

## **North Lincolnshire CCG**

# **CONFLICTS OF INTEREST POLICY**

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**The on-line version is the only version that is maintained.**

## POLICY AMENDMENTS

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

<b>New Version Number</b>	<b>Issued by</b>	<b>Nature of Amendment</b>	<b>Approved by &amp; Date</b>	<b>Date on Intranet</b>
1.0	Quality Team	Policy updated in line with NHSE guidance issued December 2014	January 2015	January 2015
1.1	Head of Governance	Policy updated in line with national guidance issued June 2016	November 2016	November 2016
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## 1 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 & governance, CCGs should be able to avoid these risks.” (*RCGP & NHS Confederation’s briefing paper on managing conflicts of interest September 2011*).

CCGs are required, as part of their day to day business, to manage conflicts of interests. To ensure that conflicts and potential conflicts of interest do not affect, or appear to affect, the integrity of the CCG’s decision-making processes. The effective management of conflicts is critical to providing confidence to patients, tax payers, health care providers and parliament that NLCCG commissioning decisions are robust, fair and transparent whilst offering value for money. In order to effectively manage the process the CCG will provide clear guidance to members and employees on what might constitute a conflict of interest. This policy sets out those arrangements, based on the NL CCG Constitution and taking account of the relevant statutory requirements and guidance documents.

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, supplemented by Prime Financial Policies.

The CCG is committed to reviewing this policy at least annually and in the light of any changes to statutory guidance.

### **General Data Protection Regulation**

The CCG is committed to ensuring that all personal information is managed in accordance with current data protection legislation, professional codes of practice and records management and confidentiality guidance. More detailed information can be found in the CCGs Data Protection and Confidentiality and related policies and procedures.

## 1.1 STATUTORY FRAMEWORK

For CCGs, the starting point is Section 140 of the NHS Act 2006 which sets out minimum requirements, supplemented by the 2013 Regulations. CCGs must:

- Maintain appropriate registers of interests;
- Publish or make arrangements for the public to access those registers;
- Make arrangements requiring the prompt declaration of interests by the persons specified (essentially members and employees) and ensure that these interests are entered into the relevant register;
- Make arrangements for managing conflicts and potential conflicts of interest (for example by developing and reviewing this policy);
- Have regard to guidance published by NHS England and Monitor in relation to conflicts of interest.

Section 140 is supplemented by the procurement specific requirements set out in the National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations 2012, in particular, Regulation 6 requires that 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
- Keep a record of how it managed any such conflict in relation to an NHS commissioning contract it enters into, which must be published.

Further guidance for CCG's is set out Within 'Managing Conflicts Of Interest: Revised Statutory Guidance for CCG's NHS England (June 2017). This can be found at: <https://www.england.nhs.uk/commissioning/pc-co-comms/coi/>

This requires CCG's to:

- Have a minimum of 3 lay members
- Appoint a Conflicts of Interest Guardian
- Publish any breaches on the CCG web site
- Strengthen provisions around decision making when a member of the governing body, committee or sub-committee is conflicted
- Strengthen arrangements around management of gifts and hospitality and a publicly accessible register
- Inclusion of an annual conflicts of interest audit in the CCG audit programme
- Staff to participate in mandatory on line training programme.

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

- **Registers of interest:** We have updated the CCG guidance to require that CCGs have systems in place to satisfy themselves as a minimum on an *annual* basis that their registers of interest are accurate and up-to-date, and to require that only decision-making staff are included on the published register.
- **Gifts from suppliers or contractors:** In line with the NHS-wide guidance, gifts of low value (up to £6), such as promotional items, can now be accepted.
- **Gifts from other sources:** We have amended the thresholds so that gifts of under £50 (rather than £10) can be accepted from non-suppliers and non-contractors, and do not need to be declared. Gifts with a value of over £50 can now be accepted on behalf of an organisation, but not in a personal capacity.
- **Hospitality – meals and refreshments:** We have amended the thresholds so that hospitality under £25 does not need to be declared. Hospitality between £25 and £75 can be accepted, but must be declared, and hospitality over £75 should be refused unless senior approval is given.
- **New care models:** We have included a new annex to provide further advice on identifying, declaring and managing conflicts of interest in the commissioning of new care models: [AnnexJ: Conflicts of interest and New Models of Care](#).

## 1.2 POLICY PURPOSE & AIMS

NL CCG recognises that conflicts of interest are unavoidable and therefore has in place arrangements to seek to manage them. This policy seeks to ensure that conflicts are identified, declared and recorded, and that clear mechanisms exist to manage or diffuse conflicts of interest when they arise. It is important to acknowledge that conflicts may not always be obvious to, or recognised by, the individuals concerned. Therefore, a policy based on full disclosure of competing interests will best safeguard healthcare professionals as they exercise their new commissioning responsibilities. NHS North Lincolnshire CCG's Managing Conflicts of Interest Policy is based on the principle of: **"If in doubt, disclose"**. 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, specifically:

- Ensure that the CCG and clinicians in commissioning roles demonstrate they are acting fairly and transparently and in the best interest of their patients and local populations;
- Ensure that the CCG operates within the legal framework;
- Safeguard clinically led commissioning, whilst ensuring objective investment decisions;
- Provide the public, providers, Parliament and regulators with confidence in the probity, integrity and fairness of commissioners' decisions;
- Provide support and information for individuals in order that they understand when actual or potential conflicts may arise and how they will be managed.

This policy should be read in conjunction with sections 8.2 – 8.4 of NLCCGs Constitution as required under the 2012 Health and Social Care Act

### 1.3 SCOPE

**This policy applies to all CCG employees**, including all full and part-time staff, staff on sessional or short term contracts, students and trainees (including apprentices), agency staff and seconded staff. In addition, any self-employed consultants or other individuals working for the CCG under a contract for services should make a declaration of interest in accordance with this guidance, as if they were CCG employees.

**Members of the CCG's Board, Committees, Sub Committees and Sub Groups**, including co-opted members, appointed deputies and members of committees/groups from other organisations (where the CCG is participating in a joint committee alongside

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

**Members of the CCG** – defined as GP partners (or where the practice is a company, each director) and any individual directly involved with the business or decision making of the CCG (e.g. representatives at the Council of Members, GP portfolio leads)

Who are referred to collectively in this policy as 'individuals within the CCG'.

## 2 DEFINITION OF AN INTEREST

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.

An interest is defined for the purposes of regulation 6 of the NHS (Procurement, Patient Choice and Competition (No 2) Regulations 2013 as including an interest of the following:

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

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

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.
- For the purposes of Regulation 6 of the NHS (Procurement, Patient Choice and Competition (No 2) Regulations 2013, a conflict will arise when 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.

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.
- Directorships, including non-executive Directorship 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 (more than 5%) of companies in the field of health and social care.
- Positions of authority in an organisation (e.g. charity or voluntary organisation) in the field of health and social care.
- Any connection with a voluntary or other organization contracting for NHS services.
- Any research funding or grants that may be received by the individual or any organisation that 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.

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.

In the case of a GP involved in commissioning, an obvious example is the award of a new contract, or extension of an existing contract, to a provider in which the individual GP has a financial stake.

A conflict of interest occurs where an individual's ability to exercise judgement, or act in a role is, could be, or is seen to be impaired or otherwise influenced by his or her involvement in another role or relationship. In some circumstances, it could be reasonably considered that a conflict exists even when there is no actual conflict. In these cases it is important to still manage these perceived conflicts in order to maintain public trust.

