Croydon Clinical Commissioning Group

# Conflicts of Interest Policy

27 July 2018 Rev. v.1.6

# CONFLICTS OF INTEREST POLICY

## CCG Policy Reference: CCCG/GOV/026

This policy replaces or supersedes Conflicts of Interest principles contained within the CCGs Constitution

**THIS POLICY WILL BE APPROVED BY THE CLINICAL COMMISSIONING GROUP (CCG) GOVERNING BODY, AND WILL HAVE EFFECT AS IF INCORPORATED INTO THE CONSTITUTION AS PART OF THE SCHEME OF DELEGATION.**

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|---|---|
| **Target Audience** | Governing Body members, committee members and all staff working for, or on behalf of, the CCG |
| **Brief Description (max 50 words)** | This policy sets out how NHS Croydon Clinical Commissioning Group (CCG) will manage conflicts of interest arising from the operation of the business of the organisation. This policy is in line with the NHS Croydon CCG Constitution and local and national guidance. |
| **Action Required** | Following approval at the CCG Governing Body, The Chief Officer will ensure that the requirements of this policy will be raised at all team meetings, and confirm the requirements with the chairs of each Committee, and with CCG executives.<br><br>Chairs of Committees will identify the programme of review with the Accountable Executive for each policy within their committee remit.<br><br>Accountable Executives will identify policy owners for each policy within their remit.<br><br>The Corporate Affairs Manager will establish and maintain a corporate register of all policies and their status, and will ensure that these are appropriately reflected CCG's committees. |

Approved: Governing Body, 6 November 2018

Review date: 30/12/2019

| Document Control | |
|---|---|
| Title: | Croydon CCG Conflicts of Interest Policy |
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## Amendment History

**This Policy is substantially based on a Policy developed by NHS SW London and this is gratefully acknowledged.**

| Version | Date | Reviewer Name(s) | Comments |
|---|---|---|---|
| 0.1 | 08/02/2013 | | 1st Pre consultation draft |
| 0.2 | 18/02/2013 | | 2nd Pre consultation draft |
| 0.3 | 01/03/2013 | | Updated to final draft CSU policy |
| 0.4 | 11/03/2013 | | Updated following input from CCG CO / Director feedback |
| 1.0 | 02/07/2013 | | Updated following input from PAG |
| 1.1 | 00/01/2015 | | Reviewed and updated to reflect NHSE published guidance |
| 1.2 | 08/02/2016 | F Ojutalayo | Scope amended to include reference to Risk and internal control framework documents<br>Section 7.1 Addition of references to Whistleblowing Policy procedures |
| 1.3 | 24/03/2016 | F Ojutalayo | To reflect references to the Bribery Act 2010, Section 5.3 |
| 1.4 | 01/09/2016 | F Ojutalayo | Reviewed and updated to reflect new NHSE Statutory Guidance. Inclusion of new and updated templates as appendices |
| 1.5 | 30/06/2017 | F Ojutalayo | Addition of App 14 relating to commissioning of new care models, reflecting updated NHSE guidance. (June 2017) |
| 1.6 | 27/07/2018 | B Smith | Reviewed and updated to reflect NHSE Statutory Guidance - |

Document Information:

| | |
|---|---|
| **Title /Version Number/(Date)** | CCCG Conflicts of Interest Policy v.1.6 2018 07 27 |
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| **Accountable Executive** | Chief Officer |
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| **Author** | **Ben Smith** |
| **Stakeholders engaged in development or review** | **SMT, Council of Members and Governing Body** |
| **Equality Analysis** | **Equality Analysis**<br>This Policy is applicable to the Governing Body, every member of staff within the CCG and those who work on behalf of the CCG. This document has been assessed for equality impact on the protected groups, as set out in the Equality Act 2010. This document demonstrates Croydon CCG's commitment to create a positive culture of respect for all individuals, including staff, patients, their families and carers as well as community partners**.** The intention is, as required by the Equality Act 2010, to identify, remove or minimise discriminatory practice in the nine named protected characteristics of age, disability, sex, gender reassignment, pregnancy and maternity, race, sexual orientation, religion or belief**,** and marriage and civil partnership. It is also intended to use the Human Rights Act 1998 and to promote positive practice and value the diversity of all individuals and communities. |
| **Contact details for further information** | Board Secretary<br>Tel. 020 3668 1285<br>E:mail: Ben.Smith@swlondon.nhs.uk |

**This policy progresses the following Authorisation Domains and Equality Delivery System (tick all relevant boxes).**

| | | | |
|---|---|---|---|
| Clear and Credible Plan | | Commissioning processes | X |
| Collaborative Arrangements | | Leadership Capacity and Capability | X |
| Clinical Focus and Added Value | | Equality Delivery System | |
| Engagement with Patients/Communities | | NHS Constitution Ref: | |

**Associated Policy Documents**

| Reference | Title |
|---|---|
| | CCG Constitution v.27 |
| SECSU/HRS/064 | Whistleblowing Policy |

**Glossary**

| Term | Definition |
|---|---|
| Accountable Executive | CCG Executive accountable for development, implementation and review of the policy |
| Policy Owner | Post holder responsible for the development, implementation and review of the policy |
| Document definitions | These are provided in Section 1 |

Contents

## Overview

Clinical involvement in commissioning may lead to a perception amongst patients and the public of conflicts of interest. Therefore, conflicts of interest must be managed effectively and openly.

The constitution for Croydon Clinical Commissioning Group (CCG) makes provision for dealing with conflicts of interest of which this policy should be considered part through its enactment.

The policy sets out how the CCG will manage conflicts of interest. It reflects the Nolan seven principles of public life:

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership

This policy applies to all employees and appointed individuals who are working for NHS Croydon CCG, persons serving on committees and other decision-making groups and members of NHS Croydon CCG Governing Body. It reflects the most recent NHS guidelines (Managing Conflicts of Interest: Revised Statutory Guidance for CCGs, NHSE, and June 2017).

A conflict of interest is defined as**:**

- A conflict between the private interests and the official responsibilities of a person in a position of trust
- A set of conditions in which a professional judgement concerning a primary interest (such as patients' welfare or the validity of research) tends to be unduly influenced by a secondary interest (such as financial gain)
- The creation of a set of circumstances where one party is favoured over another by an inadvertent preferential interest
- A perception of wrong doing, impaired judgement or undue influence can be as detrimental as any of them actually occurring.
- If in doubt, it is better to assume a conflict of interest and manage it appropriately rather than ignore it
- For a conflict to exist, financial gain is not necessary.

It is the responsibility of all staff employed or appointed by the CCG and those serving in a formal capacity to ensure that they are not placed in a position which creates a potential conflict between their private interests and their CCG duties.

Declarations of interest made by members of the CCG Governing Body will be published on the CCG website. The Register of Declarations of Interest will be reported to the NHS Croydon CCG Integrated Governance and Audit Committee (IGAC) at least annually.

# 1. Background

## 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."**

*RCGP and NHS Confederation's briefing paper on managing conflicts of interest September 2011

1.1 Clinical commissioning groups (CCGs) manage conflicts of interest as part of their day-to-day activities. Effective handling of such conflicts is crucial for the maintenance of public trust in the commissioning system. Importantly, it also serves to give confidence to patients, providers, and Parliament and tax payers that CCG commissioning decisions are robust, fair, and transparent and offer value for money.

1.2 CCGs who opt to take on an increased responsibility for the commissioning of primary care will be able to commission care for their patients and populations in more coherent and joined-up ways but they are also exposing themselves to a greater risk of conflicts of interest, both real and perceived, especially if they are opting to take on delegated budgets and functions from NHS England.

1.3 In June 2016 NHS England, in consultation with national stakeholders, developed strengthened guidance for the management of conflicts of interest. This guidance supersedes previous NHS England guidance and is reflected in this Policy.

1.4 The Policy is also compliant with statutory guidance issued under sections 14O and 14Z8 of the National Health Service Act 2006 (as amended by the Health and Social Care Act 2012) ("the Act"). This means that CCGs must have regard to such guidance with the onus on them to explain any non-adherence.

1.5 The Act sets out clear requirements for CCGs to make arrangements for managing conflicts of interest and potential conflicts of interest, to ensure they do not affect, or appear to affect, the integrity of the CCG's decision making processes.

These requirements are supplemented by procurement-specific requirements in the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013.

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

- CCGs must keep a record of how it managed any such conflict in relation to NHS commissioning contracts it enters into (As set out in section 10 below, details of this should also be published by the CCG.)

- Regulation 6 sets out the basic framework within which CCGs must operate. The detailed requirements are set out in the guidance issued by Monitor (Substantive guidance on the Procurement, Patient Choice and Competition Regulations) and, in particular, section 7 of that statutory guidance (included as Appendix 13 to this Policy).

1.6 The audit committee chair and accountable officer of a CCG seeking to take on delegated or joint commissioning responsibilities, will be required to provide direct formal attestation to NHS England that the CCG has complied with this guidance. Subsequently, this attestation will form part of an annual certification. CCG approaches to management of conflicts of interest will also be reported on a quarterly basis via self-certification as part of the CCG Improvement and Assessment Framework assurance process.

1.7 The policy will be reviewed at least annually. It contents should be viewed alongside the CCG's Hospitality & Gifts Policy, Code of Business Conduct, Anti-Bribery Procedures and Procurement Strategy

1.8 The CCG Governing Body holds ultimate responsibility for all actions carried out by staff and decisions taken within Croydon CCG's activities. This responsibility includes the stewardship of significant public resources and the commissioning of healthcare for the community. This context means the Governing Body is determined to ensure the organisation inspires confidence and trust amongst its patients, staff, partners, funders and suppliers by demonstrating integrity and avoiding any potential or real situations of undue bias or influence within its decision-making.

1.9 Where GPs are both providing care and deciding where that care takes place, how it is provided and who provides it, there is a real risk that a doctor's probity may come into question. Conflicts of interest therefore need to be managed effectively and openly to prevent any such problems arising, and also to avoid the perception among patients and the public that these issues may be a problem. The taint of conflict of interest is almost as damaging as the reality and all doctors involved in commissioning at any level must always consider what adverse comment an observer might say about their activities before making commissioning decisions.

1.10 The policy sets out the organisation's commitment to on-going training and awareness-raising on this subject and an induction programme for new members of the Governing Body.

## 2. Purpose

2.1 This policy sets out how NHS Croydon Clinical Commissioning Group (CCG) will manage conflicts of interest arising from the operation of the business of the organisation. This policy is in line with the NHS Croydon CCG Constitution and local and national guidance.

2.2 The CCG's function is to commission health services for the benefit of the local population and as such has responsibility for the stewardship of significant public

funds. The Governing Body will ensure that the organisation inspires confidence and trust amongst its members, staff, partners, funders, suppliers and the public by demonstrating integrity and avoiding any potential or real situations of undue bias or influence in decision-making.

2.3 This policy reflects the seven principles of public life promulgated by the Nolan Committee:

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership

See Appendix 1 for more information on the 'Nolan Principles'.

2.4 The CCG will ensure that health need assessments, consultation mechanisms, commissioning strategies and robust procurement procedures will enable conflicts of interest to be identified and mitigated. CCG Governing Body members are expected to act in accordance with the Nolan Principles of public life. It is recognised that any perceptions of wrong doing, impaired judgement or undue influence can be as detrimental as any of them occurring.

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

2.6 Conflicts of interest may also occur where an individual is a member of a professional body and the views, policies or interests of the professional body conflict with those of the CCG. Such conflicts may create problems such as inhibiting free discussion which could result in decisions or actions that are not in the interests of the CCG, and risk giving the impression that the CCG has acted improperly.

2.7 It is not possible, or desirable, to define all instances, real or perceived, in which an interest may be perceived to be in conflict. It is for each individual to exercise their judgement in deciding whether to register any interests that may be construed as a conflict. Individuals can seek guidance from the Board Secretary and discuss with the Conflict of Interest Guardian, but should decide to declare when in doubt.

## 3. Scope

3.1 This policy applies to all employees and appointed individuals who are working for NHS Croydon CCG, persons serving on committees and other decision-making groups and members of NHS Croydon CCG Governing Body.

3.2 The Policy must be read in conjunction with the following documents which form part of the CCG Risk Management Framework:

- CCG Anti-Fraud and Bribery Policy
- CCG Code of Requirements Policy.
- CCG Constitution
- CCG Disciplinary Policy and Process
- CCG Equality and Diversity Policy
- CCG Gifts and Hospitality Policy
- CCG Whistleblowing Policy
- CCG Working with Pharmaceuticals Policy

In the event of a conflict of interpretation between policies in the area of conflicts of interest the provisions of this policy shall prevail to the fullest extent applicable that law and NHS guidance allows.

The Policy should also be read with due reference to the following documents which set out generic guidelines and responsibilities for NHS organisations and General Practitioners in relation to conflicts of interests:

- CCG Standing Orders, Reservation and Delegation of Powers and Standing Financial Instructions
- Code of Conduct for NHS Managers 2012
- Appointments Commission: Code of Conduct and Code of Accountability
- The Healthy NHS Board: Principles for Good Governance
- General Medical Council: Good Medical Practice 2006
- NHS Commissioning Board: Code of Conduct: Managing Conflicts of Interest where GP Practices and potential providers of CCG-commission services (Appendix 3)
- British Medical Association: Conflicts of Interest in the new commissioning system April 2013
- Managing Conflicts of Interest: Revised Statutory Guidance for CCGs, NHSE June 2017

3.3 Staff and Governing Body members should also refer to their respective professional codes of conduct relating to the declaration of conflicts of interest.

