

MEETING DATE:	11 April 2013	 North Lincolnshire Clinical Commissioning Group REPORT TO THE CLINICAL COMMISSIONING GROUP GOVERNING BODY
AGENDA ITEM NUMBER:	Item 7.3	
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JOB TITLE:	Assistant Senior Officer quality & Assurance	
DEPARTMENT:	CCG	

CONFLICT OF INTEREST POLICY

PURPOSE/ACTION REQUIRED:	Approval
CONSULTATION AND/OR INVOLVEMENT PROCESS:	NL Audit Group
FREEDOM OF INFORMATION:	<i>Is this document releasable under FOI at this time? Yes</i> Public

1. PURPOSE OF THE REPORT:					
<p>The attached draft Conflict of Interest Policy (COI) has been developed by the Corporate Services Department of the CSU for local CCG's.</p> <p>Whilst Section 8 of the NL CCG Constitution sets out the management, recording and reporting for COI; the CSU have advised that the CCG should have a separate policy setting out arrangements in more general terms that supplement the constitution The attached is also in line with guidance from the NCB.</p>					
2. STRATEGIC OBJECTIVES SUPPORTED BY THIS REPORT:					
Continue to improve the quality of services	x				
Reduce unwarranted variations in services					
Deliver the best outcomes for every patient					
Improve patient experience					
Reduce the inequalities gap in North Lincolnshire					
3. IMPACT ON RISK ASSURANCE FRAMEWORK:					
<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="padding: 2px;">Yes</td> <td style="width: 20px;"></td> <td style="padding: 2px;">No</td> <td style="padding: 2px;">x</td> </tr> </table>	Yes		No	x	
Yes		No	x		

4. IMPACT ON THE ENVIRONMENT – SUSTAINABILITY:

Yes		No	x
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5. LEGAL IMPLICATIONS:

Yes		No	x
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6. RESOURCE IMPLICATIONS:

Yes		No	x
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7. EQUALITY IMPACT ASSESSMENT:

Yes	x	No	
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8. PROPOSED PUBLIC & PATIENT INVOLVEMENT AND COMMUNICATIONS:

Yes		No	x
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9. RECOMMENDATIONS:

The CCG is asked to: -

- Approve the Conflict of Interest Policy

CONFLICTS OF INTEREST POLICY

Date

(once approved, add Month and Year)

Authorship:	CSU Corporate Strategy & Policy Manager
Committee Approved:	North Lincolnshire Governing Body
Approved date:	
Review Date:	[insert date 2 year's after approved date]
Equality Impact Assessment	Completed - Screening
Sustainability Impact Assessment	Completed
Target Audience:	Council of Members Governing Body and its Committees and Sub-Committees and CCG Staff
Policy Reference No:	
Version Number:	1

The intranet version is the only version that is maintained. Any printed copies should, therefore, be viewed as 'uncontrolled' and as such may not necessarily contain the latest updates and amendments.

POLICY AMENDMENTS

Amendments to the Policy will be issued from time to time. A new amendment history will be issued with each change.

New Version Number	Issued by	Nature of Amendment	Approved by & Date	Date on Intranet

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1 INTRODUCTION

Section 140 of the 2006 Health Act, as amended by section 25 of the 2012 Act, requires CCGs to make arrangements to manage conflicts of interest. This policy sets out those arrangements, taking account of the NHS Commissioning Board (NCB) *Code of Conduct: Managing conflicts of interest where GP practices are potential providers of CCG commissioned service* (see Appendix A), supplemented with some example scenarios (see Appendix B) and in line with Section 8 of the North Lincolnshire Clinical Commissioning Group's Constitution (see summary at Appendix D).

In addition to the specific arrangements in this policy, the CCG will embody public service values and principles in all its business transactions as outlined in the Business Conduct Policy.

2 ENGAGEMENT/POLICY DEVELOPMENT

This policy consolidates and extends previous PCT policy documents, in line with the CCG's Constitution, the NCB Code of Conduct referred to above and national guidance issued in February 2012 on managing conflicts of interest specifically for GPs and other clinical commissioners¹.

3 IMPACT ANALYSES

3.1 Equality

As a result of performing the analysis, the policy does not appear to have any adverse effects on people who share *Protected Characteristics* and no further actions are recommended at this stage. The supporting paperwork is attached.

3.2 Sustainability

As a result of performing the analysis, the policy does not have any effects in terms of sustainability. The supporting paperwork is attached.

3.3 Bribery Act 2010

This policy is designed to contribute to the CCG's obligation to ensure adequate measures are in place to prevent acts of bribery within the meaning of the Bribery Act 2010. Responsibilities are outlined in more detail in the CCG's Business Conduct Policy.

The Bribery Act 2010 came into force in July 2011 and has particular relevance to this policy. The Act created three relevant criminal offences which cover the offering, promising or giving of a financial or other advantage and the requesting, agreeing to receive or accepting of a financial or other advantage. It increased the maximum penalty for bribery to 10 years' imprisonment, with an unlimited fine. Furthermore the Act introduced a 'corporate offence' of failing to prevent bribery by the organisation not having adequate preventative procedures in place.