Conflicts of interest can arise in many situations, environments and forms of commissioning, with an increased risk in primary care commissioning, out-of- hours commissioning and involvement with integrated care organisations, as clinical commissioners may here find themselves in a position of being at once commissioner and

provider of services. Conflicts of interest can arise throughout the whole commissioning cycle from needs assessment, to procurement exercises, to contract monitoring.

Interests can be considered in four different categories:

2.1. **Financial interests:** This is where an individual may get direct financial benefits from the consequences of a commissioning decision. This could, for example, include being:

- A director, including a non-executive director, or senior employee in a private company or public limited company or other organisation which is doing, or which is likely, or possibly seeking to do, business with health or social care organisations. This includes involvement with a potential provider of a new care model;
- A shareholder (or similar ownership interests), a partner or owner of a private or not-for-profit company, business, partnership or consultancy which is doing, or which is likely, or possibly seeking to do, business with health or social care organisations.
- A management consultant for a provider;
- A provider of clinical private practice

This could also include an individual being:

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

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

- An advocate for a particular group of patients;
- A GP with special interests e.g., in dermatology, acupuncture etc.



- An active member of a particular specialist professional body (although routine GP membership of the RCGP, British Medical Association (BMA) or a medical defence organisation would not usually by itself amount to an interest which needed to be declared);
- An advisor for the Care Quality Commission (CQC) or the National Institute for Health and Care Excellence (NICE);
- Engaged in a research role;
- The development and holding of patents and other intellectual property rights which allow staff to protect something that they create, preventing unauthorised use of products or the copying of protected ideas; or
- GPs and practice managers, who are members of the governing body or committees of the CCG, should declare details of their roles and responsibilities held within their GP practices.

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

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

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

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

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

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

The above categories and examples are not exhaustive and NL CCG will exercise discretion on a case by case basis, having regard to the principles set out in national guidance, in deciding whether any other role, relationship or interest which would impair or otherwise influence the individual's judgement or actions in their role within the CCG. Where any such issue is identified it will be declared and appropriately managed.

Through the adoption of this policy, individual guidance and training NL CCG intends to offer clear guidance to their employees, members and governing body and committee members on what might constitute a conflict of interest, providing examples of situations that may arise.

### 3. PRINCIPLES

This section sets out a series of principles for NL CCG and those who are serving as members of CCG governing bodies, CCG committees or take decisions where they are acting on behalf of the public or spending public money.

In line with national best practice NLCCG should observe the principles of good governance in the way they do business. These include:

- The Good Governance Standards for Public Services (2004), Office for Public Management (OPM) and Chartered Institute of Public Finance and Accountancy (CIPFA)
- The seven key principles of the NHS Constitution
- The Equality Act 2010
- The UK Corporate Governance Code
- Standards for members of NHS boards and CCG governing bodies in England

The Nolan Principles which should be adhered to by all those in public life and are set out below:

- **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.

In addition, to support the management of conflicts of interest, NL CCG is committed to:

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

In addition to the above CCG staff will need to bear in mind:

- A perception of wrongdoing, impaired judgement or undue influence can be as detrimental as any of them actually occurring;
- If in doubt, it is better to assume the existence of a conflict of interest and manage it appropriately rather than ignore it.

- For a conflict of interest to exist, financial gain is not necessary.

This policy reflects 'Managing Conflicts of Interests: Statutory Guidance for CCGs' (Issued by NHS England, June 2017). It should be read alongside the following NL CCG documents:

- Anti-Fraud, Bribery and Corruption Policy;
- Business Conduct Policy also contained within individual contracts of employment;
- Whistleblowing Policy;
- Disciplinary Policy;
- Procurement policy

## 4. THE IDENTIFICATION AND MANAGEMENT OF COI

### Declaring Interests

Conflicts of Interest are a common and sometimes unavoidable part of the delivery of healthcare. The CCG recognises that it may not be possible to completely eliminate all risks but ideally be able recognise associated risks and put measures in place to manage them.

NL CCG will seek to ensure that, as a matter of course, declarations of interest are made and regularly confirmed or updated. The CCG will utilise the template declaration of interest form at Annex A.

All individuals referred to in section 1.3 must declare any interests. Declarations of interest should be made as soon as reasonably practicable and must by law within 28 days after the interest arises (this could include an interest an individual is pursuing). Further opportunities to make declarations include:

#### **On appointment:**

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

#### **Six-monthly:**

NL CCG has a system in place to ensure that declarations of interest are obtained from all relevant individuals every six months and where there are no interests or changes to declare, a “nil return” should will recorded.

#### **At meetings:**

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

#### **On changing role, responsibility or circumstances:**

Whenever an individual's role, responsibility or circumstances change in a way that affects the individual's interests (e.g., where an individual takes on a new role outside NL CCG or enters into a new business or relationship), a further declaration should be made to reflect the change in circumstances as soon as possible, and in any event *within 28 days*. This could involve a conflict of interest ceasing to exist or a new one materialising.

All individuals who are required to make a declaration of interests that if their circumstances change, it is their responsibility to make a further declaration as soon as possible and in any event within 28 days, rather than waiting to be asked. Any change be notified to the CCG's Business Manager or Head of Governance. They can be contacted on 01652 251011 and 01652 251215

Line Managers should hold any interests declared on the individual's personal file. All interests should be declared as and when they arise. Individuals are responsible for ensuring that their registered interests are kept up to date at all times.

Once any arrangements for mitigating the risk have been agreed by the individual's Line Manager, these should be documented on the approved form and submitted to the Head of Governance and Corporate Services. Such arrangements will specify: whether and when an individual should withdraw from a specified activity, on a temporary or permanent basis; and monitoring of the specified activity undertaken by the individual, either by a line manager, colleague or other designated individual.

Where an individual is unclear about the arrangements for managing the interest, they should seek advice from their Line Manager. All other individuals should submit declarations directly to the Head of Governance and Corporate Services using the form at Appendix 1, who will decide, in conjunction with the Conflicts of Interest Guardian, whether any specific arrangements are required to manage the conflicts or potential conflicts declared.

Although the interest may be declared, this does not remove the individual's personal responsibilities of removing themselves from a position or situation which may result in a potential breach of this policy.

## **5 REGISTERS OF INTEREST**

NL CCG will maintain registers of interest and gifts and hospitality for:-

**All NL CCG employees**, including:

- All full and part time staff;
- Any staff on sessional or short term contracts;
- Any students and trainees (including apprentices);
- Agency staff; and
- Seconded staff

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

**Members of the governing body:** All members of the CCG's committees, sub-committees/sub-groups, including:

- Co-opted members;
- Appointed deputies; and
- Any members of committees/groups from other organisations.

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

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

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

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

All interests declared will be promptly transferred to the relevant CCG register(s) by the team or individual who has designated responsibility for maintaining registers of interest.

An interest should remain on the public register for a minimum of 6 months after the interest has expired. In addition, NL CCG will retain a private record of historic interests for a minimum of 6 years after the date on which it expired on.