3.4 A conflict of interest is defined as**:**

- A conflict between the private interests and the official responsibilities of a person in a position of trust. A set of conditions in which a professional judgement concerning a primary interest (such as patients' welfare or the validity of research) tends to be unduly influenced by a secondary interest (such as financial gain or to avoid a negative financial consequence)
- The creation of a set of circumstances where one party is favoured over another by an inadvertent preferential interest
- A perception of wrong doing, impaired judgement or undue influence can be as detrimental as any of them actually occurring.

If in doubt, it is better to assume a conflict of interest and manage it appropriately rather than ignore it. **For a conflict to exist, financial gain is not necessary.**

3.5 The categories of conflict of interest cover:

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

3.6 These conflicts may arise in a number of situations including:

- Appointing a governing body
- Designing service requirements
- Procurement of services where clinical commissioning leaders have a financial interest in a provider company;
- Direct or indirect financial interests: Where GPs may refer their patients to a provider company in which they have a financial interest;
- Non-financial or personal conflicts
- Where GPs make decisions regarding the care of their patients to influence the 'quality premium' they receive through their consortium;
- Where enhanced services are commissioned that could be provided by member practices;
- Where Local Medical Committee (LMC) officers are also key officials in the consortium.
- Conflicts of loyalties
- Conflict of professional duties and responsibilities

# 4. Policy Statement

4.1 This policy supports a culture of openness and transparency in business transactions, ensuring trust and confidence in the organisation and enabling commissioning decisions to be made that are in the best interests of taxpayers and the local population.

4.2 All employees and appointees of the CCG are required to:
- Ensure that the interests of patients remain paramount at all times
- Be impartial and honest in the conduct of their official business
- Use public funds entrusted to them to the best advantage of the service, always ensuring value for money
- Ensure that they do not abuse their official position for personal gain or to the benefit of their family or friends
- Ensure that they do not seek to advantage or further, private or other interests, in the course of their official duties.

4.3 Directors of provider health and social care companies with an interest of more than 50% [1] of the share capital may be precluded from membership of the Governing Body.

4.4 The CCG will view instances where this policy is not followed as serious and may take disciplinary action against individuals, which may result in dismissal.

# 5. Principles and general safeguards

5.1 The general safeguards that will be needed to manage conflicts of interest will vary to some extent, depending on at what stage in the commissioning cycle decisions are being made. The following principles are integral to the commissioning of all services, including decisions on whether to continue to commission a service, such as by contract extension.

5.2 Conflicts of interest can be managed by:

a) **Doing business appropriately**. If commissioners get their needs assessments, consultation mechanisms, commissioning strategies and procurement procedures right from the outset, then conflicts of interest become much easier to identify, avoid and/or manage, because the rationale for all decision-making will be clear and transparent and should withstand scrutiny;

b) **Being 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

[1] Excluding any interest in the operation of their GP practice

understand their obligations to declare conflicts of interest.

- Establishing and maintaining registers of interests, and agree in advance how a range of possible situations and scenarios will be handled, rather than waiting until they arise;
- Assuming that individuals will seek to act ethically and professionally, but may not always is sensitive to all conflicts of interest. Rules should assume people will volunteer information about conflicts and, where necessary, exclude themselves from decision-making, but there should also be prompts and checks to reinforce this;

c) **Being 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, but not constrain people by making it overly complex or cumbersome;

- Openness. Ensuring early engagement with patients, the public, clinicians and other stakeholders, including local Healthwatch and Health and Wellbeing Boards, in relation to proposed commissioning plans;
- Responsiveness and best practice. Ensuring that commissioning intentions are based on local health needs and reflect evidence of best practice – securing 'buy in' from local stakeholders to the clinical case for change;

d) **Being Transparent.** Documenting clearly the approach taken at every stage in the commissioning cycle so that a clear audit trail is evident;

- Securing expert advice. Ensuring that plans take into account advice from appropriate health and social care professionals, e.g. through clinical senates and networks, and draw on commissioning support, for instance around formal consultations and for procurement processes;
- Engaging with providers. Early engagement with both incumbent and potential new providers over potential changes to the services commissioned for a local population;
- Creating clear and transparent commissioning specifications that reflect the depth of engagement and set out the basis on which any contract will be awarded;
- Following proper procurement processes and legal arrangements, including even-handed approaches to providers;
- Ensuring sound record-keeping, including up to date registers of interests; and
- A clear, recognised and easily enacted system for dispute resolution.
- Complying with the requirements of the Bribery Act 2010

5.3 This Policy makes references throughout regarding the 7 Nolan Principles which fairly explains the CCG's expectations of those who undertake procurement work or decisions on behalf of the CCG (See Appendix 1).

In July 2011, the Bribery Act 2010 came into force making it more important than ever before that all staff are aware of and conduct CCG business in accordance with Nolan's seven principles. The Act reforms the criminal law of bribery, enabling simpler prosecution of offences. The Act creates a new offence whereby a criminal offence is committed if a commercial organisation fails to prevent bribery. The term commercial organisation encompasses all NHS bodies.

The relevant sections of the Act are:

- Section 1 – Offences of bribing another person
- Section 2 – Offences related to being bribed
- Section 7 – Failure of commercial organisations to prevent bribery

The CCG will commit a Section 7 offence if fails to prevent bribes being paid, directly or indirectly, by persons associated with them.

The Act states that an associated person may be an employee, agent or subsidiary. Section 7 is intended to have a broad scope and it is likely that other categories of individual, for example, contractors and agents, will fall within the definition.

Under the 2010 Bribery Act an organisation will be able to use in its defence evidence that demonstrates that it has adequate procedures in place which are designed to prevent bribes being paid and promotes a culture of awareness and compliance with this policy.

Under the Act penalties for a successful conviction include an unlimited fine and (in the case of individuals) imprisonment for up to ten years.

5.4 These general processes and safeguards should apply at all stages of the commissioning process, but will be particularly important at key decision points, e.g., whether and how to go out to procurement of new or additional services.

5.5 Ensuring that GB members and all relevant staff are aware of the particular considerations pertain to CCGs who hold responsibilities for delegated or joint commissioning of primary care.

## 6. Responsibilities and Roles

### Responsibilities

6.1 It is the responsibility of all staff employed or appointed by the CCG and those serving in a formal capacity to ensure that they are not placed in a position which creates a potential conflict between their private interests and their CCG duties.

6.2 The CCG needs to be aware of all situations where an individual has interests outside of his / her NHS Contract of Employment or other involvement with the CCG, where that interest has potential to result in a conflict of interest between the individual's private interests and their CCG duties.

6.3 All decision-makers must therefore declare relevant and material interests to the CCG upon appointment, when a new conflict of interest arises, or upon becoming aware that the CCG has entered into or proposes entering into a contract in which they or any person connected with them has any financial interest, either direct or indirect.

6.4 'Relevant and material interests' (requiring declaration) are defined as:

- Roles and responsibilities held within member practices

- Directorships, including non-executive directorships held in private companies or public limited companies (with the exception of those of dormant companies)
- Ownership or part ownership of companies, businesses or consultancies which may seek to do business with the CCG
- Shareholdings (more than **1%** or £10,000 in value) of companies in the field of health and social care;
- Membership of or a position of authority or trust in an organisation (e.g., charity, professional body or voluntary organisation) in the field of health and social care;
- Any connection with a voluntary or other organisation contracting for NHS services
- Research funding/grants that may be received by the individual or any organisation they have an interest or role in
- Interests in pooled funds that are under separate management (any relevant company included in this fund that has a potential relationship with the CCG must be declared)
- Formal interest with a position of influence in a political party or organisation
- Current contracts with the CCG in which the individual has a beneficial interest
- Any other employment, business involvement or relationship or those of a spouse or partner that conflicts, or may potentially conflict with the interests of the CCG.
- Personal healthcare needs or those of a spouse or partner that conflicts, or may potentially conflict with the interests of the CCG.
- Media appearances where members appear in the capacity of a health professional.

## Roles

### Accountable Officer of Croydon

6.5 The Accountable Officer has overall responsibility for ensuring Croydon CCG has appropriate governance policies and procedures in place to ensure the CCG works to best practice and complies with all relevant legislation, and this is delegated to the Director of Quality and Governance. They also have responsibility for ensuring the CCG applies the principles of this policy and that there are suitable resources to support its implementation.

The CCG will ensure that at least three lay members are appointed to the Governing Body, in accordance with NHS England recommendations, in order to strengthen their voice and influence and bring scrutiny to the decisions involving potentially conflicted members. The CCG Constitution will reflect this.

### Lay member for Governance and Conflicts of Interest

6.6 The lay member with responsibility for governance and conflicts of interest is responsible for reviewing the Register of Interests against the agenda for the Committee or Governing Body Meetings. The lay member will make themselves available to provide advice to any individual who believes they have, or may have, a conflict of interest. The Lay Member will consider development of a body of 'case

law' as a source of guidance, which may be reviewed, when providing advice. The lay member will undertake the role of Conflicts of Interest Guardian.

6.7 **Conflicts of Interest Guardian**

The role of Conflicts of Interest Guardian for the CCG will be undertaken by the lay member for Governance and Conflicts of Interest. In collaboration with the CCG Governing Body Secretary this individual will:

- Act as a conduit for GP practice staff, members of the public and healthcare professionals who have any concerns with regards to conflict of interest
- Be a safe point of contact for employees and workers of the CCG to raise any concerns in relation to this policy
- Support the rigorous application of conflict of interest principals and policies
- Provide independent advice and judgement to staff and judgement to staff and members where there is any doubt about how to apply conflicts of interest policies and principals in an individual situation
- Provide advice on minimising the risks of conflict of interest

They will be supported in this role by the CCG Governing Body Secretary. This role will also chair the Integrated Audit and Governance Committee (IGAC).

**Primary Care Commissioning Committee Chair**

The Primary Care Commissioning Committee will have a lay chair and a lay vice chair. The Lay Member for Governance and Conflicts of Interest should not be the Chair or Vice Chair of the Primary care Commissioning Committee. Where circumstances require that they chair all or part of any meetings in the absence of the Primary Care Commissioning Committee Chair or Vice-Chair, additional safeguards must be put in place to avoid compromising their role as the Conflicts of Interest Guardian in co-commissioning decisions. These are detailed in section 9.

**Governing Body Secretary**

6.8 The Governing Body (Board) Secretary is responsible for maintaining the Register of Declarations of Interests and Register of Gifts, Hospitality and Sponsorship, ensuring these are updated at least every 12 months and ensuring this is produced for the Chair at every Governing Body and Committee Meeting. The Governing Body Secretary will ensure that "Declarations of Interests" is a standard agenda item for all Committee and Sub-Committee meetings. In the event of withdrawal of a conflicted member, it is the responsibility of the Committee Secretary to monitor quorum and advise the Chair accordingly.
The Governing Body Secretary is responsible for maintaining a record of any breaches and mitigating actions, including publishing details of the breach on the CCG website.

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**Governing Body and Senior Management**

6.9 The Governing Body and senior management staff have a responsibility to declare any conflict of interest in line with this policy.

6.10 The Corporate Office will hold details of each query in regard to Conflict of Interest to provide an audit trail on each query and the action taken. These records may be used to compile a body of "case law" for use by the Conflicts of Interest Guardian when providing advice.

6.11 Managers of NHS Croydon CCG must ensure members of staff are aware of the policy and process to be followed.

6.12 It is the responsibility of all employees and appointees to familiarise themselves with this policy and comply with the provisions set out in it.

**Role of commissioning support units**

6.13 Commissioning Support Units (CSUs) 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 integrity of decision-making. CCGs are advised to ensure that any services they commission from CSUs, or that they secure through in- house provision, include this type of support. When using a CSU, CCGs should have systems to assure themselves that CSU 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).

6.14 Where a CCG is undertaking procurement, one way to demonstrate that the CCG is acting fairly and transparently is for the CSUs to prepare and present information on bids, including an assessment of whether providers meet pre-qualifying criteria and an assessment of which provider provides best value for money.

6.15 A CCG cannot, however, lawfully delegate commissioning decisions to an external provider of commissioning support. Although CSUs 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.

**Role of NHS England**

6.16 NHS England will support CCGs, where necessary, in meeting their duties in relation to managing conflicts of interest. In the context of co-commissioning, in doing so, CCGs will need to comply with the requirements of regulation 9 of the Procurement, Patient Choice and Competition Regulations.

6.17 NHS England will provide, an online training package for CCGs to use as part of their annual mandatory conflicts of interest training for CCG employees, governing body members, CCG committee and sub-committee members and any practice staff involved in CCG business. CCGs will be required to record their completion

rates as part of their annual conflicts of interest audit.

6.18 NHS England will also need to assure itself that CCGs are meeting their statutory duties in managing conflicts of interest, including having regard to the statutory guidance published by Monitor and NHS England. Where there are any concerns that a CCG is not meeting these duties, NHS England or Monitor could ask for further information or explanation from the CCG or take such other action as is deemed appropriate.

# 7. Non-compliance with policy:

## 7.1 Undeclared Conflicts of Interest

Any suspected breaches of this policy should be reported to the Conflict of Interest Guardian or the CCG Governing Body Secretary immediately. An appropriate person, unconnected with the breach, will be appointed to investigate and report on the outcome to the Integrated Governance and Audit Committee. Any breaches that are verified will be reported to NHS England by the CCG Governing Body Secretary and anonymised details of the breach will be published on the CCG website.