Further information on the Bribery Act can be found at www.opsi.gov.uk/acts. A list of frequently asked questions is available from the CSU Corporate Strategy and Policy Manager.

4 SCOPE

This policy applies to the Council of Members, Members of the Governing Body and Members of, and attendees at, its committees and sub committees (both voting and non-voting members), Lay Members and all CCG staff.

Individuals working on behalf of the CCG or providing services or facilities to the CCG will be made aware of their obligations with regard to declaring conflicts or potential conflicts of interest. This requirement will be written into contract documentation.

5 POLICY PURPOSE & AIMS

The CCG recognises that conflicts of interest are unavoidable and therefore has in place arrangements to seek to manage them. The measures outlined in this policy are aimed at ensuring that decisions made by the CCG will be taken, and seen to be taken, uninfluenced by external or private interests.

6 DEFINITIONS

A conflict of interest occurs where an individual's ability to exercise judgement or act in one role is, or could be, impaired or otherwise influenced by his or her involvement in another role or relationship. The individual does not need to exploit his or her position or obtain an actual benefit, financial or otherwise. A potential for competing interests and/or a perception of impaired judgement or undue influence can also be a conflict of interest.

The important things to remember are that:

- 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.

(Towards Establishment: Creating responsive and accountable CCGs (NHS Commissioning Board February 2012)).

In line with Section 8.2.3 of the Constitution, a conflict of interest will include (but is not necessarily limited to):

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

Examples of interests that will be deemed to be relevant and material will include but are not limited to:

- Roles and responsibilities held within member practices.
- Membership of a Partnership (whether salaried or profit sharing) seeking to enter into any contracts with the CCG.
- Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the CCG.
- Directorships, including non-executive Directorship held in private or public limited companies seeking to enter into contracts with the CCG.
- Shareholdings of companies in the field of health and social care seeking to enter into contracts with the CCG.
- Positions of authority in an organisation (e.g. charity or voluntary organisation) in the field of health and social care.
- Any interest that they are (if registered with the General Medical Council) required to declare in accordance with paragraph 55 of the GMC's publication 'Management for Doctors' or any successor guidance.
- Any interest that they (if they are registered with the Nursing and Midwifery Council) would be required to declare in accordance with paragraph 7 of the NMC's publication 'Code of Professional Conduct' or any successor Code.
- Any interest which does or might constitute a conflict of interest in relation to the specification for or award of any contract to provide goods or services to the CCG.
- Any research funding or grants that may be received by the individual or any organisation that they have an interest or role in.
- Any 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.

Examples of those individuals likely to have potential conflicts of interest or undue influence could be CCG staff, GPs in practice in the CCG, practice managers and Lay Members.

7 ROLES, RESPONSIBILITIES AND DUTIES

7.1 It is the responsibility of everyone to ensure they are not placed in a position which risks, or appears to risk, conflict between their private interests and their NHS duties. The Council of Members, Members of the Governing Body and Members (both voting and non-voting) of its committees and sub committees, Lay Members and all CCG staff are responsible for ensuring that they are fully aware of their responsibilities under this policy and that they are fully compliant at all times.

7.2 The Audit Group will review the arrangements for the declaration and management of conflicts of interest and provide assurances to the Governing Body that adequate systems and processes are in place to ensure compliance, especially in relation to the development of new services/contracts or changes to existing services/contracts

7.3 In any transaction undertaken in support of the CCG's commissioning functions (including conversations between two or more individuals, e-mails, correspondence and other communications), individuals must ensure, where they are aware of an interest, that they conform to the management arrangements for conflicts of interest.

7.4 Where the CCG commissions services from GP practices, the general safeguards will be supplemented by additional safeguards which form the separate

NCB Code of Conduct (Appendix A). This will ensure maximum transparency and probity and provide reassurance that commissioning decisions have been made fairly and in the best interests of patients. This will be particularly the case where a single source tender route is used. The Code of Conduct covers how the system can be assured that these extra services are not part of the 'core' primary medical services contract.

7.5 If in doubt, an individual should assume that a potential conflict of interest exists. Transparency demands that individuals are explicitly and clearly aware of their responsibilities and duties in this context. Should there be any doubt about the relevance of an interest, this should be discussed with the Chief Finance Officer.

7.6 NHS employees are advised not to engage in outside employment which may conflict with their NHS work. They are advised to tell their employer if they think they may be risking a conflict of interest in this area and the declaration can be made on the form at Appendix C.

7.7 Declaring Interests

All individuals who hold positions of authority or who can **make or influence** decisions must:

- declare their interest(s) through a Register of Interests;
- declare any relevant interests during discussions and proceedings so that any comments they make are fully understood by all others to be within that context;
- ensure that where this conflict could have, or could be perceived to have, a material impact on any decision or process, the individual will play no part in influencing or making the relevant decision.
- note that interests will be published on the CCG's website in line with the CCG's value to be transparent in its decision making processes.

