences of a commissioning decision. This could 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; • A shareholder (of more than 5% of the issued shares), partner or owner of a private or not for profit company, business or consultancy which is doing, or which is likely, or possibly seeking to do, business with health or social care organisations. • A consultant for a provider; • In secondary employment; • In receipt of a grant 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	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 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. • A member of a particular specialist professional body (although routine GP membership of the RCGP, BMA or a medical defence organisation would not usually by itself amount to an interest which needed to be declared); • An advisor for CQC or NICE; • A medical researcher.
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; • A member of a political party; • Suffering from a particular condition requiring individually funded treatment; • A financial advisor.
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). This should include: • Spouse / partner; • Close relative e.g., parent, [grandparent], child, [grandchild] or sibling; • Close friend; • Business partner.

Annex C:

Template: Register of conflicts of interest

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				Nature of Interest	Date of Interest		Action taken to mitigate risk
			Financial Interest	Non-Financial Professional Interest	Non-Financial Personal Interest	Indirect Interest		From	To	

An Excel version of the template is also available via the link below:

Register of COI v3.xlsx

Annex D:

Template: Declarations 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	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 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.

I **do / do not (delete as applicable)** give my consent for this information to published on registers that the CCG holds. If consent is NOT given please give reasons:

Signed: **Date:**

Signed: **Position:** **Date:**
(Line Manager)

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 E:

Template: Register of gifts and hospitality

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

An Excel version of the template is also available via the link below.

Register of G&H.xlsx

Annex F:

Declarations of interest checklist <the Chair's guide>

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
In advance of the meeting	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;	Meeting Chair and secretariat.
	2. A **definition of conflicts of interest** should also be accompanied with each agenda to provide clarity for all recipients;	Meeting Chair and secretariat.
	3. **Agenda** to be circulated to enable attendees (including visitors) to identify any interests relating specifically to the agenda items being considered;	Meeting Chair and secretariat.
	4. **Members should contact the Chair** as soon as an actual or potential conflict is identified;	Meeting members
	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; **A template for summary report** to present discussions at preceding meetings is detailed below.	Meeting Chair
	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.	Meeting Chair

During the meeting	7. **Declare the meeting is quorate** and ensure that this is noted in the minutes of the meeting;	Meeting Chair
	8. Chair requests **members to declare any interests in agenda items**- which have not already been declared, including the nature of the conflict;	Meeting Chair
	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.	Meeting Chair Secretariat
	10. **As minimum requirement**, the following should be **recorded in the minutes of the meeting**: • 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. **A template for recording any interests during meetings** is detailed below.	Secretariat
Following the meeting	**11.** All **new interests declared** at the meeting should be promptly be updated onto the declaration of interest form;	Individual(s) declaring interest(s)
	12. All new completed declarations of interest should **transferred onto the register of interests.**	Designated person responsible for registers of interest

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 public 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 G:

Template: Example for recording minutes of the meeting

***XXXX* Clinical Commissioning Group**
Primary Care Commissioning Committee Meeting

Date: ***15 February 2016***
Time: ***2pm to 4pm***
Location: ***Cedar Court Hotel***

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
Joan Foot	JF	Interim Head of Localities
Dr Jon Smith	JS	Secondary Care Doctor
Dr Marc 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	**Declarations of interest** *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.* *Declarations declared 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 website at the following link: http://xxxccg.nhs.uk/about-xxx-ccg/who-we-are/our -governing-body/* **Declarations of interest from sub committees.**	

	None declared **Declarations of interest from today's meeting** *The following update was received at the meeting:* • *With reference to business to be discussed at this meeting, MS declared that he is a shareholder in XXX Care Ltd.* *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.* *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.*	
4	**Minutes of the last meeting *<date to be inserted> and matters arising***	
5	**Agenda Item *<Note the agenda item>*** *MS removed himself from the meeting and sat in the public gallery, excluding himself from the discussion regarding xx.* ***<conclude decision has been made>*** ***<Note the agenda item xx>*** *MS resumed his place at the PCCC meeting.*	
6	**Any other business**	
7	**Date and time of the next meeting**	

Annex H:

Template: Procurement checklist

Service:	
Question	**Comment/ Evidence**
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?	
How have you involved the public in the decision to commission this service?	
What range of health professionals have been involved in designing the proposed service?	
What range of potential providers have been involved in considering the proposals?	
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)?	
What are the proposals for monitoring the quality of the service?	
What systems will there be to monitor and publish data on referral patterns?	
Have all conflicts and potential conflicts of interests been appropriately declared and entered in registers?	