NL CCG maintains a register of interest form and declaration form and these are set out in Appendices A and B

## **6 Register of Gifts and Hospitality**

NL CCG maintains a register of gifts and hospitality for the individuals listed in 1.3 and this is set out in Annex D. Individuals are reminded not to accept gifts or hospitality or other benefits, which might reasonably be seen to compromise their professional judgement or integrity. Need to consider the risks associated with accepting offers of gifts, hospitality and entertainment when undertaking activities for or on behalf of the CCG or their GP practice. This is especially important during procurement exercises, as the acceptance of gifts could give rise to real or perceived conflicts of interests, or accusations of unfair influence, collusion or canvassing.

## **7 Gifts**

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

All gifts of any nature offered to NL CCG staff, governing body and committee members and individuals within GP member practices by suppliers or contractors linked (currently or prospectively) to the CCG's business should be declined, whatever their value. The person to whom the gifts were offered should also declare the offer to the team or individual who has designated responsibility for maintaining the register of gifts and hospitality so the offer which has been declined can be recorded on the register.

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

Any personal gift of cash or cash equivalents (e.g. vouchers, tokens, offers of remuneration to attend meetings whilst in a capacity working for or representing the CCG) must always be declined, whatever their value and whatever their source, and the offer which has been declined must be declared to the team or individual who has designated responsibility for maintaining the register of gifts and hospitality and recorded on the register.

## **8 Hospitality**

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

Modest hospitality provided in normal and reasonable circumstances may be acceptable, although it should be on a similar scale to that which the CCG might offer in similar circumstances (e.g., tea, coffee, light refreshments at meetings). NL CCG promoted a common sense approach as to whether hospitality offered is modest or not. Hospitality of this nature does not need to be declared to the team or individual who has designated responsibility for maintaining the register of gifts and hospitality, nor recorded on the register, unless it is offered by suppliers or contractors linked (currently or prospectively) to the CCG's business in which case all such offers (whether or not accepted) should be declared and recorded.

There is a presumption that offers of hospitality which go beyond modest or of a type that the CCG might offer, should be politely refused. A non- exhaustive list of examples includes:

- Hospitality of a value of above £25; and
- In particular, offers of foreign travel and accommodation.

There may be some limited and exceptional circumstances where accepting the types of hospitality referred to in this paragraph may be contemplated. Express prior approval should be sought from the CCG's Head of Governance or Conflict of Interest Guardian. before accepting such offers, and the reasons for acceptance will be recorded in the CCGs register of gifts and hospitality. Hospitality of this nature should be declared to the team or individual who has designated responsibility for maintaining the register of gifts and hospitality, and recorded on the register, whether accepted or not. In addition, particular caution should be exercised where hospitality is offered by suppliers or contractors linked (currently or prospectively) to NL CCG's business. Offers of this nature can be accepted if they are modest and reasonable but advice should always be sought from a senior member of the CCG (the CCG Head of Governance or Conflict of Interest Guardian.as there may be particular sensitivities, for example if a contract re-tender is imminent. All offers of hospitality from actual or prospective suppliers or contractors (whether or not accepted) should be declared and recorded.

## **9 Commercial sponsorship**

CCG staff, governing body and committee members, and GP member practices may be offered commercial sponsorship for courses, conferences, post/project funding, meetings and publications in connection with the activities which they carry out for or on behalf of the CCG or their GP practices. All such offers (whether



accepted or declined) must be declared so that they can be included on the CCG's register of interests, and the Head of Governance will provide advice on whether or not it would be appropriate to accept any such offers. If such offers are reasonably justifiable and otherwise in accordance with this statutory guidance then they may be accepted. NLCCG should consider whether they wish to adopt a system of prior approval for acceptance of such sponsorship from a member of the CCG with appropriate seniority.

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

## **10 Declaration of offers and receipt of gifts and hospitality**

The template for declaring gifts and hospitality is annexed at Appendix C. All hospitality or gifts declared must be promptly transferred to a register of gifts and hospitality that all CCGs should maintain. This should include any gifts and hospitality declared in meetings. A template gifts and hospitality register for use by the CCG is annexed as Appendix D.

## **11 Publication of Registers**

The CCG will publish register(s) of interest and register(s) of gifts and hospitality, referred to above, and the Register of Procurement decisions described below, in a prominent place on the CCG's website.

In exceptional circumstances, where the public disclosure of information could give rise to a real risk of harm or is prohibited by law, an individual's name and/or other information may be redacted from the publicly available register(s). Where an individual believes that substantial damage or distress may be caused, to him/herself or somebody else by the publication of information about them, they are entitled to request that the information is not published. Such requests must be made in writing. Decisions not to publish information must be made by the Conflicts of Interest Guardian, who should seek appropriate legal advice where required, and the CCG will retain a confidential un-redacted version of the register(s).

All individuals who are required to make a declaration of interest(s) or a declaration of gifts or hospitality should be made aware that the register(s) will be published in advance of publication. This should be done by the provision of a fair processing notice that details the identity of the data controller, the purposes for which the registers are held and published, and contact details for the data protection officer. This information should additionally be provided to individuals identified in the registers because they are in a relationship with the person making the declaration.

## 12 ROLES, RESPONSIBILITIES IN NL CCG

The CCG's Accountable Officer has overall responsibility for the CCG's management of COI. The AO is supported in this role by the Head of Governance.

The Head of Governance has responsibility for:

- Supporting the Conflicts of Interest Guardian to support them in the effective conduct their role
- Ensuring that the CCG's registers of interest and other associated registers are maintained
- Managing the day to day issues around COI
- Providing advice and support on how COI should be managed; and
- Ensuring that all appropriate administrative systems are in place.

The CCG is committed to providing guidance to staff through training and awareness raising.

It is the responsibility of **Council of Members, Governing Body, Committee and sub-committee Members & CCG Staff (including any agency and seconded staff)** to ensure that they are fully aware of their responsibilities under this policy and that they fully compliant at all times.

**The Audit Group** will review the arrangements for the declaration and management of conflicts of interest and provide assurances, on a report highlighting issues to increase 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.

**The Audit Group Chair and the Accountable Officer** will be responsible for providing direct formal attestation to NHS England that the CCG has complied with statutory guidance. This attestation will subsequently form part of an annual certification. The CCG's approach to the management of conflicts of interest will also be considered on an on-going basis as part of CCG assurance.

### **Conflict of interest Guardian**

The COI Guardian is the CCG's Audit Chair. The role of the COI Guardian in collaboration with the Head of Governance will be to:

- Act as a conduit for GP practice staff, member soft the public and healthcare professionals who have any concerns with regarding conflicts of interest:
- Be a safe point of contact for NL CCG employees to raise any concerns re this policy
- Support the rigorous application of the policy and conflict of interest principles
- Provide independent advice and judgement where there is any doubt about how to apply the conflicts of interest policy and principles in an individual case
- Provide independent advice on minimising the risks of conflicts of interest
- If an individual requests that information is not included in the public register(s) decide whether the information should be published or not.

## **CCG Lay members**

NL CCG lay members play a critical role in providing scrutiny, challenge and an independent voice in the support of robust and transparent decision making and management of conflicts of interest.

Whilst certain staff have specific roles in relation to the management and oversight of conflicts of interest all CCG employees governing body and committee members will have individual responsibility on an on-going and daily basis.

**CCG employed staff** are advised not to engage in outside employment which may conflict with their NHS work. Individuals are advised to tell the CCG 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 A**.

All individuals covered by the scope of this policy are also required to declare 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 interests, in writing, as soon as they are aware of it and in any event no later than 28 days after becoming aware. The form to be used for this purpose is included at Appendix A

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.