All individuals covered by the scope of this policy are also required to declare any relevant personal or business interests and any relevant personal or business interests of their spouse, civil partner, cohabitee, family member or any other relationship (including friendship) which may influence or may be perceived to influence their judgement.

Individuals will declare any interest that they have, in writing, as soon as they are aware of it and in any event no later than 28 days after becoming aware. A form to be used for this purpose is included at Appendix C.

Where an individual is unable to provide a declaration in writing, for example, if a conflict becomes apparent in the course of a meeting, they will make an oral declaration at the meeting, and provide a written declaration as soon as possible thereafter. The declaration will be minuted.

Even if an interest has already been declared, it should be declared at the start of any meeting where matters relating to that interest are discussed and this should be minuted.

7.8 Declaring Interest on Appointment

Individuals applying for posts at the CCG or seeking appointment to the Governing Body and any of its committees and sub committees will be required to declare any potential conflicts of interest during the appointment process. Where a question

arises as to whether this may impact on the ability to appoint individuals, further guidance should be sought from the Chief Finance Officer.

7.9 Registers of Interest

The Business Manager, on behalf of the Chief Finance Officer will maintain registers of all relevant and material interests and positions of influence declared by members of the:

- Council of Members
- Governing Body
- Committees and sub committees
and
- Employees

Registers will be reviewed annually by the Audit Group with an assurance report provided to the Governing Body, to include explanations of any concerns and how these were managed.

Any changes/additions to declarations registered should be notified to the Business Manager as soon as possible after the change occurs for recording in the register.

Registers will be published on the CCG's website with the exception of staff below grade 8 who do not have a position of influence on any CCG Committee or sub-committee. All information may have to be disclosed, if requested under the Freedom of Information Act.

Declared interests of the Council of Members, the Governing Body and its committees will be published in the CCG's Annual Report and Accounts.

7.10 Management Arrangements

Full details of how declared interests should be managed are as outlined in Section 8.4 of the Constitution (for ease of reference see extract at Appendix D) and in line with Section 3 of the NCB Code of Conduct at Appendix A. Examples of possible scenarios and how to manage them are included as Appendix B.

Where no previous declaration has been made, the Chair of the meeting will determine how this should be managed, in line with the management arrangements and may require the individual to withdraw from the meeting or part of it. The agreed actions should be recorded in the minutes.

7.11 Interests of the Chair of a Meeting

Where the Chair of a meeting has a relevant interest, whether previously declared or not, in relation to the scheduled or likely business of the meeting, the Deputy Chair will act as Chair for the relevant part of the meeting and may require the Chair to withdraw for that part of the discussion. If there is no deputy Chair, the meeting will select one and the meeting must ensure that arrangements for the management of the conflict of interest are followed.

7.12 Effects of withdrawal

Where 50% of members of a meeting are required to withdraw, the Chair (or deputy) will determine whether or not the discussion can proceed. This decision will be based on whether the meeting is quorate, as set out in Standing Order 3.7.1 (in

relation to the Governing Body) and in line with the terms of reference (for all other meetings). Where a quorum cannot be convened the Chair will consult with the Audit Group Chair to ensure timely management of the issue. Possible actions are set out in Section 8.4.10 of the Constitution (see Appendix D).

Any arrangements made or agreed in a meeting will be recorded in the minutes.

8 DECLARATIONS IN RELATION TO PROCUREMENT

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 publish a Procurement Policy approved by its Governing Body which includes specific reference to conflicts of interest and 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 design and re-design services;
- b) service redesign and procurement processes are conducted in an open, transparent, non-discriminatory and fair way

Where a relevant and material interest or position of influence exists in the context of the specification for, or award of, a contract the individual will be expected to:

- Declare the interest
- Ensure that the interest is recorded in the register
- Withdraw from all discussion on the specification or award
- Not have a vote in relation to the specification or award.

Individuals will be expected to declare any interest early in the procurement process if they are to be a potential bidder in that process. In addition, where someone is to be part of the tender evaluation panel or decision making process regarding the award of the contract, any potential conflict of interest must be declared at the earliest opportunity. Failure to do so could result in the procurement process being declared invalid and possible suspension of the relevant individual from the CCG.

Potential conflicts will vary to some degree depending on the way in which a service is being commissioned eg:

- Where a CCG is commissioning a service through **Competitive Tender** (i.e. seeking to identify the best provider or set of providers for a service) a conflict of interest may arise where GP practices or other providers in which CCG members have an interest are amongst those bidding.
- Where the CCG is commissioning a service through **Any Qualified Provider** a conflict could arise where one or more GP practices (or other providers in which CCG members have an interest) are amongst the qualified providers from whom patients can choose. Guidance within the GMC's core guidance Good Medical Practice (2006) and reiterated in its document Conflicts of Interest (2008) Indicates, in such cases, that:

"You must act in your patients best interests when making referrals and when providing or arranging treatment of care.