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 reasons?	
Why have you chosen this procurement route?[22]	
What additional external involvement will there be in scrutinising the proposed decisions?	
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)	
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	
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	
What steps have been taken to demonstrate that the services to which the contract relates are capable of being provided by only one provider?	
In what ways does the proposed service go above and beyond what GP practices should be expected to provide under the GP contract?	
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?	

[22]Taking 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).

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 rectify conflicts of interest	Justification for actions to rectify 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 I:

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	Contract awarded (supplier name & registered address)	Contract value (£) (Total)	Contract value (£) to CCG

An Excel version of the template is also available via the link below

Register of PD&CA.xlsx

Annex J:

Template: Declaration of conflict of interests for bidders/contractors template

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	

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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		

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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 K

Template: 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 reviewing 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	• **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	• **Definition of an interest**: • **Types of an interest**, including: o **Financial** interests; o **Non-financial professional interests** o **Non-financial personal interests**; or o **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 Refer to paragraphs 11 to 15 of the CCG Guidance for further information
Principles	• **Principles of good governance** for consideration, include those set out in the following: o The **Seven Principles of Public Life** (commonly known as the Nolan Principles); o The **Good Governance Standards of Public Services**; o The **Seven Key Principles of the NHS Constitution**; o The **Equality Act 2010**.
Declaring conflicts of interest	• Consideration should be given to the **statutory requirements**;

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	• Detail the **types of interests to be declared** - as outlined in the *definition of an interest* section; • 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. **A declaration on interests template should be appended to the policy**
Register(s) of conflicts of interest	• Consideration should be given to the statutory requirements; • One or more registers of interest should be maintained for the following: o All **CCG employees**; o All **members of the CCG**; o Members of the **governing body**; o Members of the **CCG's committees and sub-committees**; o Any **self-employed consultants** or other individuals working for the CCG under a contract for services. • 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 in line with the guidance. **A register of interests template should be appended to the policy**
Declaration of gifts and hospitality	• 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; **A declaration of gifts and hospitality form template should be appended to the policy.**
Maintaining a register of gifts and hospitality	• Consideration should be given to the statutory requirements; • Consideration should be given to the time period for updating the registers of gifts and hospitality upon

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	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. **A register of gifts and hospitality template should be appended to the policy**
Roles and responsibilities	• **Key considerations** when appointing governing body or committee members including the following: o **Whether conflicts of interest should exclude** individuals from appointment; o **Assessing materiality** of interest; o **Determining the extent** of the interest. • The **role of CCG lay members** in managing organisational conflicts of interest, including the following: o **Conflicts of interest guardian**; o **Primary Care Commissioning Committee Chair**.
Governance arrangements and decision making	• Consider the **CCG's policy of secondary 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: o Declarations of interest checklist **(a template should be appended to the policy)**; o **Register of interests declared** to be **available for the Chair** in advance of the meeting; o **Process for declaring interests** during the meeting; o **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: o **Excluding the conflicted individual(s)** from any associated discussions and decisions; o **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; o **Clearly recording** the agenda item for which the interest has been declared. See paragraphs 64 to 89 of the CCG Guidance (Managing conflicts of interest at meetings) for further details • Consider **openness and transparency in decision making processes** through: o Effective record keeping in the form of clear minutes of the meeting. o All minutes should clearly record the context of discussions, any decisions and how any conflicts of