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 CCG Chair, the Chair of the Committee or the Chief Officer.

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

## **Secondary employment**

All CCG employees, committee members, contractors and others engaged under contract with them are required to inform the CCG if they are employed or engaged in, or wish to be employed or engage in, any employment or consultancy work in addition to their work with the CCG. The purpose of this is to ensure that the CCG is aware of any potential conflict of interest. Examples of work which might conflict with the business of the CCG, including part-time, temporary and fixed term contract work, include:

- Employment with another NHS body;

- Employment with another organisation which might be in a position to supply goods/services to the CCG;
- Directorship of a GP federation; and
- Self-employment, including private practice, in a capacity which might conflict with the work of the CCG or which might be in a position to supply goods/services to the CCG.

### **Appointing Governing Body or Committee members and senior employees**

On appointing governing body, committee or sub-committee members and senior staff, the CCG will consider whether conflicts of interest should exclude individuals from being appointed to the relevant role.

The CCG will assess the materiality of the interest, in particular whether the individual (or any person with whom they have a close association) could benefit (whether financially or otherwise) from any decision the CCG might make. This will be particularly relevant for governing body, committee and sub-committee appointments, but should also be considered for all employees and especially those operating at senior level.

The CCG will determine the extent of the interest and the nature of the appointee's proposed role within the CCG. If the interest is related to an area of business significant enough that the individual would be unable to operate effectively and make a full and proper contribution in the proposed role, then that individual should not be appointed to the role.

Any individual who has a material interest in an organisation which provides, or is likely to provide, substantial services to the CCG (whether as a provider of healthcare or commissioning support services, or otherwise) should recognise the inherent conflict of interest risk that may arise and should not be a member of the governing body or of a committee or sub-committee of the CCG, in particular if the nature and extent of their interest and the nature of their proposed role is such that they are likely to need to exclude themselves from decision-making on so regular a basis that it significantly limits their ability to effectively perform that role. Specific considerations in relation to delegated or joint commissioning of primary care are set out below.

## **13 GOVERNANCE ARRANGEMENTS AND DECISION MAKING**

### **14.1 Chairing arrangements and decision making**

The chair of a meeting of the NLCCG's governing body or any of its committees, sub-committees or groups has ultimate responsibility for deciding whether there is a conflict of interest and for taking the appropriate course of action in order to manage the conflict of interest.

In the event that the chair of a meeting has a conflict of interest, the vice chair is responsible for deciding the appropriate course of action in order to manage the conflict of interest. If the vice chair is also conflicted then the remaining non-conflicted voting members of the meeting should agree between themselves how to manage the conflict(s).

In making such decisions, the chair (or vice chair or remaining non-conflicted members as above) may wish to consult with the Conflicts of Interest Guardian or another member of the governing body.

The CCG's Head of Governance will meet with the Chair proactively to consider ahead of meetings what conflicts are likely to arise and how they should be managed, including taking steps to ensure that supporting papers for particular agenda items of private sessions/meetings are not sent to conflicted individuals in advance of the meeting where relevant.

Chairs will be provided with a declaration of interest checklist prior to meetings, which should include details of any declarations of conflicts which have already been made by members of the group. A template declaration of interest checklist has been annexed at Appendix E.

The chair should ask at the beginning of each meeting if anyone has any conflicts of interest to declare in relation to the business to be transacted at the meeting. Each member of the group should declare any interests which are relevant to the business of the meeting whether or not those interests have previously been declared. Any new interests which are declared at a meeting must be included on the CCG's relevant register of interests to ensure it is up-to-date. Similarly, any new offers of gifts or hospitality (whether accepted or not) which are declared at a meeting must be included on the CCG's register of gifts and hospitality to ensure it is up-to-date.

It is the responsibility of each individual member of the meeting to declare any relevant interests which they may have. However, should the chair or any other member of the meeting be aware of facts or circumstances which may give rise to a conflict of interests but which have not been declared then they should bring this to the attention of the chair who will decide whether there is a conflict of interest and the appropriate course of action to take in order to manage the conflict of interest.

When a member of the meeting (including the chair or vice chair) has a conflict of interest in relation to one or more items of business to be transacted at the meeting, the chair (or vice chair or remaining non-conflicted members where relevant as described above) must decide how to manage the conflict. The appropriate course of action will depend on the particular circumstances, but could include one or more of the following:

- Where the chair has a conflict of interest, deciding that the vice chair (or another non-conflicted member of the meeting if the vice chair is also conflicted) should chair all or part of the meeting;
- Requiring the individual who has a conflict of interest (including the chair or vice chair if necessary) not to attend the meeting;
- Ensuring that the individual concerned does not receive the supporting papers or minutes of the meeting which relate to the matter(s) which give rise to the conflict;
- Requiring the individual to leave the discussion when the relevant matter(s) are being discussed and when any decisions are being taken in relation to those

matter(s). In private meetings, this could include requiring the individual to leave the room and in public meetings to either leave the room or join the audience in the public gallery;

- Allowing the individual to participate in some or all of the discussion when the relevant matter(s) are being discussed but requiring them to leave the meeting when any decisions are being taken in relation to those matter(s). This may be appropriate where, for example, the conflicted individual has important relevant knowledge and experience of the matter(s) under discussion, which it would be of benefit for the meeting to hear, but this will depend on the nature and extent of the interest which has been declared;
- Noting the interest and ensuring that all attendees are aware of the nature and extent of the interest, but allowing the individual to remain and participate in both the discussion and in any decisions. This is only likely to be the appropriate course of action where it is decided that the interest which has been declared is either immaterial or not relevant to the matter(s) under discussion.
- Where over half of members withdraw from a part of a meeting - due to the arrangements agreed for the management of conflicts of interests - the chair (or deputy) will determine whether or not the discussion can proceed. In making this decision the chair will consider whether the meeting is quorate in accordance with the required number /balance of membership.
- Where the meeting is not quorate 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 or potential conflicts of interests, the chair of the meeting shall consult with the Conflicts of Interest Guardian on the action to be taken. This may include:
  - requiring another committee or sub-committee which can be quorate to progress the item of business,or if this is not possible,
  - inviting on a temporary basis one or more of the following to make up the quorum (where these are permitted members of the Board/sub-committee in question) so that the group can progress the item of business:
    - a member of the CCG who is 'interest free';
    - an individual nominated by a member to act on their behalf in the dealings between it and the CCG;
    - a member of a relevant Health and Wellbeing Board;
    - a member of a Board/Governing Body for another CCG.
- The minutes will record all declarations of interest and actions taken in mitigation. A minute template for recording declarations is attached at Appendix F

### 13.2 Minute taking

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

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

## 14 MANAGING CONFLICT OF INTERESTS THROUGHOUT THE COMMISSIONING CYCLE

Conflicts of interest need to be managed appropriately throughout the whole commissioning cycle. At the outset of a commissioning process, the relevant interests of all individuals involved should be identified and clear arrangements put in place to manage any conflicts of interest. This includes consideration as to which stages of the process a conflicted individual should not participate in, and, in some circumstances, whether that individual should be involved in the process at all.

### Designing Service

The way in which services are designed can either increase or decrease the extent of perceived or actual conflicts of interest. Particular attention will be given to public and patient involvement in service development.

### Provider engagement

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.