You must not ask for or accept any inducement, gift or hospitality which may affect or be seen to affect the way you prescribe, treat or refer patients. You must not offer such inducements to colleagues:

- if you have financial or commercial interest in organisations providing healthcare or in pharmaceutical or other biomedical companies, these interests must not affect the way you prescribe for, treat or refer patients;*
- if you have a financial or commercial interest in an organisation to which you plan to refer a patient for treatment or investigation, you must also tell the patient about your interest. When treating NHS patients you must also tell the healthcare provider.”*

The GMC also provides the following general guidance:

- you may wish to note on the patient’s record when an unavoidable conflict of interest arises; and*
- if you have a financial interest in an institution and are working under an NHS employers’ policy you should satisfy yourself, or seek other assurance from your employing or contracting body, that systems are in place to ensure transparency and to avoid, or minimise the effects of, conflicts interest. You must follow the procedures governing the schemes.*

The CCG will also adhere to the principles and guidance set out in the ‘Principles and Rules for Cooperation and Competition (NHS & DH July 2010) and the Procurement Guide for Commissioners of NHS Funded Services (NHS & DH July 2010).

9 BREACHES OF THE POLICY

Breaches of this policy may be investigated and may result in the matter being treated as a disciplinary offence under the CCG’s disciplinary procedure. Failure to adhere to the provisions of this policy may constitute a criminal offence of fraud, as an individual could be gaining unfair advantages or financial rewards for themselves, a family member or a close associate. Any suspicion that a relevant interest may not have been declared should be reported to the Chief Finance Officer.

10 IMPLEMENTATION

Following approval by the Governing Body, this policy will be distributed to the CCG Senior Leadership Team for dissemination to all their staff. Copies of the policy will also be sent to the Chairs of all committees and sub committees for dissemination to all members.

11 TRAINING & AWARENESS

This policy will be made available to all Members and staff via the CCG's website. Notice of all approved policies placed on the website will be included in CCG briefing processes. The policy will be brought to the attention of all new Members and staff via the induction process.

Advice on this policy can be obtained from the Chief Finance Officer, Chair of the Audit Group or the CSU Corporate Strategy and Policy Manager.

12 MONITORING & AUDIT

The Audit Group will keep under review the arrangements for the management of conflicts of interest, annually review the registers of interest and provide an annual assurance report to the Governing Body.

13 POLICY REVIEW

This policy will be reviewed in two years. Earlier review may be required in response to exceptional circumstances, organisational change or relevant changes in legislation/guidance, as instructed by the senior manager responsible for this policy'.

14 REFERENCES

- ¹Managing Conflicts of Interest in CCGs – NHS Federation & RCGP Centre for Commissioning
- BMA's Ensuring Transparency & Probity Guidance
- Institute of Chartered Secretaries & Administrators Chartered Secretaries Guidance Note 100618 June 2010
- NHS Wirral Commissioning/Procurement of Health Services Appendix D – Approvals Process
- Section 140 of the 2006 Health Act, as inserted by section 25 of the 2012 Act
- Towards Establishment: Creating responsive and accountable CCGs together with Technical Appendix 1 – Managing conflicts of interest (NHS Commissioning Board February 2012)
- Bribery Act 2010
- Policy on Business Conduct & Management of Conflicts of Interest – template for CCGs developed by Internal Auditor, North Yorkshire Service.

15 ASSOCIATED DOCUMENTS

- North Lincolnshire CCG's Constitution including Standing Orders, Scheme of Reservation & Delegation and Prime Financial Policies.
- Procurement Policy
- Business Conduct Policy
- Induction Policy
- Whistleblowing Policy

APPENDICES

- A NCB Code of Conduct: Managing conflicts of interest where GP practices are potential providers of CCG commissioned services
- A(i) Example scenarios on how to manage conflicts within a meeting.
- B Commissioning cycle and potential conflicts of interest
- C Form and guidance for making declarations of interest
- D Extract from North Lincolnshire CCG's Constitution – Section 8.4

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Code of Conduct: Managing conflicts of interest where GP practices are potential providers of CCG commissioned services *(taken from NCB document dated October 2012)*

Introduction

Managing potential conflicts of interest appropriately is needed to protect the integrity of the NHS commissioning system and protect clinical commissioning groups (CCGs) and GP practices from any perceptions of wrong-doing.

The CCG's Conflicts of Interest Policy supports the principles for managing conflicts of interest as identified in the CCG's constitution in Section 8. In Section 7.5 the policy states that 'Where the CCG commissions services from GP practices, the general safeguards described [in the policy] will be supplemented by additional safeguards which will form a separate **Code of Conduct** to ensure maximum transparency and probity and provide reassurance that commissioning decisions have been made fairly and in the best interests of patients.'

This Code of Conduct sets out additional safeguards that the CCG will use when commissioning services for which GP practices could be potential providers.

Background

The NHS Commissioning Board (NHS CB) will be responsible for commissioning primary care services under the GP contract. At the same time, it is an essential feature of the reforms that CCGs should be able to commission a range of community-based services, including primary care services, to improve quality and outcomes for patients.

Where the provider for these services might be a GP practice¹ the CCG will need to be able to demonstrate that those services:

- clearly meet local health needs and have been planned appropriately;
- go beyond the scope of the GP contract; and
- the appropriate procurement approach is used.