The CCG Whistleblowing Policy outlines the procedure for raising concerns should staff become aware of instances where conflicts of interest have not been declared:

- In the first instance, concerns should be raised with the relevant line manager, either verbally, or in writing. The manager will then decide what action to take.
- If staff feel unable to raise the matter with their manager, they should contact:
- A Director/member of the Senior Management Team
- Chief Finance Officer
- In exceptional circumstances staff can approach the Chair of the Audit Committee

Concerns may also be raised anonymously.

An investigation will be carried out to establish the facts of the concern, before deciding if there is a formal case to answer, and whether to proceed under CCG policies or procedures.

Any resulting investigation may need to be carried out under the terms of strict confidentiality, i.e. by not informing the subject of the issue until (or if) it becomes necessary to do so. This may be appropriate in cases of suspected fraud. Protection of service users is paramount in all cases.[1]

The CCG will:
- Treat all raised concerns in confidence
- Deal with concerns that come under the law and involve that agency
- Keep records of concerns received and report on this in annual reports
- Take appropriate action to resolve concerns
- Provide adequate feedback about the investigation of the concern

[1] Croydon CCG Whistleblowing Policy

7.2 The CCG Governing Body will view instances where this policy is not followed as serious and may take disciplinary action against individuals, which may result in dismissal, including from the Governing Body.

7.3 Any disciplinary action will be taken following the policy and procedures set out in the NHS Croydon CCG Disciplinary Policy and Procedures.

## 8. Register of Declarations of Interest

8.1 NHS Croydon CCG has established a Register of Declarations of Interest, which is held by the Board Secretary. The CCG will maintain one or more registers, updating at least once every 12 months, recording the interests of:

a) Its Practice Leads (representative of the membership of the CCG);
b) GP practice partners ((or where the practice is a company, each director) ;
c) Any practice staff directly involved with the business and/or decision-making activities of the CCG;
d) Members of its Governing Body;
e) Members and attendees, of its committees or sub-committees and the committees or sub-committees of its Governing Body; and
f) All CCG employees.

8.2 Declarations of interest made by members of the CCG Governing Body will be published on the group's website. An interest should remain on the public register for a minimum of 6 months after the interest has expired. In addition, the CCG must retain a private record of historic interests for a minimum of 6 years after the date on which it expired.

8.3 A web link to the CCG's register(s) of interests (including the register of gifts and hospitality) shall be published as part of the CCG's Annual Report and Annual Governance Statement.

8.4 The Register of Declarations of Interest will be reported to the NHS Croydon CCG Integrated Governance and Audit Committee annually.

8.5 All members of the CCG Governing Body will be required to complete a Declaration of Interests proforma upon appointment to their position. Where there are no interests to declare a nil return is required. Any subsequent interests shall be declared once the potential conflict of interest arises. Individuals will be asked to review and update the register at the beginning of every meeting of the Governing Body and its committees and at least every three months.

8.6 Other members of staff and other members of committees and groups should complete the form as soon as they identify a potential conflict of interest or if requested by the CCG's Governance team as part of the CCG's quarterly review of interests.

8.7 When an individual changes role or responsibility within the organisation or its governing body, any changes to the individuals' interests should be declared within 28 days of the relevant events or change. The Register of Interest shall note the date that any potential interest/interest is declared and action required.

8. 8 The Declaration of Interests proforma is attached at Appendix 2.

**Data Protection**

8.9 The information provided will be processed in accordance with data protection principles as set out in the Data Protection Act 1998. Data will be processed only to ensure that the Council of Members and Governing Body members act in the best interests of the group and the public and patients the group was established to serve. The information provided will not be used for any other purpose, unless otherwise stated within statutory legislation. Signing the declaration form will also signify that you consent to your data being processed for the purposes set out in this policy.

## 9. Declaration of Interests

9.1 The agenda (both public and confidential agenda) for meetings of the CCG Governing Body and also of its committees will contain a standing item at the commencement of each meeting, requiring members to declare any interests relating specifically to the agenda items being considered.

9.2 It shall be the responsibility of the Chair of the Governing Body and the Chairs of its committees to review the Register of Interests against the Agenda at the beginning of each meeting.

9.3 If it is not known what can be declared, or whether/when the declaration needs to be updated, advice should be sought from the Board Secretary or Corporate Affairs Manager

9.4 If during the course of a meeting, an interest not previously declared is identified, this shall be declared. Minutes of the meeting shall detail all declarations made.

9.5 Governing Body and committee members must be specific when declaring interests. They should state which agenda the potential conflict of interest relates to and the nature of that conflict.

9.6 Where an interest is significant or when the individual or a connected person has a direct financial interest in a decision, the individual should not take part in the discussion or vote on the item and should consider leaving the room when the matter is discussed. The Chair of the meeting may insist that a member leaves the room if they have a significant interest or a direct financial interest in a matter under discussion.

9.7 The minutes of the meetings will record the actions taken to manage a conflict of interest. i.e.:

- The points at which a member leaves the room and subsequently returns shall be recorded,
- The points at which a member withdraws from a discussion and subsequently re-joins will be recorded.
- When a member sits out of a vote will be recorded,
- When a member with a declared interest continues to take part in a discussion, the minutes will record how that conflict of interest is being managed within the meeting.

9.8 If there is any doubt as to whether an interest should be declared, a declaration should be made and / or advice sought from the CCG Governance Team or from the Lay Member of the Governing Body, with particular responsibility for governance and conflicts of interest (CoI Guardian).

9.9 **Waiver**

Where permitted under the Clinical Commissioning Group's Constitution or the conditions of its establishment, the Council of Members or Governing Body has the power to waive restrictions on any clinical professional governing body member participating in council of members or governing body business, where to authorise such a conflict would be in the interests of the Clinical Commissioning Group. The application of a waiver can, therefore, be used in the following situations: a member of the Council of Members or Governing Body is a clinical professional providing healthcare services to the CCG that do not exceed the average for other practices and NHS entities commissioned to provide services by the clinical commissioning group; or

Where the Council of Members or governing body member has a financial interest arising out of the delivery of some professional service on behalf of the CCG, and the conflict has been adjudged by the Chair and the Governance and CoI Guardian not to bestow any greater financial benefit to the member requesting the waiver than to other professionals in a similar relationship with the CCG.

Where the Chair and CoI Guardian have approved the use of the waiver, the Chair must have discussed it with the Accountable Officer before the meeting. In such circumstances where the waiver is used, the Council of Members or governing body member:

- Must disclose his/her interest as soon as practicable at the start of the meeting
- May participate in the discussion of the matter under consideration; but
- Must not vote on the subject under discussion.

The minutes of the meeting will formally record that the waiver has been used, and that this policy and the governing document provisions have been observed in managing that authorised conflict. Where a member has withdrawn from the meeting for a particular item, the Board Secretary will ensure that the member is protected from further exposure with relation to their conflict of interest through the restricted circulation of minutes. The member has an obligation to ensure that they remain mindful of their declared conflict and work with the secretariat to limit their exposure to information relevant to the conflict while supporting the efficient business administration of the Governing Body.

9.10 Where all of the GPs or other practice representatives on a decision-making body could have a material interest in a decision, particularly where the CCG is proposing to commission services on a single tender basis from all GP practices in the area, or where it is likely that all or most practices would wish to be qualified providers for a service under Any Qualified Provider regime, the decision should be referred to the Governing Body and exclude all GPs or other practice representatives with an interest from the decision-making process, i.e. so that the decision is made only by the non-GP members of the Governing Body including the lay members and the registered nurse and secondary care doctor; under the terms of the Croydon CCG Constitution a quorum can be made up in order to progress the item of business by inviting on a temporary basis one or more of the following:

- A member of the CCG who is an individual;
- An individual appointed by a member to act on its behalf in the dealings between it and the CCG;
- A member of a relevant Health and Wellbeing Board;
- A member of a Governing Body of another CCG.

9.11 **Decisions taken where a Governing Body or Committee member has an interest**

In the event of a committee having to decide upon a question in which a committee member has an interest, all decisions will be made by vote, with a simple majority required. A quorum must be present for the discussion and decision; interested parties will not be counted when deciding whether the meeting meets quorum. Interested committee members must not vote on matters affecting their own interests, even where the use of the waiver has been approved by the Chair and used.

All decisions under a Conflict of Interest will be recorded by the Committee Secretary and reported in the minutes of the meeting. The report will record:

- The nature and extent of the conflict;
- An outline of the discussion;
- The actions taken to manage the conflict,
- The use of the waiver and reasons for its implementation.

Where a committee member benefits from the decision, this will be reported in the Annual Report and Accounts, as a matter of best practice.

## 10. Managing Conflicts of Interest: contractors

10.1 Anyone seeking information in relation to procurement, or participating in procurement, or otherwise engaging with the CCG in relation to the potential provision of services or facilities to the CCG, will be required to make a declaration of interest.

10.2. Anyone contracted to provide services or facilities directly to the CCG will be subject to the same provisions of this policy in relation to managing conflicts of interests. This requirement will be set out in the contract for their services.

## Transparency in Procuring Services

10.3. The CCG recognises the importance in making decisions about the services it procures in a way that does not call into question the motives behind the procurement decision that has been made. The CCG will procure services in a manner that is open, transparent, non-discriminatory and fair to all potential providers.

10.4. The CCG will publish a Procurement Strategy approved by its Governing Body which will ensure that:

a) All relevant clinicians (not just members of the CCG) and potential providers, together with local members of the public, are engaged in the decision-making processes used to procure services;
b) Service redesign and procurement processes are conducted in an open, transparent, non-discriminatory and fair way; and
c) Reflects NHSE guidance with relation to the management of conflicts of interest

## Register of procurement decisions

10.5. CCGs also need to maintain a register of procurement decisions taken, including:

- 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); and
- A summary of any conflicts of interest in relation to the decision and how this was managed by the CCG; and
- The award decision taken.

10.6. The register should be updated whenever a procurement decision is taken.

10.7. In the interests of transparency, the register of interests and the register of decisions will be publicly available and easily accessible to patients and the public including by:

- Ensuring that both registers are available in a prominent place on the CCG's website; and making both registers available upon request for inspection at the CCG headquarters.

10.8. The CCG will also take into consideration any particular access needs of our stakeholders. For example, individuals without internet access may be directed to the local library or invited to view the register(s) at the CCG's headquarters.

10.9. The registers will form part of the CCG's annual accounts and will thus be signed off by external auditors. Further work will be carried out by NHS England on the specific arrangements for this.

## Procurement issues

10.10. The CCG will need to be able to recognise and manage any conflicts or potential conflicts of interest that may arise in relation to procurement.

10.11. The NHS Act, the Health and Social Care Act ("the HSCA") and associated regulations11 set out the statutory rules with which commissioners are required to comply when procuring and contracting for the provision of clinical services. They need to be considered alongside the Public Contract Regulations12 and, where appropriate, EU procurement rules. Monitor's Substantive guidance on the Procurement, Patient Choice and Competition Regulations advises that the requirements within these create a framework for decision making that will assist commissioners to comply with a range of other relevant legislative requirements.

10.12. The Procurement, Patient Choice and Competition Regulations place requirements on commissioners to ensure that they adhere to good practice in relation to procurement, 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.

10.13. The regulations set out that commissioners must:

- Manage conflicts and potential conflicts of interests when awarding a contract by prohibiting the award of a contract where the integrity of the award has been, or appears to have been, affected by a conflict; and
- Keep appropriate records of how they have managed any conflicts in individual cases.

10.14. Monitor has a statutory duty under section 78 of the HSCA to produce guidance on compliance with any requirements imposed by the regulations and how it intends to exercise the powers conferred on it by these regulations. Monitor's Substantive guidance on the Procurement, Patient Choice and Competition Regulations is the relevant statutory guidance. NHS England works closely with Monitor with regard to these matters and has engaged with Monitor in developing this revised guidance.

**General considerations and use of the template**

10.15. The most 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 or joint arrangements, but it will also need to be considered in respect of any commissioning issue where GPs are current or possible providers. CCGs are advised to address the factors set out in the procurement template at Appendix 8 when drawing up their plans to commission services.

10.16. The CCG is required to make evidence of their deliberations on conflicts publicly available. The template is one way of evidencing this and will support the CCG in fulfilling our duty in relation to public involvement. It will further provide appropriate assurance:

- That the CCG is seeking and encouraging scrutiny of its decision-making process;
- To Health and Wellbeing Boards, local Healthwatch and to local communities

that the proposed service meets local needs and priorities; it will enable them to raise questions if they have concerns about the approach being taken;
- To the audit committee and, where necessary, 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; and
- To NHS England in their role as assurers of the co-commissioning arrangements.

**Designing service requirements**

10.17. It is good practice to engage relevant providers, especially clinicians, in confirming that the design of service specifications will meet patient need. Such engagement, done transparently and fairly, is entirely legal. However, conflicts of interest can occur 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.

10.18. 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.

10.19. Such 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.

10.20. Other steps include:

- Advertise the fact that a service design/re-design exercise is taking place widely and invite comments from any potential providers and other interested parties (ensuring a record is kept of all interactions);
- As the service design develops, engage with a wide range of providers on an on-going basis to seek comments on the proposed design, e.g. via the commissioner's website or via workshops with interested parties;
- Use engagement to help shape the requirement to meet patient need but take care not to gear the requirement in favour of any particular provider(s);
- If appropriate, engage the advice of an independent clinical adviser on the design of the service;
- Be transparent about procedures;
- Ensure at all stages that potential providers are aware of how the service will be commissioned; and
- Maintain commercial confidentiality of information received from providers.