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	interest were raised and managed. **A template for recording minutes of the meeting should be appended to the policy.**
Managing conflicts of interest throughout the commissioning cycle	• Key areas for consideration include the following: • **Service design**, this can either increase or reduce the level of perceived or actual conflicts of interest; o Consider **public and patient involvement** and **provider engagement** in service design; o Consider how you **involve PPI in** needs assessment, planning and prioritisation to service design, procurement and monitoring; o Consider how you will **engage relevant providers, especially clinicians**, in confirming the design of service specifications- ensuring an audit train/ evidence base is maintained; o Consider how you ensure provider engagement is in accordance with the three main principles of procurement law, namely **equal treatment, non-discrimination and transparency** o Are **specifications clear and transparent.** • **Procurement**, is there clear processes to recognise and manage any conflicts or potential conflicts of interest that may arise in relation to procurement o Consideration should be given to **statutory regulations and guidance when procuring** and contracting clinical services; o 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; o 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. **A procurement template and register of procurement decisions should be appended to the policy.** • 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; o **Process for recording** any declared interests in the minutes of the meeting; and how these are managed; o Consider **commercial sensitivity of information** i.e. which information should be disseminated. **A template for recording minutes of the contract meeting should be appended to the policy.**
Raising concerns	• Key areas for consideration: o **When should a concern** regarding conflicts of interest **be reported**;

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	o What is the **process for reporting** concerns; o **Who should concerns be raised with**; o How will concerns **be investigated**; o **Who is responsible** for making the decision; o How do you **ensure confidentiality;** o **Reporting requirements.**
Breach of conflicts of interest policy	• Consider and agree a clear, **defined process for managing breaches of the CCG's conflicts of interest policy**, including: o **How the breach is recorded**; o How it is **investigated**; o The **governance arrangements and reporting mechanisms**; o Clear **links to whistleblowing and HR policies**; o **Communications and management of any media interest**; o When and who to **notify NHS England**; o **Process for publishing the breach** on the CCG website.

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Appendix B - NHS England Managing Conflicts of Interest: Revised Statutory Guidance for CCGs

	Key Changes for consultation	NHS Sheffield CCG Response
1	We recommend that the number of lay members on the CCG governing body be increased to support with the management of conflicts of interest. We recommend that all CCGs have **a minimum of three lay members on the Governing Body**, (rather than the two lay members that are required by statute).	NHS Sheffield concurs with this recommendation and currently has four lay members on the Governing Body.
2	We will require the introduction of a **conflicts of interest guardian** in all CCGs. This role should be undertaken by CCG audit chairs and will be an important point of contact for any conflicts of interest queries or issues.	NHS Sheffield welcomes the introduction of a conflicts of interest (COI) guardian and supports the recommendation of the role being assumed by the CCG Audit Chair. It would be of benefit to the Audit Chairs and of value to the CCG Audit Committees to provide additional training to appropriately response to COI queries or issues.
3	We will require all CCGs to include an **annual audit of conflicts of interest management** within their internal audit plans and to publish the audit findings within their annual end-of-year governance statement.	Details of the proposed response by NHS England where non-compliance is evidenced would be helpful.
4	We will strengthen the **provisions around the management of gifts and hospitality**, including the need for prompt declarations and a **publicly available register** of gifts and hospitality.	The strengthening of the provisions for the management of gifts and hospitality is supported. NHS Sheffield CCG currently publishes its register of gifts and hospitality and produces an annual report.
5	We will strengthen the **provisions around decision-making** when a member of the group is conflicted.	We support the principle. Sight of the draft provisions which will define a prescriptive approach to address COI in decision making would be beneficial within this consultation process.
6	We will require CCGs to have **a robust process for managing breaches within their conflict of interest policy** and to **publish any breaches on the CCG's website,** in the interests of openness and transparency.	We support the principle. Additional guidance from NHS England would be useful providing details of the robust process envisaged including examples of the actions taken where a breach has occurred would be advantageous.

7	There will be a requirement for **all CCG staff and the staff of their member practices to complete mandatory online conflicts of interest training**, which will be provided by NHS England. The online training will be supplemented by a series of face-to-face training sessions for CCG leads in key decision-making roles.	NHS Sheffield would appreciate the opportunity to contribute to both the development of the mandatory online COI training and face-to-face sessions and looks forward to receiving further information shortly.