Such services will be commissioned using the NHS standard contract rather than the GP contract (as current 'local enhanced services' are). It is anticipated that the resources currently associated with local enhanced services (with the exception of public health services) will form part of CCGs' baseline allocations, so that they can determine how best to use these resources.

CCGs could also make payments to GP practices for:

- promoting improvements in the quality of primary medical care (e.g. reviewing referrals and prescribing)²; or
- carrying out designated duties as healthcare professionals in relation to areas such as safeguarding.

Procurement requirements

¹ This could also be a provider consortium of practices, or a provider organisation in which GPs have a financial interest. The term 'GP practice' is generally used to denote any of these arrangements.

² The NHS Commissioning Board will give CCGs delegated powers to commission local enhanced services for these activities.

The Secretary of State for Health will make regulations placing requirements on commissioners to ensure that they adhere to good practice in relation to procurement, do not engage in anti-competitive behaviour, and promote the right of patients to make choices about their healthcare. It is anticipated that these regulations will set out high-level requirements in relation to managing conflicts of interest.

The NHS Commissioning Board is to publish procurement guidance for CCGs to provide support in meeting the requirements of the regulations. This will draw on the current Procurement Guide for commissioners of NHS-funded services, which includes guidance on managing conflicts of interest throughout the process: pre-procurement, during procurement and post-procurement.

The CCG will need to decide, subject to the proposed Department of Health (DH) regulations on procurement and choice, and subject to current procurement rules set out in the Public Contracts Regulations 2006, where it is appropriate to commission community-based services through competitive tender or an Any Qualified Provider (AQP) approach and where through single tender. In general, commissioning through competitive tender or AQP will introduce greater transparency and help reduce the scope for conflicts.

There may, however, be circumstances where the CCG could reasonably commission services from GP practices on a single tender basis, i.e. where they are the only capable providers or where the service is of minimal value.

Principles and main content

The proposed additional safeguards are designed to:

- maintain confidence and trust between patients and GPs;
- enable the CCG and its member practices to demonstrate that they are acting fairly and transparently and that members of CCGs will always put their duty to patients before any personal financial interest;
- ensure that the CCG operates within the legal framework but is not bound by over-prescriptive rules that risk stifling innovation or slowing down the services it wishes to commission to improve quality and productivity; and
- build on existing guidance, in particular the Procurement Guide for commissioners of NHS-funded services and Principles & Rules of Cooperation & Competition.

The Code adds to the general guidance in *Towards establishment: Creating responsive and accountable CCGs* by providing advice on:

- the additional factors that the CCG should address when drawing up plans for services that might be provided by GP practices;
- the steps that the CCG should take to assure the Audit Committee, Health and Wellbeing Board(s) and, where necessary, the auditors that these services are appropriately commissioned from GP practices;
- recommended procedures for decision-making in cases where all the GPs (or other practice representatives) sitting on a decision-making group have a potential financial interest in the decision;
- arrangements for publishing details of payments to GP practices;
- the potential role of commissioning support services; and the supporting role of the NHS Commissioning Board.

Code of Conduct

1. Factors to address when commissioning services from GP practices

The attached template will be used by the CCG to assure itself, the Audit Committee, and local communities, Health and Wellbeing Boards and auditors where required, when commissioning services that may potentially be provided by GP practices.

Setting out these factors in a consistent and transparent way as part of the planning process will enable the CCG to seek and encourage scrutiny and enable local communities and Health and Wellbeing Boards to raise questions if they have concerns about the approach being taken.

The CCG will make these completed templates publicly available on request.

The first set of questions are intended to apply equally to:

- services that the CCG is proposing to commission through competitive tender where GP practices are likely to bid;
- services that the CCG is proposing to commission through an Any Qualified Provider' (AQP) approach, where GP practices are likely to be among the qualified providers that offer to provide the service; and services that a CCG is proposing to commission through single tender from GP practices.

The question on pricing applies to the AQP and single tender approaches. There are specific questions on AQP about safeguards to ensure that patients are aware of the range of choices available to them. These requirements apply also to GP practices as providers of services, but it is essential that the CCG too satisfies itself and others that these safeguards will be in place before commissioning the service.

The remaining questions are specific to single tenders from GP practices and focus on providing assurance that:

- there are no other capable providers, i.e. that this is the appropriate procurement route. The CCG will obtain advice from its procurement advisor (Commissioning Support Unit) on this point
- the proposed service goes beyond the scope of the services provided by GP practices under their GP contract. The CCG will discuss this with the NHS CB local area team if there is in any doubt on this point.

2. Providing assurance

The CCG will address the factors set out in the template when drawing up plans to commission a service for which GP practices may be potential providers. The CCG will provide appropriate assurance:

- to Health and Wellbeing Boards and to local communities that the proposed service meets local needs and priorities; and
- 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.