10.21. When engaging providers on service design, commissioners should bear in mind that they have ultimate responsibility for service design and for selecting the provider of services. Monitor has issued guidance on the use of provider boards in service design.

10.22. CCGs will also need to ensure that they have systems in place for managing conflicts of interest on an on-going basis, for instance, by monitoring a contract that has been awarded to a provider in which an individual commissioner has a

vested interest.

**Decision-making when a conflict of interest arises: primary medical care**

10.23. Procurement decisions relating to the commissioning of primary medical services should be made by a committee of the CCG's governing body. This 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.

10.24. In either case, the membership of the committee should be constituted so as to ensure that the majority is held by lay and executive members. In addition to existing CCG lay members, members may be drawn from the CCG's executive members, except where these members may themselves have a conflict of interest (e.g. if they are GPs or have other conflicts of interest). Provision could be made for the committee to have the ability to call on additional lay members or CCG members when required, for example where the committee would not be quorate because of conflicts of interest. It could also include GP representatives from other CCG areas and non-GP clinical representatives (such as the CCG's secondary care specialist and/or governing body nurse lead).

10.25. Any conflicts of interest issues would need to be considered on an individual basis. CCGs could also consider reciprocal arrangements with other CCGs in order to support effective clinical representation within the committee. The specific composition is a matter of determination for individual CCGs, subject to the provisions of their constitution. However, the Chair and Vice-Chair must always be lay members of the committee.

**Examples**

- Regulations require that a CCG governing body has at least 6 members, including its Chair and Deputy Chair. The members must include the CCG's Accountable Officer, Chief Financial Officer, registered nurse, secondary care specialist and two lay members (the CCG will endeavour to always have at least three lay members to assist in managing the risk of conflict). The committee with responsibility for commissioning primary care could consist of the above plus GP members. If GP members had to withdraw from decision making for conflict of interest reasons, the committee would still be quorate with a lay and executive majority.

- Alternatively the committee could be made up of the CCG's two lay members, two additional lay people (not members or employees of the CCG), the Chief Financial Officer, a GP member of the Governing Body and one other CCG member (executive or otherwise). That would create a committee of seven people and ensure that lay and executive membership was in the majority.

10.26. A standing invitation must be made to the CCG's local Healthwatch and Health

and Wellbeing Board to appoint representatives to attend commissioning committee meetings, including, where appropriate, for items where the public is excluded from a particular item or meeting for reasons of confidentiality. These representatives would not form part of the membership of the committee.

10.27. As a general rule, meetings of these committees, including the decision- making and the deliberations leading up to the decision, should be held in public (unless the CCG has concluded it is appropriate to exclude the public).

10.28. In joint commissioning arrangements, 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.

10.29. CCGs may wish to include decisions on other commissioning issues within the remit of the committee. They also may wish to designate an existing committee to incorporate the above responsibilities within their remit. Where a CCG does this, they should ensure that the membership and chairing arrangements are compliant with the above requirements, or that, when dealing with primary care procurement issues, the participating membership and chairing arrangements are adjusted to meet these requirements. Where an existing committee is so designated, the above requirements on Healthwatch and Health and Wellbeing Board participation and on meeting in public would apply for co-commissioning decisions.

10.30. The arrangements for primary medical care decision making 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.

**Dispute Resolution**

10.31. Where disputes arise, we would hope that in most cases these could be resolved informally, without recourse to a formal process. If however the dispute cannot be resolved informally, this section sets out the process by which the perceived breach will be handled.

Examples of disputes which may arise include:

- Clarification of scoring criteria and/or assessment
- Score weighting
- Application of SFIs
- Contract duration
- Assessment of impact upon existing providers and/or local health economy

10.32. The design of the procedure is based on the principle that disputes should be resolved at the most local level possible.

- The first port of call is Croydon CCG

- If the dispute is not successfully resolved at this level, the complaint should then be heard by the local Health and Wellbeing Board.
- If the provider is unhappy with the HWB response, it should be escalated to the NHSE.
- Subject to being invited by a member practice involved in a dispute, the practice may invite the local LMC to be informally involved.

10.33 Croydon CCG is committed to engaging with its members around strategic proposals and developments. However, where a member finds it has a dispute or grievance with the wider CCG as a whole, the Governing Body or committees to whom it has delegated powers with regard to:

- Matters of eligibility or disqualification; or
- The interpretation and application of their respective powers and obligations under the Constitution; or
- A decision which the CCG has made on behalf of its members; or
- Any other relevant matter that the CCG considers fair and equitable to be the subject of a complaint or guidance

The Governing Body's decision as a representative body is recognised as final subject only to legal requirements, matters of regional or national policy and supported by the principles of locally brokered mediation (see 9/9 (d)) to be instigated at the direction of the CCG Chair.

10.34. If the member wishes to raise an issue with the CCG as a whole:

a) In the first instance, the member may raise such an issue through the elected locality representative on the Governing Body, in writing within 60 days of the issue arising for resolution;

b) The locality representative on the Governing Body will respond to the member in writing within 30 working days, unless the locality representative is on leave or otherwise away, in which case the Chair can direct any other elected Governing Body member to receive and resolve the issue;

c) If the locality representative is unable to resolve the issue, the member may formally write to the Chair, or, if the Chair is unavailable, to the statutory vice Chair (lay member), clearly outlining the issues(s) and contact details. The Chair, in conjunction with the Chief Officer where appropriate, will contact the member within 30 working days through the member representative to resolve the dispute;

d) Where the dispute is unable to be resolved as above in (c), parties may decide, at their own cost, to refer to mediation, the independent third party mediator being appointed by the Centre for Effective Dispute Resolution.

10.35. **Objectives of the procedure**

The objectives of the procedure are as follows:

- To provide the CCG with an appropriate mechanism for dealing with reasonable disputes
- To resolve disputes transparently, fairly and consistently.
- To assure providers that the process is fair and transparent.

- To mitigate risks and protect the reputation of the CCG
- To prevent where possible legal challenge/ expensive external referral processes.

10.36. When handling disputes, Croydon CCG will:

- Commit to transparency
- Communicate the process and decision making criteria widely and in advance
- Engage all relevant stakeholders
- Enforce declarations of interest
- Publish findings within and across the CCG to enable consistency
- Be objective and base the analysis and the decision on objective information and criteria
- Maintain an audit trail

10.37 **The Procedure**

The CCG dispute resolution procedure is made up of the following stages:

**Stage 1: Making the Complaint**
Any complaint must be submitted to the Chair of NHS Croydon CCG in writing. The complaint will be acknowledged within five working days.

**Stage 2: Triage**
Following the receipt of the complaint, the CCG may get in contact with the complainant at this stage and request clarification or further information. If the complaint is not deemed to warrant proceeding, further the complainant is notified that the complaint will not progress.

If the complaint should be fast tracked to another organisation, the claimant is informed of the course of action.

Where the complaint is in scope and not subject to fast tracking, it will proceed to the next stage. In most cases, we would envisage that the triage process will be carried out within five working days.

**Stage 3: Chair review**
Following the triage, the CCG Chair will review the complaint to determine whether a swift resolution can be achieved without the need to involve the Governing Body. The Chair may call a meeting of the parties concerned to discuss the matter informally and without prejudice.

**Stage 4: The Governing Body**
If the complaint cannot be resolved by the Chair, the Governing Body will then formally review the complaint and may refer on to the Integrated Audit and Governance Committee to advice.

**Stage 5: The decision**
Once the Governing Body has made the decision, it will write to the complainant notifying them of the decision, explaining the rationale and necessary the course of action. It will also notify NHS England (NHSE) of the dispute and the outcome.

If the complainant does not believe that the case has been satisfactorily resolved it can appeal. The Governing Body may convene a separate forum to advice on the appeal. In most cases, this stage of the process is expected to take no longer than 25 days.

While the timescales set out for each stage above are illustrative, the process as a whole will take no longer than three months.

10.38 **Right of Appeal**
The expectation is that most complaints will be successfully resolved. However, if the complainant is unsatisfied by the results of this procedure, they can refer the complaint to the NHSE process. Appeals to NHSE must be made within 3 months of the complainant being informed of the CCG's decision.

**Record keeping**

10.39. As set out above, a clear record of any conflicts of interest should be kept by the CCG in its register of interests. It must also ensure that it records procurement decisions made, and details of how any conflicts that arose in the context of the decision have been managed. These registers should be available for public inspection as detailed above.

10.40. CCGs should ensure that details of all contracts, including the contract value, are published on their website as soon as contracts are agreed. Where CCGs decide to commission services through Any Qualified Provider (AQP), they should publish on their website the type of services they are commissioning and the agreed price for each service. Further, CCGs should ensure that such details are also set out in their annual report. Where services are commissioned through an AQP approach, they should ensure that there is information publicly available about those providers who qualify to provide the service.

## 11. Equality and Diversity Statement

11.1 The organisation is committed to ensuring that it treats its employees fairly, equitably and reasonably and that it does not discriminate against individuals or groups on the basis of their ethnic origin, physical or mental abilities, gender, age, religious beliefs or sexual orientation. An Equality Analysis has been completed for this policy.

11.2 If you have any concerns or issues with the contents of this policy or have difficulty understanding how this policy relates to you or your role, please contact the Corporate Office.

# 12. Monitoring Compliance and Effectiveness of the Policy

12.1 NHS Croydon CCG will ensure that all employees and decision-makers are aware of the existence of this policy. The following will be undertaken to ensure awareness:

- Introduction to the policy during local induction for new starters to the organisation
- Annual reminder of the existence and importance of the policy via internal communication methods
- Annual reminder to update declaration forms sent to all Governing Body members and committee members.

12.2 The policy will be reviewed annually by the Croydon CCG Integrated Governance and Audit Committee. Staff and decision-makers will be reminded of the policy and register of interests at least quarterly.

12.3 The Board Secretary will review register entries on a regular basis and take any action necessary as highlighted by the review.

12.4 Conflicts of interest management will form part of the internal audit cycle on an annual basis. This will be carried out according to NHS England guidance and using the template provided alongside it. The results of the audit will be reflected in the Annual Governance Statement.

# APPENDICES:

Appendix 1 – The Nolan Principles

Appendix 2 – Declaration of interests form for CCG members and employees

Appendix 3 – CCG Register of Interests Template

Appendix 4 – Declarations of Gifts and Hospitality Template

Appendix 5 – Register of Gifts and Hospitality Template

Appendix 6 – Declarations of Interest Checklist

Appendix 7 – Template for Recording Minutes of Meetings

Appendix 8 – Procurement Checklist

Appendix 9 – Procurement Decisions and Contracts Awarded Template

Appendix 10 – Declaration of Conflict of Interests for Bidders/Contractors Template

Appendix 11 – 10 Key Questions

Appendix 12 – NHS Clinical Commissioners, Royal College of General Practitioners and British Medical Association – Shared principles on conflicts of interest when CCGs are commissioning from member practices

Appendix 13 – Section 7 of Monitor's Substantive Guidance on the Procurement, Patient Choice and Competition Regulations

Appendix 14 – Summary of key aspects of the guidance on managing conflicts of interest relating to commissioning of new care models

Appendix 14 – Conflicts of Interest Policy Checklist

## Appendix 1: The Nolan Principles

The 'Nolan Principles' set out the ways in which holders of public office should behave in discharging their duties. The seven principles 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.

**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.

*Source: The First Report of the Committee on Standards in Public Life (1995)*

## Appendix 2: Declaration of Personal and Financial Interests Form – for members/ employees

**NHS Croydon Clinical Commissioning Group Member / employee/ Governing Body member / committee member (including committees of the Governing Body) declaration form: financial and other interests**

This form is required to be completed in accordance with the CCG's Constitution and section 14O of *The National Health Service Act 2006, the NHS (Procurement, Patient Choice and Competition) regulations 2013 and the Substantive guidance on the Procurement, Patient Choice and Competition Regulations*

**Notes:**

- Each CCG must make arrangements to ensure that the persons mentioned above declare any interest which may lead to a conflict with the interests of the CCG and /or NHS England and the public for whom they commission services in relation to a decision to be made by the CCG and/or NHS England or which may affect or appear to affect the integrity of the award of any contract by the CCG and/or NHS England.
- Within 28 days of a relevant event, members and employees need to register their financial and other interests.
- If any assistance is required in order to complete this form, then the member or employee should contact the SECSU Governance Team
- The completed form should be sent by both email and signed hard copy to the SECSU Governance Team. Any changes to interests declared must also be registered within 28 days of the relevant event by completing and submitting a new declaration form.
- Declarations of interest made by members of the CCG Governing Body will be published on the group's website.
- The register will be published
- Members and employees completing this declaration form must provide sufficient detail of each interest so that a member of the public would be able to understand clearly the sort of financial or other interest the member or employee has and the circumstances in which a conflict of interest with the business or running of the CCG might arise. If in doubt as to whether a conflict of interest could arise, a declaration of the interest should be made.