Provider engagement should follow the three main principles of procurement law, namely **e**qual **t**reatment, non-discrimination and transparency. This includes ensuring that the same information is given to all at the same time and procedures are transparent. This mitigates the risk of potential legal challenge.

As the service design develops, it is good practice to engage with a range of providers on an on-going basis to seek comments on the proposed design e.g., via

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

Engagement should help to shape the requirement to meet patient need, but it is important not to gear the requirement in favour of any particular provider(s). If appropriate, the advice of an independent clinical adviser on the design of the service should be secured.

### **Specifications**

The CCG will 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. The CCG will carefully consider the appropriate degree of financial risk transfer in any new contractual model.

Specifications should be clear and transparent, reflecting the depth of engagement, and set out the basis on which any contract will be awarded.

### **Procurement and awarding grants**

The CCG will seek to recognise and manage any conflicts or potential conflicts of interest that may arise in relation to the procurement of any services or the administration of grants. "Procurement" relates to any purchase of goods, services or works and the term "procurement decision" should be understood in a wide sense to ensure transparency of decision making on spending public funds. The decision to use a single tender action, for instance, is a procurement decision and if it results in the commissioner entering into a new contract, extending an existing contract, or materially altering the terms of an existing contract, then it is a decision that should be recorded.

NHS England and CCGs must comply with two different regimes of procurement law and regulation when commissioning healthcare services: the NHS procurement regime, and the European procurement regime:

- The NHS procurement regime – the NHS (Procurement, Patient Choice and Competition (No.2)) Regulations 2013: made under S75 of the 2012 Act; apply only to NHS England and CCGs; enforced by NHS Improvement; and
- The European procurement regime – Public Contracts Regulations 2015 (PCR 2015): incorporate the European Public Contracts Directive into national law; apply to all public contracts over the threshold value (€750,000, currently £589,148); enforced through the Courts. The general principles arising under the Treaty on the Functioning of the European Union of equal treatment, transparency, mutual recognition, non-discrimination and proportionality may apply even to public contracts for healthcare services falling below the threshold value if there is likely to be interest from providers in other member states.

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



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

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

*CCGs must keep a record of how it managed any such conflict in relation to NHS commissioning contracts it has entered into. [As set out in paragraph 113 below, details of this should also be published by the CCG.]*

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

2013

Paragraph 24 of PCR 2015 states: "Contracting authorities shall take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all economic operators". Conflicts of interest are described as "any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure".

The Procurement, Patient Choice and Competition Regulations (PPCCR) place requirements on commissioners to ensure that they adhere to good practice in relation to procurement, run a fair, transparent process that does not discriminate against any provider, do not engage in anti-competitive behaviour that is against the interest of patients, and protect the right of patients to make choices about their healthcare. Furthermore the PPCCR places requirements on commissioners to secure high quality, efficient NHS healthcare services that meet the needs of the people who use those services. The PCR 2015 are focussed on ensuring a fair and open selection process for providers.

The CCG will use Appendix G, to record factors that the CCG should address when drawing up their plans to commission general practice services.

This will enable the CCG to provide evidence of their management of conflicts publicly available, and the relevant information from the procurement template will be used to complete the register of procurement decisions. Complete transparency around procurement will provide.

Evidence that the CCG is seeking and encouraging scrutiny of its decision-making process;

- A record of the public involvement throughout the commissioning of the service;
- A record of how the proposed service meets local needs and priorities for partners such as the Health and Wellbeing Boards, local Healthwatch and local communities;
- Evidence to the audit committee and internal and external auditors that a

robust process has been followed in deciding to commission the service, in selecting the appropriate procurement route, and in addressing potential conflicts.

External services such as commissioning support services (CSSs) can play an important role in helping CCGs decide the most appropriate procurement route, undertake procurements and manage contracts in ways that manage conflicts of interest and preserve the integrity of decision-making. When using a CSS, CCGs should have systems to assure themselves that a CSS' business processes are robust and enable the CCG to meet its duties in relation to procurement (including those relating to the management of conflicts of interest). This would require the CSS to declare any conflicts of interest it may have in relation to the work commissioned by the CCG.

A CCG cannot, however, lawfully delegate commissioning decisions to an external provider of commissioning support. Although CSSs are likely to play a key role in helping to develop specifications, preparing tender documentation, inviting expressions of interest and inviting tenders, the CCG itself will need to:

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

### **Register of procurement decisions**

NL CCG will maintain a register of procurement decisions taken, either for the procurement of a new service or any extension or material variation of a current contract. This must include:

- The details of the decision;
- Who was involved in making the decision (including the name of the CCG clinical lead, the CCG contract manager, the name of the decision making committee and the name of any other individuals with decision-making responsibility);
- A summary of any conflicts of interest in relation to the decision and how this was managed by the CCG (see paragraph 117 in relation to retaining the anonymity of bidders); and
- The award decision taken.

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

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

### **Declarations of interest for bidders/contractors**

As part of a procurement process, it is good practice to ask bidders to declare any conflicts of interest. This allows commissioners to ensure that they comply with the principles of equal treatment and transparency. When a bidder declares a conflict, the commissioners must decide how best to deal with it to ensure that no bidder is treated differently to any other. A declaration of interests for bidders/ contractors template is attached at Appendix I.

It will not usually be appropriate to declare such a conflict on the register of procurement decisions, as it may compromise the anonymity of bidders during the procurement process. However, commissioners should retain an internal audit trail of how the conflict or perceived conflict was dealt with to allow them to provide information at a later date if required. Commissioners are required under regulation 84 of the Public Contract Regulations 2015 to make and retain records of contract award decisions and key decisions that are made during the procurement process (there is no obligation to publish them). Such records must include "communications with economic operators and internal deliberations" which should include decisions made in relation to actual or perceived conflicts of interest declared by bidders. These records must be retained for a period of at least three years from the date of award of the contract.

### **Contract Monitoring**

The management of conflicts of interest applies to all aspects of the commissioning cycle, including contract management. Any contract monitoring meeting needs to consider conflicts of interest as part of the process i.e., the chair of a contract management meeting should invite declarations of interests; record any declared interests in the minutes of the meeting; and manage any conflicts appropriately and in line with this guidance. This equally applies where a contract is held jointly with another organisation such as the Local Authority or with other CCGs under lead commissioner arrangements.

The individuals involved in the monitoring of a contract should not have any direct or indirect financial, professional or personal interest in the incumbent provider or in any other provider that could prevent them, or be perceived to prevent them, from carrying out their role in an impartial, fair and transparent manner. The CCG will be mindful of any potential conflicts of interest when they disseminate any contract or performance information/reports on providers, and manage the risks appropriately.