3. Preserving integrity of decision making process when all or most GPs have an interest in a decision

Where certain members of a decision-making body have a material interest, they will either be excluded from relevant parts of meetings, or join in the discussion but not participate in the decision-making itself (i.e. not have a vote) (see *Appendix Ai of the Conflicts of Interest Policy for example scenarios*). In many cases, e.g. where a limited number of GPs have an interest, it should be straightforward for relevant individuals to be excluded from decision-making.

In other cases, 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 AQP.

In these cases the CCG will:

- refer the decision 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;
- consider co-opting individuals from a Health and Wellbeing Board or from another CCG onto the governing body – or inviting the Health and Wellbeing Board or another CCG to review the proposal – to provide additional scrutiny, although such individuals would only have authority to participate in decision-making if provided for in the CCG's constitution; and
- ensure that rules on forming a quorum (set out in the CCG's constitution) enable decisions to be made.

Depending on the nature of the conflict, GPs or other practice representatives could be permitted to join in the discussion about the proposed decision, but should not take part in any vote on the decision.

4. Transparency - publication of contracts

The CCG will ensure that the details of all contracts, including the value of the contracts, are published on the CCG's website as soon as contracts are agreed.

Where the CCG decides to commission services through AQP, the CCG will publish on its website the type of services being commissioned and the agreed price for each service.

The CCG will publish these details in its annual report.

Where services are commissioned through an AQP approach the CCG will ensure that information is publicly available about those providers who qualify to provide the service.

5. Role of commissioning support

The Commissioning Support Unit (CSU) will provide advice to the CCG in helping it to determine the most appropriate procurement route, undertake procurements and manage contracts in ways that manage conflicts of interest and preserve integrity of decision-making.

The CCG will seek assurance that the business processes employed by the CSU are robust and enable the CCG to meet its duties in relation to procurement.

Where the CCG is undertaking a procurement exercise the CSU will provide support by preparing and presenting information on bids, including an assessment of whether providers meet pre-qualifying criteria and an assessment of which provider provides best value for money.

The CCG cannot, however, lawfully sub-delegate commissioning decisions to an external provider of commissioning support.

The CSU will play a key role in helping to develop specifications, preparing tender documentation, inviting expressions of interest and inviting tenders, the CCG itself will:

- sign off the specification and evaluation criteria;
- sign off decisions on which providers to invite to tender; and
- make final decisions on the selection of the provider.

6. Role of the NHS Commissioning Board

The NHS Commissioning Board (NHS CB) will be able to support the CCG, where necessary, in meeting its duties in relation to managing conflicts of interest.

Where, in particular, the CCG is commissioning any service from a primary care provider that is related to the services that some or all GP practices provide under the GP contract, the CCG will discuss the matter with the NHS CB local area team to ensure that the proposed arrangements do not cut across or duplicate the Board's role in commissioning primary care services.

The Board will also need to be able to assure itself that the CCG is meeting its statutory duties in managing conflicts of interest, including having regard to the guidance published by the Board. Where there are any concerns that the CCG was not meeting these duties, the Board may ask for further information or explanations.

Template

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

NHS North Lincolnshire Clinical Commissioning Group

Service:	
Question	Comment/Evidence
Questions for all three procurement routes	
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 have we involved the public in the decision to commission this service?	
What range of health professionals have been involved in designing the proposed service?	
What range of potential providers have been involved in considering the proposals?	
How have we involved the Health and Wellbeing Board(s)? How does the proposal support the priorities in the relevant joint health and wellbeing strategy (or strategies)?	
What are the proposals for monitoring the quality of the service?	
What systems will there be to monitor and publish data on referral patterns?	
Have all conflicts and potential conflicts of interests been appropriately declared and entered in registers which are publicly available?	
Why have we chosen this procurement route? ³	

³Taking into account S75 regulations and NHS Commissioning Board guidance that will be published in due course, Monitor guidance, and existing procurement rules.

What additional external involvement will there be in scrutinising the proposed decisions?	
How will the CCG make its final commissioning decision in ways that preserve the integrity of the decision-making process?	
Additional question for AQP or single tender (for services where national tariffs do not apply)	
How have we determined a fair price for the service?	
Additional questions for AQP only (where GP practices are likely to be qualified providers)	
How will we ensure that patients are aware of the full range of qualified providers from whom they can choose?	
Additional questions for single tenders from GP providers	
What steps have been taken to demonstrate that there are no other providers that could deliver this service?	
In what ways does the proposed service go above and beyond what GP practices should be expected to provide under the GP contract?	
What assurances will there be that a GP practice is providing high-quality services under the GP contract before it has the opportunity to provide any new services?	