Interests that must be declared:

- Roles and responsibilities held within member practices
- Directorships, including non-executive directorships held in private companies or public limited companies (with the exception of those of dormant companies)
- Ownership or part ownership of companies, businesses or consultancies which may seek to do business with the CCG and /or with NHS England
- Shareholdings (more than 5%) of companies in the field of health and social care;

- Membership of or a position of authority or trust in an organisation (e.g., charity, professional body or voluntary organisation) in the field of health and social care;
- Any connection with a voluntary or other organisation contracting for NHS services
- Research funding/grants that may be received by the individual or any organisation they have an interest or role in;
- Interests in pooled funds that are under separate management (any relevant company included in this fund that has a potential relationship with the CCG must be declared)
- Formal interest with a position of influence in a political party or organisation
- Current contracts with the CCG in which the individual has a beneficial interest
- Any other employment, business involvement or relationship or that of a spouse or partner that conflicts, or may potentially conflict with the interests of the CCG.
- Any other role or relationship which the public could perceive would impair or otherwise influence the individual's judgement or actions in their role within the CCG. Whether such interests are those of the individual themselves or of a family member or close friend of the individual.
- Personal healthcare needs or those of a spouse or partner that conflicts, or may potentially conflict with the interests of the CCG.
- Media appearances where members appear in the capacity of a health professional.
- Other specific interests

NHS
Croydon Clinical Commissioning Group

## Declaration of Personal and Financial Interest Form 2018/19 – *(revised 30.09.16)*

| | | |
|---|---|---|
| **Individual's Name:** | | |
| **Practice Name** (if relevant): | | |
| **Role Title** (e.g. Chair, GP, lay member, head of commissioning etc.)**:** | | |
| **Role(s) within Croydon CCG** (Mark box(es) with an X)**:** | Employee | |
| | Contractor | |
| | Governing Body Member | |
| | Practice Representative on the Council of Members | |
| | GP Clinical Lead | |
| | GP Network Lead | |
| | Partner of a member practice | |
| | Practice Manager of a member practice | |
| | Other (please specify): | |
| **Committee Membership** (Mark box(es) with an X)**:** | Council of Members | |
| | Governing Body | |
| | Primary Care Commissioning Committee | |
| | Senior Management Team | |
| | Clinical Leadership Group | |
| | Integrated Audit and Governance Committee | |
| | OBC Programme Board | |
| | Quality Committee | |
| | Finance Committee | |
| | Remuneration Committee | |
| | Clinical Networks | |
| | Practice Managers' Forum | |
| | | |
| | Other (please specify relevant sub-group in rows below): | |
| | | |
| | | |
| | | |
| **Position within or relationship with SW London Commissioning Collaborative and/ or NHS England** (please specify) | | |

**PLEASE COMPLETE DECLARATIONS ON FOLLOWING PAGES BEFORE SIGNING AND RETURNING TO:**

Ben Smith@swlondon.nhs.uk

**Declaration of Personal and Financial Interest 2018-19 – NHS Croydon Clinical Commissioning Group**

| Type of Interest | Detail including any action taken to mitigate risk | Personal interests or that of a family member, close friend (Mark box/boxes with an X) | | Date(s) Interest relates to: From | To |
|---|---|---|---|---|---|
| Roles and responsibilities held within member practices | | Financial<br>Non- Financial interests | | | |
| | | Personal interests | | | |
| | | Interests of a family member/ close friend | | | |
| Directorships, including non-executive directorships, held in private companies or PLCs | | Financial<br>Non- Financial interests | | | |
| | | Personal interests | | | |
| | | Interests of a family member/ close friend | | | |
| Any connection with an organisation (including providers and the voluntary sector) seeking to contract for NHS services or do business with the CCG and/or with NHS England | | Financial<br>Non- Financial interests | | | |
| | | Personal interests | | | |
| | | Interests of a family member/ close friend | | | |
| Shareholdings (more than 5%) of companies operating or seeking to operate in the field of health and social care | | Financial<br>Non- Financial interests | | | |
| | | Personal interests | | | |
| | | Interests of a family member/ close friend | | | |
| Positions of authority in an organisation (e.g. charity or voluntary organisation) operating or seeking to operate in the field of health and social care | | Financial<br>Non- Financial interests | | | |
| | | Personal interests | | | |
| | | Interests of a family member/ close friend | | | |
| Research funding/grants that may be received by the individual or any organisation they have an interest or role in. | | Financial<br>Non- Financial interests | | | |
| | | Personal interests | | | |
| | | Interests of a family member/ close friend | | | |
| Other specific interests: Please state | | Financial<br>Non- Financial interests | | | |
| | | Personal interests | | | |
| | | Interests of a family member/ close friend | | | |
| Media appearances where you have appeared in the capacity as a healthcare professional | | Financial<br>Non- Financial interests | | | |
| | | Personal interests | | | |
| | | Interests of a family member/ close friend | | | |
| Access to healthcare requiring individually funded treatment | | Financial<br>Non- Financial interests | | | |
| | | Personal interests | | | |
| | | Interests of a family member/ close friend | | | |

| Type of Interest | Detail including any action taken to mitigate risk | Personal interests or that of a family member, close friend (Mark box/boxes with an X) | | Date(s) Interest relates to: From | To |
|---|---|---|---|---|---|
| Any other role or relationship which the public could perceive would impair or otherwise influence the individual's judgment or actions in their role within the CCG and/or with NHS England | | Financial<br>Non- Financial interests | | | |
| | | Personal interests | | | |
| | | Interests of a family member/ close friend | | | |
| Any secondary employment currently held outside the CCG including outside working hours | | Personal interests | | | |
| **No interests to declare** | **Nil return** | | | | |

*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 provided on this form 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 undertake to notify the CCG of any changes in my declarations as soon as is practicable and no later than 28 days after the change arises. I will review the accuracy of the information I have provided at least annually. I am aware that if I do not make full, accurate and timely declarations then this may place the CCG in breach of national NHS policy and could result in civil, criminal, or disciplinary action as a result.

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

**Signed:** **Date:**

**Signed:** **Position:** **Date:**

(Line Manager or Senior CCG Manager)

# Appendix 3: CCG Register of Interests Template

NHS
Croydon Clinical Commissioning Group

## Croydon CCG Register of Interests

| Name, Current position (s) held, and dates (i.e. Governing Body, Member, practice, Employee or other ) | Declared Interest- (Name of the organisation, nature of business and role) | Type of Interest | | | Is the interest direct or indirect? (I / D) | Nature of Interest | Date of Interest | | Action taken to mitigate risk |
|---|---|---|---|---|---|---|---|---|---|
| | | Financial Interests | Non-Financial Professional Interests | Non-Financial Personal Interests | | | From | To | |
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This form is available in excel format from the Corporate Office.

## Appendix 4: Declarations of Gifts and Hospitality Template

| Recipient Name | Position | Date of Offer | Date of Receipt (if applicable) | Details of Gift / Hospitality | Estimated Value | Supplier / Offeror Name and Nature of Business | Details of Previous Offers or Acceptance by this Offeror/ Supplier | Details of the officer reviewing and approving the declaration made and date | Declined or Accepted | Reason for Accepting or Declining | Other Comments |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | | |
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*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 or a Senior CCG Manager)
Please return to **Ben.Smith@swlondon.nhs.uk**

## Appendix 5: Register of Gifts and Hospitality Template

**Register of Gifts and Hospitality Template**

NHS
Croydon Clinical Commissioning Group

| Name | Position | Date of offer | Declined or Accepted? | Date of Receipt (if applicable) | Details of Gift /Hospitality | Estimated Value | Supplier / Offeror Name and Nature of business | Reason for Accepting or Declining |
|---|---|---|---|---|---|---|---|---|
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This form is available in excel format from the Corporate Office.

## Appendix 6: Declarations of Interest Checklist

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

| Timing | Checklist for Chairs | Responsibility |
|---|---|---|
| **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<br>Meeting members |
| | 4. **Members should contact the Chair** as soon as an actual or potential conflict is identified. | Meeting Chair |
| | 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.<br><br>**A template for a 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. | |
| **During the meeting** | 7. **Check and 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 | Meeting Chair and secretariat |

| Timing | Checklist for Chairs | Responsibility |
|---|---|---|
| | participate in the meeting, on a case by case basis, and this decision is recorded.<br><br>**10. As minimum requirement**, the following should be **recorded in the minutes of the meeting**:<br><br>• Individual declaring the interest;<br>• At what point the interest was declared;<br>• The nature of the interest;<br>• The Chair's decision and resulting action taken;<br>• The point during the meeting at which any individuals retired from and returned to the meeting - even if an interest has not been declared;<br><br>• **Visitors in attendance** who participate in the meeting must also follow the meeting protocol and declare any interests in a timely manner.<br><br>**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 updated onto the declaration of interest form;<br><br>**12.** All new completed declarations of interest should be **transferred onto the register of interests.** | Individual(s) declaring interest(s)<br><br>Designated person responsible for registers of interest |

## Template for recording any interests during meetings

| Report from <insert details of sub-committee/ work group> | |
|---|---|
| **Title of paper** | <insert full title of the paper> |
| **Meeting details** | <insert date, time and location of the meeting> |
| **Report author and job title** | <insert full name and job title/ position of the person who has written this report> |
| **Executive summary** | <include summary of discussions held, options developed, commissioning rationale, etc.> |
| **Recommendations** | <include details of any recommendations made including full rationale><br><include details of finance and resource implications> |
| **Outcome of Impact Assessments completed (e.g. Quality IA or Equality IA)** | <Provide details of the QIA/EIA. If this section is not relevant to the paper state 'not applicable'> |
| **Outline engagement – clinical, stakeholder and public/patient:** | <Insert details of any patient, public or stakeholder engagement activity. If this section is not relevant to the paper state 'not applicable'> |
| **Management of Conflicts of Interest** | <Include details of any conflicts of interest declared><br><br><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><br><br><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 :<br>Finance (insert job title)<br>Commissioning (insert job title)<br>Contracting (insert job title)<br>Medicines Optimisation (insert job title)<br>Clinical leads (insert job title)<br>Quality (insert job title)Safeguarding (insert job title)<br>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> |

## Summary report template to present discussions from preceding meetings

| Meeting | Date of Meeting | Chairperson (name) | Secretariat (name) | Name of person declaring interest | Agenda Item | Details of interest declared | Action taken |
|---|---|---|---|---|---|---|---|
| | | | | | | | |
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## Appendix 7: Template for Recording Minutes of Meetings

**Croydon Clinical Commissioning Group**
**Primary Care Commissioning Committee Meeting [Illustrative example only]**

**Date:** ***15 February 2017***
**Time:** ***2pm to 4pm***
**Location:** ***Room B, XXXX CCG***

**Attendees:**

| Name | Initials | Role |
|---|---|---|
| Philip Hogan | PH | Croydon CCG Governing Body Lay Member (Chair) |
| Roger Eastwood | RE | Croydon CCG Audit Chair Lay Member |
| Paulette Lewis | PL | Croydon CCG PPI Lay Member |
| Dr Jon Norman | JN | Secondary Care Doctor |
| Dr Agnelo Fernandes | AF | Clinical Chair, Governing Body |
| Jai Jayaraman | JR | Chief Executive – Local Healthwatch |

**In attendance from 2.35pm**

| | | |
|---|---|---|
| Martin Ellis | ME | Director of Primary & Out of Hospital Care |

| Item No | Agenda Item | Actions |
|---|---|---|
| 1 | **Chairs welcome** | |
| 2 | **Apologies for absence**<br><br><apologies to be noted> | |
| 3 | **Declarations of interest**<br><br>*PH 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 Croydon clinical commissioning group.*<br><br>*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://www.croydonccg.nhs.uk/news-publications/publications/Pages/Publications.aspx*<br><br>**Declarations of interest from sub committees.**<br>*None declared* | |

| | | |
|---|---|---|
| | **Declarations of interest from today's meeting**<br><br>*The following update was received at the meeting:*<br>• *With reference to business to be discussed at this meeting, MS declared that he is a shareholder in XXX Care Ltd.*<br><br>*PH declared that the meeting is quorate and that AF S 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 AF.*<br><br>*PH and AF discussed the conflict of interest, which is recorded on the register of interest, before the meeting and AF 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>*<br><br>*AF left the meeting, excluding himself from the discussion regarding xx.*<br><br>***<conclude decision has been made>***<br><br>***<Note the agenda item xx>***<br><br>*AF was brought back into the meeting.* | |
| **6** | **Any other business** | |
| **7** | **Date and time of the next meeting** | |

## Appendix 8: Procurement Checklist

# NHS Croydon
# Clinical Commissioning Group

[To be used when commissioning services from GP practices, including provider consortia or organisations in which GPs have a financial interest]

**Service:**

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

| **Service:** | |
|---|---|
| **Question** | **Comment/ Evidence** |
| 10. Why have you chosen this procurement route e.g., single action tender?[2] | |
| 11. What additional external involvement will there be in scrutinising the proposed decisions? | |
| 12. How will the CCG make its final commissioning decision in ways that preserve the integrity of the decision-making process and award of any contract? | |
| Additional question when qualifying a provider on a list or framework or pre selection for tender (including but not limited to any qualified provider) or direct award (for services where national tariffs do not apply) | |
| 13. How have you determined a fair price for the service? | |
| Additional questions when qualifying a provider on a list or framework or pre selection for tender (including but not limited to any qualified provider) where GP practices are likely to be qualified providers | |
| 14. How will you ensure that patients are aware of the full range of qualified providers from whom they can choose? | |
| Additional questions for proposed direct awards to GP providers | |
| 15. What steps have been taken to demonstrate that the services to which the contract relates are capable of being provided by only one provider? | |
| 16. In what ways does the proposed service go above and beyond what GP practices should be expected to provide under the GP contract? | |
| 17. What assurances will there be that a GP practice is providing high-quality services under the GP contract before it has the opportunity to provide any new services? | |

[2]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).