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

## **15 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. This has now been put on a statutory footing in the 2013 Regulations mentioned above. 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.
- Only take part in discussions as part of extended membership meetings to involve other major stakeholders in the service being discussed. 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 e.g.:

- 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 (2013) – Honesty in Financial Dealings* paragraphs 77-80 states:

- *You must be honest in financial and commercial dealings with patients, employers, insurers and other organisations or individuals.*
- *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 formally, and you should be prepared to exclude yourself from decision making.*
- *You must not ask for or accept – from patients, colleagues or others – any inducement, gift or hospitality that may affect or be seen to affect the way you*

*prescribe for, treat or refer to patients or commission services for patients. You must not offer these inducements.*

In addition, the GMC's document *Financial & Commercial Arrangements and Conflicts of Interest* (2013) indicates GPs should:

- *Use your professional judgment to identify when conflicts of interest arise.*
- *Avoid conflicts of interest wherever possible.*
- *Declare any conflict to anyone affected, formally and as early as possible, in line with the policies of your employer or the organisation contracting your services.*
- *Get advice about the implications of any potential conflict of interest.*
- *Make sure that the conflict does not affect your decisions about patient care.*

*If you are in doubt about whether there is a conflict of interest, act as though there is.*

**The CCG recognise that particular care must be exercised when commissioning services from GP practices, including provider consortia or organisations in which GPs have a financial interest.**

For that reason, this policy incorporates the Procurement Template developed by NHS England for that purpose which must be completed in each case where GP practices, consortia or organisations in which GPs have a financial interest are or may be a tenderer. In addition, systems will be put in place to ensure that such contracts are monitored on an on-going basis to ensure any conflict is appropriately managed.

**The CCG is prohibited by law from awarding any contract where the integrity of the procurement process or the award has been, or appears to have been, affected by a conflict of interest. In this context, it is likely that the CCG will wish to take specialist legal advice.**

## **16 RAISING CONCERNS AND BREACHES**

It is the duty of every individual within the CCG to speak up about genuine concerns in relation to the management of conflicts of interests, and to report any concerns in accordance with the terms of this policy and the CCG's Whistleblowing Policy or with the whistleblowing policy of the relevant employer organisation (where the breach is being reported by an employee or worker of another organisation). Individuals should not ignore their suspicions or seek to investigate them, but speak to the CCG's Conflict of Interest Guardian or the Head of Governance and Corporate Services.

Where a breach is suspected or has occurred, this will be investigated by the Head of Governance and Corporate Services who will draw on other expertise available to the organisation such as internal audit. The findings will be shared with the Conflicts of Interest Guardian and the breach formally reported to the Audit Committee.

A review of lessons learned will be conducted by the Head of Governance following any incident of non-compliance with this policy and the report reviewed by the CCG's Audit Committee. Anonymised details of breaches will be published on the CCG's website for the purpose of learning and development.

Anyone who wishes to report a suspected or known breach of the policy, who is not an employee or worker of the CCG, should ensure that they comply with their own organisation's whistleblowing policy, since most such policies should provide protection against detriment or dismissal.

All notifications will be treated with appropriate confidentiality at all times, in accordance with the CCG's policies and applicable laws, and the person making such disclosures can expect an appropriate explanation of any decisions taken as a result of any investigation.

Providers, patients and other third parties can make a complaint to NHS Improvement in relation to a commissioner's conduct under the Procurement Patient Choice and Competition Regulations. The regulations are designed as an accessible and effective alternative to challenging decisions in the courts.

It is the duty of all CCG employees, governing body members, committee or sub-committee members and GP practice members to speak up about any genuine concerns in relation to how this policy is administered and conflicts of interest are managed.

Concerns may be raised in accordance with the CCG's Whistle Blowing Policy where the individual is an employee.

Anonymised details of breaches will be published on NL CCG website for the purposes of learning and development.

Where an individual is concerned that there has been a breach of the Policy this concern should be raised with the CCG Conflicts of Interest Guardian in the first instance.

Where there has been a reported breach of the COI policy an investigation will be conducted. An investigation will be undertaken under the supervision of the Head of Governance who will liaise with the COI Guardian.

### **Fraud or Bribery**

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

### **Impact of Non-compliance**

Failure to comply with the CCG's policy on conflicts of interest management can have serious implications for the CCG and any individuals concerned.

### **Civil Implications**

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

## **Criminal Implications**

Failure to manage conflicts of interest could lead to criminal proceedings including for offences such as fraud, bribery and corruption. This could have implications for CCGs and linked organisations, and the individuals who are engaged by them. The Fraud Act 2006 created a criminal offence of fraud and defines three ways of committing it:

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

An essential ingredient of the offences is that, the offender's conduct must be dishonest and their intention must be to make a gain, or cause a loss (or the risk of a loss) to another. Fraud carries a maximum sentence of 10 years imprisonment and /or a fine if convicted in the Crown Court or 6 months imprisonment and/or a fine in the Magistrates' Court. The offences can be committed by a body corporate.

Bribery is generally defined as giving or offering someone a financial or other advantage to encourage that person to perform their functions or activities. The Bribery Act 2010 reformed the criminal law of bribery, making it easier to tackle this offence proactively in both the public and private sectors. It introduced a corporate offence which means that commercial organisations, including NHS bodies, will be exposed to criminal liability, punishable by an unlimited fine, for failing to prevent bribery. The offences of bribing another person, being bribed and bribery of foreign public officials can also be committed by a body corporate. The Act repealed the UK's previous anti-corruption legislation (the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Acts of 1906 and 1916 and the common law offence of bribery) and provides an updated and extended framework of offences to cover bribery both in the UK and abroad. The offences of bribing another person, being bribed or bribery of foreign public officials in relation to an individual carries a maximum sentence of 10 years imprisonment and/or a fine if convicted in the Crown Court and 6 months imprisonment and/or a fine in the Magistrates' Court. In relation to a body corporate the penalty for these offences is a fine.

## **Disciplinary Implications**

Individuals who fail to disclose any relevant interests or who otherwise breach this policy will be subject to investigation and, where appropriate, to disciplinary action in accordance with the CCG's Disciplinary Policy. Individuals should be aware that the outcomes of such action may, if appropriate, result in the termination of their employment or position with the CCG.

## **Professional Regulatory Implications**

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

## **17 IMPLEMENTATION**

Following approval by the Audit Group, this policy will be distributed to the CCG Senior Leadership Team for dissemination to all their staff and to the Council of Members, the Governing Body, Committee and Sub Committee Members and Practice Managers.

## **18 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.

All individuals within the CCG will be required to complete national mandatory training on an annual basis.

## **19 MONITORING & AUDIT**

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

## **20 IMPACT ANALYSES**

### **20.1 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.

### **20.2 Sustainability**

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

### **20.3 Quality**

A Quality Impact Assessment has been completed for this policy and is included in the attached paperwork.

### **20.4 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.

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.

## **21 POLICY REVIEW**

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



## **22 REFERENCES**

- Managing Conflicts of Interest: Statutory Guidance for CCGs – June 2017\*
- Managing Conflicts of Interest in CCGs – NHS Federation & RCGP Centre for Commissioning
- BMA's Ensuring Transparency & Probity Guidance
- Section 140 of National Health Service Act 2006, as inserted by section 25 of the 2012 Act
- The NHS (Procurement, Patient Choice and Competition)(No 2) Regulations 2013 (SI 2013 No 500)
- GMC core guidance – Good Medical Practice (2013)
- GMC guidance – Financial & Commercial Arrangements and Conflicts of Interest 2013
- Public Contracts Regulations 2006
- 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.

\* builds on guidance issued by other national bodies, in particular Monitor, the BMA, the GMC and the Royal College of General Practitioners outlined above.