COMMISSIONING CYCLE AND POTENTIAL CONFLICTS OF INTEREST

Interest	Pecuniary (Self, partner or close associate)	Personal (Self)	Personal (Partner or close associate)	Competing Loyalties
Needs assessment*	Fully participate	Fully participate	Fully participate	Fully participate
Decide priorities*	Discuss but cannot vote	Discuss and vote	Discuss and vote	Discuss and vote
Review commissioning proposals	Remain but cannot speak or vote	Remain but cannot speak or vote	Remain but cannot speak or vote	Discuss and vote
Design services* (ensure a fully inclusive process)	Discuss and vote	Discuss and vote	Discuss and vote	Discuss and vote
Review prioritised business cases	Leave the room	Remain but cannot speak or vote (unless interest is deemed not prejudicial)	Remain but cannot speak or vote (unless interest is deemed not prejudicial)	Discuss and vote
Procurement/ contracting	Leave the room	Remain but cannot speak or vote (unless interest is deemed not prejudicial)	Remain but cannot speak or vote (unless interest is deemed not prejudicial)	Discuss and vote
Performance Management*	Remain but cannot speak or vote (unless significant and then leave the room)	Remain but cannot speak or vote (unless significant and then leave the room)	Remain but cannot speak or vote (unless significant and then leave the room)	Discuss and vote
Review Health Outcomes*	Fully participate	Fully participate	Fully participate	Fully participate

Notes:

- The illustrations given above should not be considered to be prescriptive in every instance.
- These are guidelines and both the materiality of the conflict and the significance of the issue should be considered carefully by the Chair in deciding on how to manage the conflict.
- It is the responsibility of the Chair to review the agenda and operate caution in terms of deferment or referral if necessary.
- Chairs to also consider potential conflicts of interest arising from verbal reports.
- Links should be considered to strategy direction eg is the introduction of a LES in line with the strategy?
- If significant/complete conflict of interest at a locality level the matter could be referred to the CCG for decision.



North Lincolnshire
Clinical Commissioning Group

DECLARATION OF INTERESTS & SECONDARY EMPLOYMENT/PRIVATE PRACTICE FORM

Please complete the form after referring to the guidance notes attached.

Please delete the following statements that **do NOT** apply:

I have no interests to declare

I am not aware of any relevant interests of close associates (as defined in the guidance notes)
(delete as appropriate)

I wish to declare my interests recorded overleaf

I wish to declare the interests of close associates (as defined in the guidance notes) recorded overleaf
(delete as appropriate)

Signature..... Date.....

Name (*please print*).....

Position.....

Practice.....

Base

Committee/Sub Committee Member.....

I declare that to the best of my knowledge and belief, the information I have given on this form is correct and complete. I understand that if I knowingly provide false information, this may result in disciplinary action and I may be liable for prosecution and civil recovery proceedings. I consent to the disclosure of information from this form to and by the CCG and NHS Counter Fraud and Security Management Service for the purpose of verification, prevention, detection and prosecution of fraud.

I undertake to update as necessary the information provided and to regularly review the accuracy of the information provided.

Appendix C continued

Type of Interest	Details & whether Personal or Pecuniary*	Self or other**	Start Date
Membership of a Partnership (whether salaried or profit sharing) seeking to enter into contracts with the CCG.			
Roles and responsibilities held within member practices.			
Directorships, including non-executive directorships held in private or public limited companies			
Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the CCG			
Shareholdings in private or public companies seeking to enter into contracts with the CCG.			
As an employee or trustee of a voluntary organisation, social enterprise or charity seeking to enter into a contract with the CCG.			
Any interest that (if registered with the GMC) would be required to declare in accordance with paragraph 55 of the GMC's publication 'Management for Doctors' or any successor guidance.			
Any interest that (if registered with the Nursing & Midwifery Council) would be required to declare in accordance with paragraph 7 of the NMC's publication 'Code of Professional Conduct' or any successor Code.			
Partner/employee ofpractice which provides medical services over and above the GP contractual obligations			
Research funding/grants that may be received by the individual or any organisation they have an interest or role in			
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			
Any other employment or private practice (include hours worked per week)			

*Pecuniary – of or relating to money i.e. a financial interest

** (specify relationship)

Guidance Notes

- Section 8 of the CCG Constitution and its related Business Conduct and Conflicts of Interest Policies require CCG Shadow Board Members, Council of Members, Members of its Committees and Sub-Committees, CCG staff and individuals working on behalf of the CCG to declare interests which are relevant and material and any positions of influence they hold or are held by a family member, close friend or other acquaintance, in the categories outlined below.
- If there are no interests to declare a **nil return must be submitted** and the word 'Nil' entered against each category.
- Declarations should be made within 28 days of a relevant event occurring.
- Any changes to declarations should also be made within 28 days of a relevant event occurring by completing and submitting a new declaration form.
- Any changes should be reported at the start of each Committee/Sub Committee meeting. This will be a standing agenda item at all meetings, including CCG staff meetings.
- Members and employees completing this 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 has and the circumstances in which a conflict of interest might arise.
- If in doubt as to whether a conflict of interest could arise, a declaration of the interest should be made.
- If any assistance is required to complete the form, please contact the CSU Strategy & Policy Manager Tel 01482 672190 email: mwharton@nhs.net
- The signed hard copy of the completed form should be sent to the Business Manager, North Lincolnshire CCG, Health Place, Wrawby Road, Brigg DN20 8GS Tel 01652 251011.
- Details of directorships of companies and organisations likely or possibly seeking to do business with the NHS will be published in the CCG's annual report.
- All declarations (apart from those of employees on Grade 7 and below will be published on the CCG's website.