## Appendix 9: Procurement Decisions and Contracts Awarded Template

| **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 manager** (Name) | **Decision making process and name of decision making committee** | **Summary of conflicts of interest noted** | **Actions to mitigate conflicts of interest** | **Justification for actions to mitigate conflicts of interest** | **Contract awarded** (supplier name & registered address) | **Contract value (£)** (Total) **and value to CCG** | **Comments to note** |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | | | | |

This form is available in excel format from the Corporate Office.

## Appendix 10: Declaration of Conflict of Interests for Bidders/Contractors Template

This form is required to be completed in accordance with the CCG's Constitution, and s140 of the NHS Act 2006 (as amended by the Health and Social Care Act 2012) and the NHS (Procurement, Patient Choice and Competition) (No2) Regulations 2013 and related guidance.

### Declarations:

| **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** | |

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:

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

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

Signed:

On behalf of:

Date:

**Declaration of Financial and other Interests for Bidders/potential contractors/ service providers'**

**Notes:**

- All potential bidders/contractors/service providers, including sub-contractors, members of a consortium, advisers or other associated parties (Relevant Organisation) are required to identify any potential conflicts of interest that could arise if the Relevant Organisation were 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 in circumstances where the CCG is jointly commissioning the service with, or acting under a delegation from, NHS England. If any assistance is required in order to complete this form, the Relevant Organisation should contact ben.smith@swlondon.nhs.uk
- The completed form should be sent to [*specify relevant Commissioning lead]*.
- Any changes to interests declared either during the procurement process or during the term of any contract subsequently entered into by the Relevant Organisation and the CCG must notified to the CCG by completing a new declaration form and submitting it to ben.smith@swlondon.nhs.uk
- Relevant Organisations completing this declaration form must provide sufficient detail of each interest so that the CCG, NHS England and also a member of the public would be able to understand clearly the sort of financial or other interest the person concerned has and the circumstances in which a conflict of interest with the business or running of the CCG or NHS England (including the award of a contract) might arise.
- If in doubt as to whether a conflict of interests could arise, a declaration of the interest should be made.

Interests that must be declared (whether such interests are those of the Relevant Person themselves or of a family member, close friend or other acquaintance of the Relevant Person), include the following:

- The Relevant Organisation or any person employed or engaged by or otherwise connected with a Relevant Organisation (Relevant Person) has provided or is providing services or other work for the CCG or NHS England;
- A Relevant Organisation or Relevant Person is providing services or other work for any other potential bidder in respect of this project or procurement process;
- The Relevant Organisation or any Relevant Person has 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.

## Appendix 11: 10 Key Questions

These questions are provided as a prompt to CCGs in considering key issues when reviewing their current arrangements for managing conflicts of interest.

1. Do you have a process to identify, manage and record potential (real or perceived) conflicts of interest that could affect, or appear to affect, the integrity of an award of a contract, including those that could arise in relation to co- commissioning of primary care?

2. How will the CCG make its final commissioning decisions in ways that preserve the integrity of the decision-making process?

3. Have all conflicts and potential conflicts of interests been appropriately declared and entered in registers, including an explanation of how the conflict has been managed?

4. Have you made arrangements to make registers of interest accessible to the public?

5. Have you set out how you will you ensure fair, open and transparent decisions about:
   - Priorities for investment in new services;
   - The specification of services and outcomes; and
   - The choice of procurement route?

6. How will you involve patients, and the public, and work with your partners on the Health and Wellbeing Boards and providers (old and new) in informing these decisions?

7. What process will you use to resolve disputes with potential providers?

8. Have you summarised your intended approach in your constitution, and thought through how your governing body will be empowered to oversee these systems and processes – both how they will be put in place and how they will be implemented?

9. What systems will there be to monitor the patterns of decision making and how any conflicts of interest were managed?

10. Has your decision making body identified and documented in the constitution the process for remaining quorate where multiple members are conflicted?

# Appendix 12: NHS Clinical Commissioners, Royal College of General Practitioners and British Medical Association – Shared principles on conflicts of interest when CCGs are commissioning from member practices

*December 2014*

## 1. Introduction

The ability for CCGs to become involved in co-commissioning General Practice and primary care services has the potential to bring many benefits but it also brings with it the potential for perceived and actual conflicts of interest.

NHS Clinical Commissioners (NHSCC), the Royal College of General Practitioners (RCGP) and the British Medical Association (BMA) have decided to collectively outline their high level starting principles in managing conflicts of interest when CCGs commission from member practices. In large part this has brought together principles articulated in previous lines/guidance/steer from the above organisations and NHS England.

Our principles are applicable to each of the three primary care commissioning models open to CCGs and should not be seen as being directive or be interpreted to mean that we prefer one model over another. These decisions need to remain a local, professionally led, decision.

In developing these shared principles we would like them to sit alongside NHS England's updated guidance on Managing Conflicts of Interest (June 2016). We are on a journey regarding the co-commissioning of primary care and we will review these principles when needed and as CCGs work through the guidance.

It should be noted that this paper is not designed to address the issue of perceived or actual conflicts of interest in CCGs holding and performance managing GP contracts under co-commissioning arrangements.

## 2. Our headline shared principles around conflicts of interest

We collectively agree the following in relation to managing conflicts of interest when CCGs commission from member practices:

- If CCGs are doing business properly (needs assessments, consultation mechanisms, commissioning strategies and procurement procedures), then the rationale for what and how they are commissioning is clearer and easier to withstand scrutiny.

Decisions regarding resource allocation should be Evidence based, and there should be robust mechanisms to ensure open and transparent decision making.

- CCGs must have robust governance plans in place to maintain confidence in the probity of their own commissioning, and maintain confidence in the integrity of clinicians.
- CCGs should assume that those making commissioning decisions will behave ethically, but individuals may not realise that they are conflicted, or lack

awareness of rules and procedures. To mitigate against this, CCGs should ensure that formal prompts, training and checks are implemented to make sure people are complying with the rules. As a rule of thumb, 'if in doubt, disclose'

- CCGs should anticipate many possible conflicts when electing/selecting individuals to commissioning roles, and where necessary provide commissioners with training to ensure individuals understand and agree in advance how different scenarios will be dealt with.
- It is important to be balanced and proportionate – the purpose of these tools is not to constrain decision-making to be complex or slow.

## 3. Addressing perceived as well as actual conflicts of interest

Conflicts of interest in the NHS are not new and they are not always avoidable. The documents we reviewed to produce this paper were all clear that the existence of a conflict is not the same as impropriety and focus on how to avoid potential or perceived wrongdoing. Most importantly all acknowledge that perceived wrongdoing can be as detrimental as actual wrongdoing, and risks losing confidence in the probity of CCGs and the integrity of wider clinicians such as GPs in networks/federations, individual practices and partners.

The RCGP/NHS Confederation also notes evidence from the BMJ that people think they aren't biased by potential conflicts but often are so the common theme is - *if in any doubt it's important to disclose.*

The RCGP/NHS Confederation and NHS England Guidance identify four types of potential conflict of interest:

- Direct financial;
- Indirect financial (for example a spouse has a financial interest in a provider);
- Non-financial (i.e. reputation) and;
- Loyalty, i.e., to professional bodies

The BMA recognises that for CCGs there will be situations where the best decision for the population and taxpayers is not in the best interest of individual patients (for whom GPs are required to advocate) and that this can create a perceived conflict. The RCGP/NHS Confederation paper acknowledges this but in terms of the governance when commissioning services.

## 4. Planning for populations

CCGs must always demonstrate that their commissioned services meet the needs of their local populations, as such CCGs will need to work with their Health and Wellbeing Board's or other local strategic bodies to ensure there is alignment to local strategic plans.

What is clear from all the existing guidance is that CCGs will need to identify the situations where they are involving their governing body clinicians to strategically plan for their population, and situations where their governing body clinicians need to be separated from procurement, planning and decision-making processes. In the former it is critically important to secure clinical expertise. In the latter, the CCG will need to manage risks around perceived and actual conflicts in relation to the tendering of services.

The BMA outlines that decisions regarding resource allocation should be evidence based, and there should be robust mechanisms to ensure open and transparent decision making. As such, GP involvement must be agreed at each stage of the commissioning and procurement process so that potential risks of conflicts are appropriately defined and mitigated early on.

## 5. Good practice – for CCGs

All the guidance suggests CCGs must have robust governance plans in place to maintain confidence in the probity of their own commissioning, and maintain confidence in the integrity of clinicians.

The RCGP/NHS Confederation suggests using existing NHS guidance as a starting point:

- Identify potential conflicts
- Declare interests in a register
- Exclude individuals from discussion or decision making if financial interest exceeds 1% equity in the provider organisation - depending on the nature of the discussion (we would also add that includes considering the share of the contract value to make sure there are no loopholes, this might also apply to practices with profit sharing arrangements).
- Continue to manage conflicts post-decision i.e. contract managing (carefully separating overall strategy development for populations from individual procurement processes. The former will be important for CCG lay involvement will be important and include secondary care clinicians and non-executive Board nurses, the latter can be managed by managers.

NHS England guidance also says that an individual with a 'material interest' in an organisation which provides or is likely to provide significant business should not be member of CCG governing body. The BMA suggests anything above 5% equity is a material interest. The RCGP/NHS Confederation refer nce this threshold but also say that something lower than a 1% stake could also be a material interest (if the size of the bid is significant).

Clearly these thresholds need to be considered in relation to individual practices and GP partners once co-commissioning is in place. The perceived risks must be recognised early on and we feel some worked case study examples would be helpful for CCGs as they work through the updated guidance. NHSCC, the RCGP and the BMA are planning to work with NHS England and Monitor to identify these examples.

NHSCC believe that CCG lay members, secondary care doctors and nurses on governing bodies play a vital role in both the design, implementation, leadership and monitoring of conflicts of interest systems and processes. They can provide robust challenge and ultimately a protection for GPs working in both the commissioning and provision of health care. Enabling them to carry out their roles in this regard is vital.

CCGs should also be proactive in their approach when considering conflicts when electing/selecting people, doing a proper induction (i.e. include continuous training and review at both Governing Body and membership (assembly level) and ensuring understanding from individuals, and agree in advance how different scenarios will be dealt with. The CCG should ensure individuals are prompted to declare an interest but not absolved from their responsibility to declare as well. Again, CCG lay members, secondary

care doctors and nurse members of the governing body have a critical role in this process, as an independent arbiter and as those providing appropriate scrutiny and oversight.

NHS England's *Code of Conduct* guidance specifically explores when CCGs are commissioning services from their own GP member practices. When CCGs are commissioning from federations of practices, the same guidance should apply.

As practical support NHS England have also produced an updated code of conduct template for use when drawing up local plans (see their updated guidance). The template asks a series of questions to provide assurance to Health and Wellbeing Boards that the service meets local needs, and to the Audit Committee or external auditors that robust process was used to commission the service, select the appropriate procurement route and address potential conflicts of interest.

## 6. Good practice - for individuals

The current guidance suggests that individuals making decisions in CCGs do so with the Nolan principles of public life in mind: selflessness, integrity, objectivity, accountability, openness, honesty, and leadership.

They also refer to the guidance the General Medical Council (GMC) has produced for doctors including:

- You must not allow any interests you have to affect the way you prescribe for, treat, refer or commission services for patients.
- If you are faced with a conflict of interest, you must be open about the conflict, declaring your interest informally, and you should be prepared to exclude yourself from decision making.
- You must not try to influence patients' choice of healthcare services to benefit you, someone close to you, or your employer. If you plan to refer a patient for investigation, treatment or care at an organisation, NHS England's guidance indicates that individuals must declare an interest as soon as they come aware of it, and within 28 days. More informally, the RCGP/NHS Confederation also suggested the simple 'Paxman test' - whether explaining the situation to an investigative reporter/journalist like Jeremy Paxman would cause embarrassment. We think it would be helpful to develop this type of text into a tool for CCGs to use locally.

NHS England guidance indicates that individuals must declare an interest as soon as they come aware of it, and within 28 days.

Finally, the BMA suggested that commissioner doctors:

- Declare all interests, even if they are potential conflicts or the individual is unsure whether it counts as a conflict, as soon as possible.
- Update a register of interests every three months.
- Doctors must be familiar with their organisation's formal guidance.
- If individual doctors have any questions, they should seek advice from colleagues, err on the side of being open about conflicts of interest, or seek external advice from professional or regulatory bodies.

In addition to the above, the RCGP suggests there should also be a requirement to update the register of interests if a material difference arises in the circumstances of an individual at any point.

## 7. Procurement processes – CCGs and member practices

According to the BMA guidance, when CCGs are procuring community level services, these contracts are often below threshold requiring a competitive tender process.

There are a number of procurement options for CCGs in this situation – for example a few may include:

1. Competitive tender where GP practices are likely to bid
2. AQP where GP providers are likely to be among the qualified providers
3. Single tender from GP practices

From the guidance that exists, different questions arise around conflicts of interest when the above procurement processes are used. For example:

- Identifying whether approaches such as AQP are being used with the safeguards to ensure that patients are aware of the choices available to them.

  If single tender is the route used, CCGs will need to demonstrate a few things - depending on the nature of the procurement. For example that there are no other capable providers, why the successful bid was preferred to the others and the impact of disproportionate tendering costs. (Monitor's procurement guidance provides many useful steers on what CCGs will need to demonstrate)

For primary care co-commissioning, NHSCC believes one of the elements to include on procurement processes are the issues around standing financial orders and schemes of delegation which should not allow CCGs to divide primary care budgets into smaller budgets to circumvent the procurement process. NHSCC's lay member network will have examples/steer on the correct wording to use from previous local experiences.