## **23 ASSOCIATED DOCUMENTS**

- CCG Constitution
- Procurement Policy
- Business Conduct Policy
- Local Anti-Fraud, Bribery & Corruption Policy
- Induction Policy
- Whistleblowing Policy

## **APPENDICES**

Appendix A ..... Template Declaration of interests for CCG members and employees

Appendix B ..... Template Register of interests

Appendix C ..... Template Declarations of gifts and hospitality

Appendix D ..... Template Registers of gifts and hospitality

Appendix E ..... Template Declarations of interest checklist

Appendix F ..... Template for recording minutes

Appendix G ..... Procurement checklist

Appendix H ..... Template Register of procurement decisions and contracts awarded

Appendix I ..... Template Declaration of interests for bidders/contractors

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

Appendix J ..... Integrated Impact Assessment

## Appendix A: Template Declaration of interests for CCG members and employees

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

*The information submitted will be held by the CCG for personnel or other reasons specified on this form and to comply with the organisation's policies. This information may be held in both manual and electronic form in accordance with the Data Protection Act 1998. Information may be disclosed to third parties in accordance with the Freedom of Information Act 2000 and published in registers that the CCG holds.*

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

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

--

**Signed:**

**Date:**

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

**Date:**

Please return to Business Manager NLCCG

## Types of interest

Type of Interest	Description
<b>Financial Interests</b>	<p>This is where an individual may get direct financial benefits from the consequences of a commissioning decision. This could, for example, include being:</p> <ul style="list-style-type: none"> <li>• A director, including a non-executive director, or senior employee in a private company or public limited company or other organisation which is doing, or which is likely, or possibly seeking to do, business with health or social care organisations;</li> <li>• A shareholder (or similar owner interests), a partner or owner of a private or not-for-profit company, business, partnership or consultancy which is doing, or which is likely, or possibly seeking to do, business with health or social care organisations.</li> <li>• A management consultant for a provider;</li> <li>• In secondary employment (see paragraph 56 to 57);</li> <li>• In receipt of secondary income from a provider;</li> <li>• In receipt of a grant from a provider;</li> <li>• In receipt of any payments (for example honoraria, one off payments, day allowances or travel or subsistence) from a provider</li> <li>• In receipt of research funding, including grants that may be received by the individual or any organisation in which they have an interest or role; and</li> <li>• 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).</li> </ul>
<b>Non-Financial Professional Interests</b>	<p>This is where an individual may obtain a non-financial professional benefit from the consequences of a commissioning decision, such as increasing their professional reputation or status or promoting their professional career. This may, for example, include situations where the individual is:</p> <ul style="list-style-type: none"> <li>• An advocate for a particular group of patients;</li> <li>• A GP with special interests e.g., in dermatology, acupuncture etc.</li> <li>• A member of a particular specialist professional body (although routine GP membership of the RCGP, BMA or a medical defence organisation would not usually by itself amount to an interest which needed to be declared);</li> <li>• An advisor for Care Quality Commission (CQC) or National Institute for Health and Care Excellence (NICE);</li> <li>• A medical researcher.</li> </ul>
<b>Non-Financial Personal Interests</b>	<p>This is where an individual may benefit personally in ways which are not directly linked to their professional career and do not give rise to a direct financial benefit. This could include, for example, where the individual is:</p> <ul style="list-style-type: none"> <li>• A voluntary sector champion for a provider;</li> <li>• A volunteer for a provider;</li> <li>• A member of a voluntary sector board or has any other position of authority in or connection with a voluntary sector organisation;</li> <li>• Suffering from a particular condition requiring individually funded treatment;</li> <li>• A member of a lobby or pressure groups with an interest in health.</li> </ul>
<b>Indirect Interests</b>	<p>This is where an individual has a close association with an individual who has a financial interest, a non-financial professional interest or a non-financial personal interest in a commissioning decision (as those categories are described above). For example, this should include:</p> <ul style="list-style-type: none"> <li>• Spouse / partner;</li> <li>• Close relative e.g., parent, grandparent, child, grandchild or sibling;</li> <li>• Close friend;</li> <li>• Business partner.</li> </ul>

## Appendix B: Template Register of interests

[illegible]

## Appendix C: Template Declarations of gifts and hospitality

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

*The information submitted will be held by the CCG for personnel or other reasons specified on this form and to comply with the organisation's policies. This information may be held in both manual and electronic form in accordance with the Data Protection Act 1998. Information may be disclosed to third parties in accordance with the Freedom of Information Act 2000 and 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:**  
**(Line Manager or a Senior CCG Manager)**

**Position:**

**Date:**

Please return to **NL CCG Business Manager**

Appendix D: Template Register of gifts and hospitality

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

## Appendix E: Template declarations of interest checklist

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

Timing	Checklist for Chairs	Responsibility
In advance of the meeting	1. <b>The agenda</b> 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 <b>definition of conflicts of interest</b> should also be accompanied with each agenda to provide clarity for all recipients.	Meeting Chair and secretariat
	3. <b>Agenda</b> to be circulated to enable attendees (including visitors) to identify any interests relating specifically to the agenda items being considered.	Meeting Chair and secretariat
	4. <b>Members should contact the Chair</b> as soon as an actual or potential conflict is identified.	Meeting members
	5. Chair to review a <b>summary report from preceding meetings</b> i.e., sub- committee, working group, etc., detailing any conflicts of interest declared and how this was managed.  <b>A template for a summary report</b> to present discussions at preceding meetings is detailed below.	Meeting Chair
	6. A <b>copy of the members' declared interests</b> is checked to establish any actual or potential conflicts of interest that may occur during the meeting.	Meeting Chair



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

<p><b>Following the meeting</b></p>	<p><b>11.</b> All <b>new interests declared</b> at the meeting should be promptly updated onto the declaration of interest form;</p> <p><b>12.</b> All new completed declarations of interest should be <b>transferred onto the register of interests.</b></p>	<p>Individual(s) declaring interest(s)</p> <p>Designated person responsible for registers of interest</p>
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## Template for recording any interests during meetings

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

## Template to record interests during the meeting.

[illegible]

## Appendix F: Template for recording minutes

### North Lincolnshire NHS Clinical Commissioning Group Primary Care Commissioning Committee Meeting

Item No	Agenda Item	Actions
1	<b>Chairs welcome</b>	
2	<b>Apologies for absence</b>  <apologies to be noted>	
3	<p><b>Declarations of interest</b></p> <p><i>XX reminded committee members of their obligation to declare any interest they may have on any issues arising at committee meetings which might conflict with the business of XXX clinical commissioning group.</i></p> <p><i>Declarations 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: <a href="http://xxxccg.nhs.uk/about-xxx-ccg/who-we-are/our-governing-body/">http://xxxccg.nhs.uk/about-xxx-ccg/who-we-are/our-governing-body/</a></i></p> <p><b>Declarations of interest from sub committees.</b> <i>None declared</i></p>	
	<p><i>The following update was received at the meeting:</i></p> <ul style="list-style-type: none"> <li><i>With reference to business to be discussed at this meeting, XX declared that he is a shareholder in XXX Care Ltd.</i></li> </ul> <p><i>XX declared that the meeting is quorate and that XX 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 XX.</i></p> <p><i>XX and XX discussed the conflict of interest, which is recorded on the register of interest, before the meeting and XX agreed to remove himself from the table and not be involved in the discussion around agenda item</i></p>	
4	<b>Minutes of the last meeting &lt;date to be inserted&gt; and matters arising</b>	

5	<p><b>Agenda Item</b> <i>&lt;Note the agenda item&gt;</i></p> <p><i>XX left the meeting, excluding himself from the discussion regarding xx.</i></p> <p><b>&lt;conclude decision has been made&gt;</b></p> <p><b>&lt;Note the agenda item xx&gt;</b></p> <p><i>XX was brought back into the meeting.</i></p>	
6	<b>Any other business</b>	
7	<b>Date and time of the next meeting</b>	