Extract from North Lincolnshire CCG's Constitution

Section 8.4 Managing Conflicts of Interest: general

- 8.4.1 Individual members of the CCG, the Governing Body, committees or sub-committees, and employees will comply with the arrangements determined by the Group for managing conflicts or potential conflicts of interest.
- 8.4.2 The Chief Finance Officer will ensure that for every interest declared, either in writing or by oral declaration, arrangements are in place to manage the conflict of interests or potential conflict of interests, to ensure the integrity of the Group's decision making processes.
- 8.4.3 Arrangements for the management of conflicts of interest are to be determined by the Chief Finance Officer and will include the requirement to put in writing to the relevant individual arrangements for managing the conflict of interests or potential conflicts of interests, within a week of declaration. The arrangements will confirm the following:
- a) when an individual should withdraw from a specified activity, on a temporary or permanent basis;
 - b) monitoring of the specified activity undertaken by the individual, either by a line manager, colleague or other designated individual.
- 8.4.4 Where an interest has been declared, either in writing or by oral declaration, the declarer will ensure that before participating in any activity connected with the CCG's exercise of its commissioning functions, they have received confirmation of the arrangements to manage the conflict of interest or potential conflict of interest from the Chief Finance Officer.
- 8.4.5 Where an individual member, employee or person providing services to the Group is aware of an interest which:
- a) Has not been declared, either in the register or orally, they will declare this at the start of the meeting
 - b) Has previously been declared, in relation to the scheduled or likely business of the meeting, the individual concerned will bring this to the attention of the Chair of the meeting, together with details of arrangements which have been confirmed for the management of the conflict of interests or potential conflict of interests.

The Chair of the meeting will then determine how this should be managed and inform the member of their decision. Where no arrangements have been confirmed, the Chair of the meeting may require the individual to withdraw from the meeting or part of it. The individual will then comply with these arrangements, which must be recorded in the minutes of the meeting.

- 8.4.6 Where the Chair of any meeting of the CCG, including committees, sub-committees, has a personal interest, previously declared or otherwise, in relation to the scheduled or likely business of the meeting, they must make a declaration and the Deputy Chair will act as Chair for the relevant part of the meeting. Where arrangements have been confirmed for the management of the conflict of interest(s) or potential conflicts of

interest(s) in relation to the Chair, the meeting must ensure these are followed. Where no arrangements have been confirmed, the Deputy Chair may require the Chair to withdraw from the meeting or part of it. Where there is no Deputy Chair, the members of the meeting will select one.

- 8.4.7 Any declarations of interests, and arrangements agreed in any meeting of the Clinical Commissioning Group, committees or sub-committees, or the Governing Body, the Governing Body's committees or sub-committees, will be recorded in the minutes.
- 8.4.8 Where more than 50% of the members of a meeting are required to withdraw from a meeting or part of it, owing to the arrangements agreed for the management of conflicts of interest(s) or potential conflicts of interest(s), the Chair (or Deputy) will determine whether or not the discussion can proceed.
- 8.4.9 In making this decision the Chair will consider whether the meeting is quorate, in accordance with the number and balance of membership set out in the Group's standing orders. Where the meeting is not quorate, owing to the absence of certain members, the discussion will be deferred until such time as a quorum can be convened. Where a quorum cannot be convened from the membership of the meeting, owing to the arrangements for managing conflicts of interest(s) or potential conflicts of interest(s), the Chair of the meeting shall consult with the Chief Finance Officer on the action to be taken.
- 8.4.10 This may include:
- a) Requiring another of the Group's committees or sub-committees, which can be quorate to progress the item of business, or if this is not possible,
 - b) Inviting on a temporary basis one or more of the following to make up the quorum (where these are permitted members of the committee/sub-committee in question) so that the Group can progress the item of business:
 - i) an individual working within a member practice;
 - ii) an individual appointed by a member to act on its behalf in the dealings between it and the Clinical Commissioning Group;
 - ii) a member of a relevant Health and Wellbeing Board;
 - iii) a member of another Clinical Commissioning Group.
 - c) These arrangements must be recorded in the minutes.
- 8.4.11 In any transaction undertaken in support of the Clinical Commissioning Group's exercise of its commissioning functions (including conversations between two or more individuals, e-mails, correspondence and other communications), individuals must ensure, where they are aware of an interest, that they conform to the arrangements confirmed for management of that interest. Where an individual has not had confirmation of arrangements for managing the interest, they must declare their interest at the earliest possible opportunity in the course of that transaction, and declare that interest as soon as possible thereafter. The individual must also inform either their line manager (in the case of employees), or the Chief Finance Officer of the transaction.

8.4.12 The Chief Finance Officer will take such steps as deemed appropriate, and request information deemed appropriate from individuals, to ensure that all conflicts of interest and potential conflicts of interest are declared.

8.4.13 Where a member is aware that another member has an interest but has not declared it that member is obliged to bring it to the attention of the Chair of the Committee/Group.

DRAFT