Regardless of what the local application is the most important part of this process is transparency. NHS England says to set out the details, including the value of all contracts on the CCG website. If they are using AQP, the types and prices of services they are commissioning should be on the website. All of this information should also be in the CCG's annual report.

When making procurement decisions, the current guidance suggests that anyone with a perceived or material conflict should be excluded from decision making, either both excluded from voting or from discussion and voting. What is not clear in the guidance is how far back this rule goes – i.e. to the planning stage or just the development of the specification and procurement. CCGs will need to agree that line locally.

According to the reviewed guidance if all GPs and practice representatives due to make a decision are conflicted, then the CCG should be:

- Referring decisions to the governing body, so that lay members / the nurse / the secondary care doctor can make the final decision. However this may weaken GP clinical input into decision making.
- Co-opting individuals from the HWB or another CCG onto the governing body, or invite the HWB / another CCG to review proposal to provide additional scrutiny (these individuals would only be able to participate in decision making if this was set out in the CCG constitution)
- Ensure that quoracy rules enable decisions to be made in this circumstance
- Plan ahead to ensure that agreed processes are followed.
- Use an appropriately constituted arms-length external scrutiny committee to ensure probity (recommended by the BMA)

CCGs can use commissioning support services (CSS) to reduce potential conflicts, for example a CSS can help select the best procurement route and prepare bids etc. However, this cannot completely eliminate the conflict as CCGs are responsible for signing off specification and evaluation criteria, signing off which providers to invite to tender, and making the final decision on the selection of the provider. The CCG is responsible for ensuring that their CSS or other third parties are compliant with regulations in the same way that the CCG must be.

NHS England also suggest any questions about the service going beyond the scope of the GP contract should be discussed with NHS England area teams, clearly that would need review in light of new delegated co-commissioning arrangements.

**Networks and Federations**

We note that the increasing number of GP networks and federations could potentially present an added complication to local procurement processes. If most or all CCG member practices are part of the local federation, then this could mean that a practice not part of the federation/excluded from a federation may not have the opportunity to win contracts through competitive tender – because the process is more suited to federated organisations. One way to mitigate this would be for the CCG to always design and procure service specifications according to best practice (with openness and transparency), thereby supporting all practices to bid. One area to be careful about is when all the GPs on a governing body have a declared interest in local federations – this makes decision making and accountability complex and the CCG will need to work that through carefully with the input of its lay members and wider clinicians on the governing body. Again, an external scrutiny committee with non-conflicted clinicians such as from a neighbouring CCG may be helpful.

**8. Local engagement**

Separately, the BMA suggests that LMCs should be involved in CCGs either by formal consultation, a non-voting seat on governing body, or as an observer on governing body. They indicate that a non-voting governing body seat would be the best option. Neither of the other two papers we reviewed address this.

**9. Other conflicts of interest issues for consideration**

**Personal conflict**

The RCGP/NHS Confederation highlight that in CCG governing bodies a personal conflict can arise because CCG leaders are elected by their constituent GP members. There could be a perception that CCG governing bodies are favouring the most vocal or influential of their GP practice members. Related to this is the potential indirect interest for elected GPs to build a constituency of supporters within their CCG.

The CCG is responsible for ensuring that their CSS or other third parties are compliant with regulations in the same way that the CCG must be.

NHS England guidance suggests that in the case of every GP governing body member being conflicted, the lay members, registered nurse and secondary care doctor make the decision (and that the constitution is written so that this is quorate). This could however mean that decisions would be taken without a GP perspective. Alternatively, CCGs may bring in members of the Health and Wellbeing Board or another CCG to provide oversight, or as the BMA suggests use an external scrutiny committee to make decisions.

**Use of primary care incentive schemes**

In its guidance, the BMA highlights its concerns about the professional and ethical implications of CCGs applying incentive schemes to reduce referral or prescribing activity. The BMA urges any doctor, whether commissioner or provider, to consider the schemes carefully and ensure that scheme is based on clinical evidence. NHSCC suggests that one solution is to ensure the expertise of secondary care clinicians and nurses on governing bodies plays an important part in providing clinical input and lay members can scrutinize commercial/ financial and performance data.

The RCGP acknowledge that it is not ethical to under-treat or under-refer for financial gain, but is not unethical to 'review and reflect' on variations in referral/prescribing rates and try to reduce referrals in line with evidence or best practice.

**Note to the reader:**

This paper has been developed from a review of three guidance documents and brings together previous lines/guidance from NHSCC, NHS England, the RCGP and the BMA.

- BMA 'Conflicts of interest in the new commissioning system: Doctors in commissioning roles' April 2013
- RCGP/NHS Confederation 'Managing conflicts of interest in clinical commissioning groups' September 2011
- NHS England 'Managing conflicts of interest: guidance for clinical commissioning groups.' March 2013 (includes Commissioning Board Document that precedes it). We have also read across the paper to the new version of this document published December 2014.

NHSCC have also supplemented the principles raised in this paper with some points for steer that have been raised by members of its lay member network.

## Appendix 13: Section 7 of Monitor's Substantive Guidance on the Procurement, Patient Choice and Competition Regulations

### 7.1 Introduction

This section provides guidance for commissioners on handling conflicts of interest. Regulation 6(1) of the Procurement, Patient Choice and Competition Regulations prohibits commissioners from awarding a contract for NHS health care services where conflicts, or potential conflicts, between the interests involved in commissioning such services and the interests in providing them affect, or appear to affect, the integrity of the award of that contract.

Regulation 6(2) requires commissioners to maintain a record of how any conflicts that have arisen have been managed.

S.14O of the National Health Service Act 2006 includes further requirements relating to conflicts of interest. Guidance on how to comply with these requirements (including managing conflicts of interest) has been published by NHS England and is available on NHS England's website.

Members of commissioning organisations that are registered doctors will also need to ensure that they comply with their professional obligations, including those relating to conflicts of interest. These are described in the General Medical Council's guidance, *Good Medical Practice* and *Financial and commercial arrangements and conflicts of interest.* These are available on the General Medical Council's website.

### 7.2 What is a conflict?

Broadly, a conflict of interest is a situation where an individual's ability to exercise judgment or act in one role is/could be impaired or influenced by that individual's involvement in another role.

For the purposes of Regulation 6, a conflict will arise where an individual's ability to exercise judgment or act in their role in the **commissioning of services** is impaired or influenced by their interests in the **provision of those services**.

### 7.3 What constitutes an interest?

Regulation 6 of the Procurement, Patient Choice and Competition Regulations makes it clear that an interest includes an interest of:

- A member of the commissioner;
- A member of the governing body of the commissioner;
- A member of the commissioner's committees or sub-committees, or committees or sub-committees of its governing body; or
- An employee.

Other interests that might give rise to a conflict include the interests of any individuals or organisations providing commissioning support to the commissioner, such as CSUs, who

may be in a position to influence the decisions reached by the commissioner as a result of their role.

### 7.4 What interests in the provision of services may conflict with the interests in commissioning them?

A range of interests in the provision of services may give rise to a conflict with the interests in commissioning them, including:

- **Direct financial interest** - for example, a member of a CCG or NHS England who has a financial interest in a provider that is interested in providing the services being commissioned or that has an interest in other competing providers not being awarded a contract to provide those services. Financial interests will include, for example, being a shareholder, director, partner or employee of a provider, acting as a consultant for a provider, being in receipt of a grant from a provider 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).
- **Indirect financial interest** - for example, a member of a CCG or NHS England whose spouse has a financial interest in a provider that may be affected by a decision to reconfigure services. Whether an interest held by another person gives rise to a conflict of interests will depend on the nature of the relationship between that person and the member of the CCG or NHS England. Depending on the circumstances, interests held by a range of individuals could give rise to a conflict including, for example, the interests of a parent, child, sibling, friend or business partner.
- **Non-financial or personal interests** - for example, a member of a CCG or NHS England whose reputation or standing as a practitioner may be affected by a decision to award a contract for services or who is an advocate or representative for a particular group of patients.
- **Professional duties or responsibilities.** For example, a member of a CCG who has an interest in the award of a contract for services because of the interests of a particular patient at that member's practice.

Commissioners will also need to consider whether any previous or prospective roles or relationships may give rise to a conflict of interest. A conflict of interest may arise, for example, where a person has an expectation of future work or employment with a provider that is bidding for a contract.

### 7.5 Conflicts that affect or appear to affect the integrity of an award

Even if a conflict of interest does not actually affect the integrity of a contract award, a conflict of interest that appears to do so can damage a commissioner's reputation and public confidence in the NHS. Regulation 6 of the Procurement, Patient Choice and Competition Regulations therefore also prohibits commissioners from awarding contracts in these circumstances.

As well as affecting the decision to award a contract and to which provider, a conflict of interest may affect a variety of decisions made by a commissioner during the commissioning cycle in a way that affects, or appears to affect, the integrity of a contract

award decision taken at a later point in time. For example, conflicts of interest might affect the prioritisation of services to be procured, the assessment of patients' needs, the decision about what services to procure, the service specification/design, the determination of qualification criteria, as well as the award decision itself.

Conflicts might arise in many different situations. A conflict of interest might arise, for example where the spouse of a staff member of a local area team at NHS England is employed by a provider that is bidding for a contract. A conflict could also arise where a CCG is deciding whether to procure particular services from GP practices in the area or from a wider pool of providers, or where it is deciding whether to commission services that would reduce demand for services provided by GP practices under the NHS General Medical Services contract.

Depending on the circumstances of the case, there may be a number of different ways of managing a conflict or potential conflict of interest in order to prevent that conflict affecting or appearing to affect the integrity of the award of the contract.

It will often be straightforward to exclude a conflicted individual from taking part in decisions or activities where that individual's involvement might affect or appear to affect the integrity of the award of a contract. The commissioner will need to consider whether in the circumstances of the case it would be appropriate to exclude the individual from involvement in any meetings or activities in the lead up to the award of a contract in relation to which the individual is conflicted, or whether it would be appropriate for the individual concerned to attend meetings and take part in discussions, having declared an interest, but not to take part in any decision-making (not having a vote in relation to relevant decisions). It is difficult to envisage circumstances where it would be appropriate for an individual with a material conflict of interest to vote on relevant decisions.

Where it is not practicable to manage a conflict by simply excluding the individual concerned from taking part in relevant decisions or activities, for example because of the number of conflicted individuals, the commissioner will need to consider alternative ways of managing the conflict. For example, depending on the circumstances of the case, it may be possible for a CCG to manage a conflict affecting a substantial proportion of its members by:

- Involving third parties who are not conflicted in the decision-making by the CCG, such as out-of-area GPs, other clinicians with relevant experience, individuals from a Health and Wellbeing Board or independent lay persons; or
- Inviting third parties who are not conflicted to review decisions throughout the process to provide ongoing scrutiny, for example the Health and Wellbeing Board or another CCG.

Whether a conflict of interests affects or appears to affect the integrity of a contract award (such that the commissioner may not award the contract) will depend on the circumstances of the case. The list of factors in the box below is not exhaustive, but covers some of the core factors that a commissioner is likely to need to consider in deciding whether it is appropriate to award a contract. See box below.

**Conflicts that affect or appear to affect the integrity of a contract award:** Examples of factors that a commissioner is likely to need to consider in deciding whether or not it can award a contract:

- The nature of the individual's interest in the provision of services, including whether the interest is direct or indirect, financial or personal, and the magnitude of any interest;
- Whether and how the interest is declared, including at what stage in the process and to whom;
- The extent of the individual's involvement in the procurement process, including, for example, whether the individual has had a significant influence on service design/specification, has played a key role in setting award criteria, has been involved in deliberations about which provider or providers to award the contract to and/or has voted on the decision to award the contract; and
- What steps have been taken to manage the actual or potential conflict (or example, via an external review of the decisions taken throughout the procurement process, including whether a conflict of a member of a CCG has been dealt with in accordance with the CCG's constitution).

### 7.6 Recording how conflicts have been managed

Regulation 6 of the Procurement, Patient Choice and Competition Regulations also requires commissioners to maintain a record of how any conflicts that have arisen have been managed.

Commissioners will need to include all relevant information to demonstrate that the conflict was appropriately managed. See box below.

**Examples of what information a record might contain:**
Commissioners might include the following information in a record of how a conflict of interest has been managed:

- The nature of the individual's interest in the provision of services, including whether the interest is direct or indirect, financial or personal, and the magnitude of any interest;
- Whether and how the interest is declared, including at what stage in the process and to whom;
- The extent of the individual's involvement in the procurement process, including, for example, whether the individual has had a significant influence on service design/specification, has played a key role in setting award criteria, has been involved in deliberations about which provider or providers to award the contract to and/or has voted on the decision to award the contract; and
- What steps have been taken to manage the actual or potential conflict (or example, via an external review of the decisions taken throughout the procurement process, including whether a conflict of a member of a CCG has been dealt with in accordance with the CCG's constitution).

## Appendix 14: Summary of key aspects of the guidance on managing conflicts of interest relating to commissioning of new care models

### Introduction

1. Conflicts of interest can arise throughout the whole commissioning cycle from needs assessment, to procurement exercises, to contract monitoring. They arise in many situations, environments and forms of commissioning.

2. Where CCGs are commissioning new care models[3], particularly those that include primary medical services, it is likely that there will be some individuals with roles in the CCG (whether clinical or non-clinical), that also have roles within a potential provider, or may be affected by decisions relating to new care models. Any conflicts of interest must be identified and appropriately managed, in accordance with this statutory guidance.