## Appendix G: Procurement checklist

<b>Service:</b>	
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	
4. What range of potential providers have been involved in considering the proposals?	
5. How have you involved your Health and Wellbeing Board(s)? How does the proposal support the priorities in the relevant joint health and wellbeing strategy (or strategies)?	
6. What are the proposals for monitoring the quality of the service?	
7. What systems will there be to monitor and publish data on referral patterns?	
8. Have all conflicts and potential conflicts of interests been appropriately declared and entered in registers?	
9. In respect of every conflict or potential conflict, you must record how you have managed that conflict or potential conflict. Has the management of all conflicts been recorded with a brief explanation of how they have been managed?	
10. Why have you chosen this procurement route e.g., single action tender? <sup>25</sup>	

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



## Template: Procurement decisions and contracts awarded

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

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

as necessary the information. Signed:

On behalf of:

Date:

Please return to NL **CCG Business Manager**

## Appendix H: Template Register of procurement decisions and contracts awarded

[illegible]

**Appendix I: Template Declaration of conflict of interests for bidders/contractors**

<b>Name of Organisation:</b>	
<b>Details of interests held:</b>	
<b>Type of Interest</b>	<b>Details</b>
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	

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

To the best of my knowledge and belief, the above information is complete and correct.

I undertake to update as necessary the information.

Signed:

On behalf

of: Date:

## **Annex J: 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<sup>28</sup>, 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

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

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

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

### **Governance arrangements**

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

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

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

#### Primary Care Commissioning Committee

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

#### NCM Commissioning Committee

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

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

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

#### NCM Clinical Advisory Committee

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

#### **Provider engagement**

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



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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.

## Appendix K: Integrated Impact Assessment

INTEGRATED IMPACT ASSESSMENT							
Policy/project/function/service	Conflict of Interest Policy						
Date of analysis:	19/07/2017						
Type of analysis completed	Quality	19/07/2017					
	Equality	19/07/2017					
	Sustainability	19/07/2017					
What are the aims and intended effects of this policy/project or function?	To support the effective management of Conflicts of Interests by the CCG, keeping the CCG compliant with mandatory requirements.						
Please list any other policies that are related to or referred to as part of this analysis	Business Conduct, Anti-Fraud & Corruption						
Who does the policy, project, function or service affect?							
	Service users						
	Members of the public						
	Other (please list)	CCG Compliance					
QUALITY IMPACT							
PATIENT SAFETY	Please 'X' ONE for each Chance of Impact on Indicator			Brief description of potential impact	Mitigation strategy and monitoring arrangements	Risk 5 x 5 risk matrix)	
	Positive Impact	No Impact	Negative Impact			Likelihood	Consequence
	X	X	X				
Patient safety /adverse events		X					
Mortality position		X					

Infection control MRSA/CDIFF		X					
CQC status		X					
NHSLA / CNST		X					
Mandatory/statutory training	X						
Workforce (vacancy turnover absence)		X					
Safe environment		X					
Standard & suitability of equipment		X					
<b>CLINICAL EFFECTIVENESS</b>							
NICE Guidance and National Quality Standards, eg VTE, Stroke, Dementia		X					
Patient related outcome measures		X					
External accreditation e.g. professional bodies ie RCN		X					
CQUIN achievement		X					
<b>PATIENT EXPERIENCE</b>							
Will there be an impact on patient experience if so how		X					
Will it impact on carers if so how		X					
<b>INEQUALITIES OF CARE</b>							
Will it create / reduce variation in care provision?		X					
<b>STAFF EXPERIENCE</b>							
What is the impact on workforce capability care and skills?		X					
Will there be a change in working practice, if so, how?		X					
Will there be an impact on training	X			All staff will have to undertake mandatory COI training			

TARGETS / PERFORMANCE							
Will it have an impact on performance, if so, how?	x			Should support compliance with national guidance.			
Could it impact on the achievement of local, regional, national targets, if so, how?		x					
EQUALITY IMPACT							
Analysis Rating (see completion notes)	Red		Red/Amber		Amber		Green X
Approved by:	Commissioner Lead:	tbc			GP lead for E&D:	tbc	
	Date				Date		
Local Profile Data							
General	N/A						
Gender (Men and Women)							
Race (All Racial Groups)							
Disability (Mental and Physical, Sensory Impairment, Autism, Mental Health Issues)							
Religion or Belief							
Sexual Orientation (Heterosexual, Homosexual and Bisexual)							
Pregnancy and Maternity							
Transgender							
Marital Status							
Age							

## Equality Data

Is any equality data available relating to the use or implementation of this policy, project or function?	No Impact
List any consultation e.g. with employees, service users, Unions or members of the public that has taken place in the development or implementation of this policy, project or function.	None - national directive
Promoting inclusivity; How does the project, service or function contribute to our aims of eliminating discrimination and promoting equality and diversity?	None - national directive

## Equality Impact Risk Assessment test

What impact will the implementation of this policy, project or function have on employees, service users or other people who share characteristics protected by *The Equality Act 2010*?

Protected Characteristic:	No Impact	Positive Impact	Negative Impact	Evidence of impact and if applicable justification where a <i>Genuine Determining Reason</i> exists
Gender (Men and Women)	X			
Race (All Racial Groups)	X			
Disability (Mental and Physical, Sensory Impairment, Autism, Mental Health Issues)	X			
Religion or Belief	X			
Sexual Orientation (Heterosexual, Homosexual and Bisexual)	X			
Pregnancy and Maternity	X			

Transgender	X			
Marital Status	X			
Age	X			

### Action Planning

As a result of performing this Equality Impact Analysis, what actions are proposed to remove or reduce any risks of adverse outcomes identified on employees, service users or other people who share characteristics protected by The Equality Act 2010?

Identified Risk:	Recommended Action:	Responsible Lead	Completion Date	Review Date
<b>None</b>				

## SUSTAINABILITY IMPACT

Staff preparing a Policy / Board Report / Committee Report / Service Plan / Project are required to complete a Sustainability Impact Assessment. Sustainability is one of the Trust's key Strategies and the Trust has made a corporate commitment to address the environmental effects of activities across Trust services. The purpose of this Sustainability Impact Assessment is to record any positive or negative impacts that this activity is likely to have on each of the Trust's Sustainability Themes.

	Positive Impact	Negative Impact	No Specific Impact	What will the impact be? If the impact is negative, how can it be mitigated? (action)
Reduce Carbon Emission from buildings by 12.5% by 2010-11 then 30% by 2020			X	
New builds and refurbishments over £2million (capital costs) comply with BREEAM Healthcare requirements.			X	
Reduce the risk of pollution and avoid any breaches in legislation.			X	
Goods and services are procured more sustainability.			X	

Reduce carbon emissions from road vehicles.			X	
Reduce water consumption by 25% by 2020.			X	
Ensure legal compliance with waste legislation.			X	
Reduce the amount of waste produced by 5% by 2010 and by 25% by 2020			X	
Increase the amount of waste being recycled to 40%.			X	
Sustainability training and communications for employees.			X	
Partnership working with local groups and organisations to support sustainable development.			X	
Financial aspects of sustainable development are considered in line with policy requirements and commitments.			X	