3. This annex is intended to provide further advice and support to help CCGs to manage conflicts of interest in the commissioning of new care models. It summarises key aspects of the statutory guidance which are of particular relevance to commissioning new care models rather than setting out new requirements. Whilst this annex highlights some of the key aspects of the statutory guidance, CCGs should always refer to, and comply with, the full statutory guidance.

### Identifying and managing conflicts of interest

4. The statutory guidance for CCGs is clear that any individual who has a material interest in an organisation which provides, or is likely to provide, substantial services to a CCG (whether as a provider of healthcare or provider of commissioning support services, or otherwise) should recognise the inherent conflict of interest risk that may arise and should not be a member of the governing body or of a committee or sub-committee of the CCG.

5. In the case of new care models, it is perhaps likely that there will be individuals with roles in both the CCG and new care model provider/potential provider. These conflicts of interest should be identified as soon as possible, and appropriately managed locally. The position should also be reviewed whenever an individual's role, responsibility or circumstances change in a way that affects the individual's interests. For example where an individual takes on a new role outside the CCG, or enters into a new business or relationship, these new interests should be promptly declared and appropriately managed in accordance with the statutory guidance.

6. There will be occasions where the conflict of interest is profound and acute. In such scenarios (such as where an individual has a direct financial interest which gives rise to a conflict, e.g., secondary employment or involvement with an organisation which benefits financially from contracts for the supply of goods and services to a CCG or aspires to be a new care model provider), it is likely that CCGs will want to consider whether, practically, such an interest is manageable at all. CCGs should note that this

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

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

7. Where a member of CCG staff participating in a meeting has dual roles, for example a role with the CCG and a role with a new care model provider organisation, but it is not considered necessary to exclude them from the whole or any part of a CCG meeting, he or she should ensure that the capacity in which they continue to participate in the discussions is made clear and correctly recorded in the meeting minutes, but where it is appropriate for them to participate in decisions they must only do so if they are acting in their CCG role.

8. CCGs should take all reasonable steps to ensure that employees, committee members, contractors and others engaged under contract with them are aware of the requirement to inform the CCG if they are employed or engaged in, or wish to be employed or engaged in, any employment or consultancy work in addition to their work with the CCG (for example, in relation to new care model arrangements).

9. CCGs should identify as soon as possible where staff might be affected by the outcome of a procurement exercise, e.g., they may transfer to a provider (or their role may materially change) following the award of a contract. This should be treated as a relevant interest, and CCGs should ensure they manage the potential conflict. This conflict of interest arises as soon as individuals are able to identify that their role may be personally affected.

10. Similarly, CCGs should identify and manage potential conflicts of interest where staff are involved in both the contract management of existing contracts, and involved in procurement of related new contracts.

**Governance arrangements**

11. Appropriate governance arrangements must be put in place that ensure that conflicts of interest are identified and managed appropriately, in accordance with this statutory guidance, without compromising the CCG's ability to make robust commissioning decisions.

12. We know that some CCGs are adapting existing governance arrangements and others developing new ones to manage the risks that can arise when commissioning new care models. We are therefore, not recommending a "one size fits" all governance approach, but have included some examples of governance models which CCGs may want to consider.

13. The principles set out in the general statutory guidance on managing conflicts of interest (paragraph 19-23), including the Nolan Principles and the Good Governance Standards for Public Services (2004), should underpin all governance arrangements.

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

Primary Care Commissioning Committee

15. Where a CCG has full delegation for primary medical services, CCGs could consider delegating the commissioning and contract management of the entire new care model to its Primary Care Commissioning Committee. This Committee is constituted with a lay and executive majority, and includes a requirement to invite a Local Authority and Healthwatch representative to attend (see paragraph 97 onwards of the CCG guidance).

16. Should this approach be adopted, the CCG may also want to increase the representation of other relevant clinicians on the Primary Care Commissioning Committee when new care models are being considered, as mentioned in Paragraph 98 of this guidance. The use of the Primary Care Commissioning Committee may assist with the management of conflicts/quorum issues at governing body level without the creation of a new forum/committee within the CCG.

17. If the CCG does not have a Primary Care Commissioning Committee, the CCG might want to consider whether it would be appropriate/advantageous to establish either:

    a) A **new care model commissioning committee** (with membership including relevant non-conflicted clinicians, and formal decision making powers similar to a Primary Care Commissioning Committee ("NCM Commissioning Committee"); or

    b) A separate **clinical advisory committee**, to act as an advisory body to provide clinical input to the Governing Body in connection with a new care model project, with representation from all providers involved or potentially involved in the new care model but with formal decision making powers remaining reserved to the governing body ("NCM Clinical Advisory Committee").

NCM Commissioning Committee

18. The establishment of a NCM Commissioning Committee could help to provide an alternative forum for decisions where it is not possible/appropriate for decisions to be made by the Governing Body due to the existence of multiple conflicts of interest amongst members of the Governing Body. The NCM Commissioning Committee should be established as a sub-committee of the Governing Body.

19. The CCG could make the NCM Commissioning Committee responsible for oversight of the procurement process and provide assurance that appropriate governance is in place, managing conflicts of interest and making decisions in relation to new care models on behalf of the CCG. CCGs may need to amend their constitution if it does not currently contain a power to set up such a committee either with formal delegated

decision making powers or containing the proposed categories of individuals (see below).

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

NCM Clinical Advisory Committee

21. This advisory committee would need to include appropriate clinical representation from all potential providers, but have no decision making powers. With conflicts of interest declared and managed appropriately, the NCM Clinical Advisory Committee could formally advise the CCG Governing Body on clinical matters relating to the new care model, in accordance with a scope and remit specified by the Governing Body.

22. This would provide assurance that there is appropriate clinical input into Governing Body decisions, whilst creating a clear distinction between the clinical/provider side input and the commissioner decision-making powers (retained by the Governing Body, with any conflicts on the Governing Body managed in accordance with this statutory guidance and constitution of the CCG).

23. From a procurement perspective the Public Contracts Regulations 2015 encourage early market engagement and input into procurement processes. However, this must be managed very carefully and done in an open, transparent and fair way. Advice should therefore be taken as to how best to constitute the NCM Clinical Advisory Committee to ensure all potential participants have the same opportunity. Furthermore it would also be important to ensure that the advice provided to the CCG by this committee is considered proportionately alongside all other relevant information. Ultimately it will be the responsibility of the CCG to run an award process in accordance with the relevant procurement rules and this should be a process which does not unfairly favour any one particular provider or group of providers.

24. When considering what approach to adopt (whether adopting an NCM Commissioning Committee, NCM Clinical Advisory committee or otherwise) each CCG will need to consider the best approach for their particular circumstances whilst ensuring robust governance arrangements are put in place. Depending on the circumstances, either of the approaches in paragraph 17 above may help to give the CCG assurance that there was appropriate clinical input into decisions, whilst supporting the management of conflicts. When considering its options the CCG will, in particular, need to bear in mind any joint / delegated commissioning arrangements that it already has in place either with NHS England, other CCGs or local authorities and how those arrangements impact on its options.

## Provider engagement

25. It is good practice to engage relevant providers, especially clinicians, in confirming that the design of service specifications will meet patient needs. This may include providers from the acute, primary, community, and mental health sectors, and may include NHS, third sector and private sector providers. Such engagement, done transparently and fairly, is entirely legal. However, conflicts of interest, as well as challenges to the fairness of the procurement process, can arise if a commissioner engages selectively with only certain providers (be they incumbent or potential new providers) in developing a service specification for a contract for which they may later bid. CCGs should be particularly mindful of these issues when engaging with existing / potential providers in relation to the development of new care models and CCGs must ensure they comply with their statutory obligations including, but not limited to, their obligations under the National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations 2013 and the Public Contracts Regulations 2015.

## Further support

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

# Appendix 15: 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;<br>• Aims and objectives of the policy;<br>• Consider the CCG's constitution and specified requirements in terms of conducting business appropriately;<br>• Consider the legal requirements in terms of managing conflicts of interest;<br>• Consider any other appropriate regulations;<br>• Scope of the policy <whom the policy applies to><br>• Commitment to review <include frequency> |
| Definition of an interest | • Definition of an interest:<br>• Types of an interest, including:<br>  ○ Financial interests;<br>  ○ Non-financial professional interests<br>  ○ Non-financial personal interests; or<br>  ○ 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<br><br>Refer to paragraphs 13 to 17 of the CCG Guidance for further information |
| Principles | • Principles of good governance for consideration, include those set out in the following:<br>  ○ The Seven Principles of Public Life (commonly known as the Nolan Principles);<br>  ○ The Good Governance Standards of Public Services;<br>  ○ The Seven Key Principles of the NHS Constitution;<br>  ○ The Equality Act 2010 |
| Declaring conflicts of interest | • Consideration should be given to the statutory requirements;<br>• Detail the types of interests to be declared - as outlined in the *definition of an interest* section;<br>• Details of when a conflict of interest should be declared;<br>• State the contact details of the nominated person to whom declarations of interest should be reported to;<br>• 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.<br><br>A declaration of interests template should be appended to the policy |

| Conflicts of interest policy- checklist | Key areas for consideration |
|---|---|
| Register(s) of conflicts of interest | • Consideration should be given to the statutory requirements;<br><br>• One or more registers of interest should be maintained for the following:<br>  ○ All CCG employees;<br>  ○ All members of the CCG;<br>  ○ Members of the governing body;<br>  ○ Members of the CCG's committees and sub-committees;<br>  ○ Any self-employed consultants or other individuals working for the CCG under a contract for services.<br><br>• 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;<br>• Stipulate publication arrangements for registers of interests in line with the guidance.<br><br>A register of interests template should be appended to the policy |
| Declaration of gifts and hospitality | • Consideration should be given to the statutory requirements;<br>• Consideration of risks when accepting gifts and hospitality;<br>• Define acceptable types of gifts and hospitality;<br>• Define the process for reporting gifts and hospitality;<br>• State the contact details of the nominated person to whom declarations of gifts and hospitality should be reported to.<br><br>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;<br>• Consideration should be given to the time period for updating the registers of gifts and hospitality upon receiving a declaration of gifts and hospitality in line with the guidance;<br>• Stipulate publication arrangements for registers of gifts and hospitality in line with the guidance.<br><br>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:<br>  ○ Whether conflicts of interest should exclude individuals from appointment;<br>  ○ Assessing materiality of interest;<br>  ○ Determining the extent of the interest.<br><br>• The role of CCG lay members in managing organisational conflicts of interest, including the following:<br>  ○ Conflicts of interest guardian;<br>  ○ Primary care commissioning committee Chair. |
| | |

| Conflicts of interest policy- checklist | Key areas for consideration |
|---|---|
| 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.<br><br>• Define the procedure to be followed in governing body, committee and sub-committee meetings, including:<br>○ Declarations of interest checklist (a template should be appended to the policy);<br>○ Register of interests declared to be available for the Chair in advance of the meeting;<br>○ Process for declaring interests during the meeting;<br>○ Recording minutes of the meeting including interests declared.<br><br>• Procedures to be followed for managing conflicts of interest which arise during a governing body, committee or sub-committee meeting, including, where appropriate:<br>○ Excluding the conflicted individual(s) from any associated discussions and decisions;<br>○ 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;<br>○ Clearly recording the agenda item for which the interest has been declared.<br><br>See paragraphs 72 to 94 of the CCG Guidance (Managing conflicts of interest at meetings) for further details<br><br>• Consider openness and transparency in decision making processes through:<br>○ Effective record keeping in the form of clear minutes of the meeting.<br>○ All minutes should clearly record the context of discussions, any decisions and how any conflicts of interest were raised and managed.<br><br>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:<br><br>• Service design, this can either increase or reduce the level of perceived or actual conflicts of interest;<br>○ Consider public and patient involvement and provider engagement in service design;<br>○ Consider how you involve PPI in needs assessment, planning and prioritisation to service design, procurement and monitoring;<br>○ Consider how you will engage relevant providers, especially clinicians, in confirming the design of service specifications- ensuring an audit train/ evidence base is maintained;<br>○ Consider how you ensure provider engagement is in accordance with the three main principles of procurement law, namely equal treatment, non-discrimination and transparency<br>○ Are specifications clear and transparent?<br><br>• Procurement, are there clear processes to recognise and manage any conflicts or potential conflicts of interest that may arise in relation to procurement |

| Conflicts of interest policy- checklist | Key areas for consideration |
|---|---|
| | ○ Consideration should be given to statutory regulations and guidance when procuring and contracting clinical services;<br>○ 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;<br>○ 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.<br><br>A procurement template and register of procurement decisions should be appended to the policy.<br><br>• 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;<br>○ Process for recording any declared interests in the minutes of the meeting; and how these are managed;<br>○ Consider commercial sensitivity of information i.e. which information should be disseminated.<br><br>A template for recording minutes of the contract meeting should be appended to the policy. |
| Raising concerns | • Key areas for consideration:<br>○ When should a concern regarding conflicts of interest be reported;<br>○ What is the process for reporting concerns;<br>○ Who should concerns be raised with;<br>○ How will concerns be investigated;<br>○ Who is responsible for making the decision;<br>○ How do you ensure confidentiality;<br>○ 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:<br>○ How the breach is recorded;<br>○ How it is investigated;<br>○ The governance arrangements and reporting mechanisms;<br>○ Clear links to whistleblowing and HR policies;<br>○ Communications and management of any media interest;<br>○ When and who to notify NHS England;<br>○ Process for publishing the breach on the CCG website. |