# BUSINESS CONDUCT & CONFLICTS OF INTEREST POLICY

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CCG Chief Operating Officer
CCG Corporate Team Lead for Conflicts of Interest

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INTRODUCTION

“If conflicts of interest are not managed effectively by CCGs, confidence in the probity of commissioning decisions and the integrity of clinicians involved could be seriously undermined. However, with good planning and governance, CCGs should be able to avoid these risks.”

Royal College of General Practitioners’ (RCGP) and NHS Confederation’s briefing paper on managing conflicts of interest, September 2011

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

2. NHS Warrington Clinical Commissioning Group (CCG), as a commissioner of healthcare, needs to manage conflicts of interest in a way that demonstrates transparency, probity and accountability. This is particularly important when commissioning services that might be delivered by member practices as providers – ensuring that the approach taken does not affect or appear to affect the integrity of the CCG’s decision making processes. This will enable the CCG to withstand scrutiny and challenge and also protect the CCG, its Governing Body, Committee members, its staff and member practices from any perception of wrong-doing.

3. Failure to manage conflicts of interest could lead to legal challenge and even criminal action in the event of fraud, bribery and corruption.

Aims & Objectives

4. Conflicts of interest are inevitable in public life. This policy sets out how NHS Warrington CCG will ensure best practice is followed in managing actual or potential conflicts of interest. The policy sets out the safeguards which are in place as part of a robust governance framework to ensure transparency, fairness and probity in decision-making, including:

- Arrangements for declaring interests
- Maintaining registers of interests
- Managing conflicts of interest proactive and / or when they arise
- Keeping a record of the steps taken to manage a conflict
- Situations where individuals would be excluded from decision-making as a result of an actual or potential conflict of interest
- Managing situations where individuals have failed to declare an interest
- Engagement with a range of potential providers on service design

5. The benefits of managing conflicts of interest are:

- Maintaining confidence and trust between patients, the public and GPs.
- Enabling the CCG and member practices to demonstrate that they are acting fairly and transparently and that the members of the CCG will always put their duty to patients before any personal interest.
- Ensuring that CCG operates in line with legislation.

**Policy Statement on Business Conduct**

6. As a statutory NHS body, NHS Warrington CCG will embody public service values and principles in all business the organisation conducts. High standards of corporate and personal conduct are a requirement for all members and employees of the CCG.

7. The following principles will govern the activities of the CCG:

**Accountability:** Everything done by members and employees of the CCG must be able to stand the test of parliamentary scrutiny, public judgements on propriety and professional codes of conduct.

**Probity:** There should be an absolute standard of honesty in dealing with the assets of the NHS and the CCG. Integrity should be the hallmark of all personal conduct in decisions affecting patients, staff and suppliers, and in the use of information acquired in the course of CCG business.

**Transparency:** There should be sufficient transparency about CCG activities to promote confidence between the CCG and its staff, patients and the public.

8. Employees, members, committee and sub-committee members of the group and members of the Governing Body should act in the interests of the group at all times and should follow the Seven Principles of Public Life, set out by the Committee on Standards in Public Life (the Nolan Principles) (see Appendix C of the CCG Constitution)

**Legislative Framework**

9. There are two separate pieces of legislation that require the CCG to manage conflicts of interest. These are:

a) *Section 140 of the 2006 Act (Health Act 2006), as inserted by section 25 of the 2012 Act (Health and Social Care Act 2012).* This requires commissioners to:

- Maintain appropriate registers of interests;
- Publish or make arrangements for public to access those registers;
- Make arrangements requiring the prompt declaration of any interests and inclusion within the relevant register;
- Make arrangements for managing conflicts of interest and potential conflict of interest;
- Have regard to guidance published by NHS England and Monitor in relation to conflicts of interest.

b) *(ii) The NHS (Procurement, Patient Choice and Competition) Regulations 2013.* This requires commissioners to:
• Manage conflicts and potential conflicts of interest when awarding a contract by prohibiting the award of contract when the integrity of the award has been, or appears to have been, affected by a conflict.

• Keep appropriate records of how they have managed any such conflicts in relation to NHS commissioning contracts it enters into. Details of this should be published by the CCG.

10. In addition to the legislation outlined above, NHS England has published detailed guidance for CCGs on the discharge of their functions and requires each CCG to have regard to the guidance. This includes:
• Managing Conflicts of Interest: Revised Statutory Guidance for CCGs, June 2016.
• Code of Conduct: Managing conflicts of interest where GP practices are potential providers of CCG commissioned services, April 2013.

Scope of the Policy & Associated Documentation

11. This policy applies to NHS Warrington Clinical Commissioning Group (CCG) and applies to all those who work for the CCG (including those on temporary or honorary contracts), members of the CCG and members of the Governing Body, CCG committees, as well as individuals who provide services to the CCG.

12. Individuals contracted to work on behalf of the CCG or otherwise providing services or facilities to the CCG will be made aware of their obligation with regard to declaring conflicts or potential conflicts of interest. This requirement will be written into their contract for services.

13. This policy should be read in conjunction with:
• NHS Warrington CCG Constitution
• NHS Warrington CCG Governance Manual
• Relevant NHS Warrington CCG Organisational Policies
• Code of Conduct for NHS Managers
• General Medical Council Good Medical Practice 2006

Commitment to review

14. This policy will be subject to review on an annual basis or on the publication of revised legislation and statutory guidance for CCGs. The review will be conducted by the CCGs Conflict of Interest Guardian supported by the Chief Operating Officer.

DEFINITION OF AN INTEREST

15. 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.
16. 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.

17. Interests can be captured in four different categories:

   a) **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.

      - 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.

      This could also include an individual being:

      - In secondary employment;

      - In receipt of secondary income from a provider;

      - 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).

   b) **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.
A member of a particular specialist professional body (although routine GP membership of the RCGP, British Medical Association (BMA) or a medical defence organisation would not usually by itself amount to an interest which needed to be declared);

An advisor for the Care Quality Commission (CQC) or the National Institute for Health and Care Excellence (NICE);

A medical researcher.

GPs and practice managers, 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.

c) **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.

d) **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, a:

- Spouse / partner
- Close relative e.g., parent, grandparent, child, grandchild or sibling;
- Close friend;
- 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.
18. NHS England has produced a range of conflicts of interest case studies can be found here. Employees, members and governing body and committee members should refer to these examples of what might constitute a conflict of interest.

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

20. If in doubt, it is better to assume the existence of a conflict of interest and declare it, rather than ignore it.

PRINCIPLES

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

22. The CCG will observe the principles of good governance in the way it does business. These include:

- The Nolan Principles\(^1\) (as set our below)
- The Good Governance Standards for Public Services (2004), Office for Public Management (OPM) and Chartered Institute of Public Finance and Accountancy (CIPFA)\(^2\)
- The seven key principles of the NHS Constitution\(^3\)
- The Equality Act 2010\(^4\)
- The UK Corporate Governance Code\(^5\)
- Standards for members of NHS boards and CCG governing bodies in England\(^6\)

23. All those with a position in public life should adhere to the Nolan principles, which are:

- **Selflessness** – Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends;

- **Integrity** – Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties;

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\(^1\) The 7 principles of public life [https://www.gov.uk/government/publications/the-7-principles-of-public-life](https://www.gov.uk/government/publications/the-7-principles-of-public-life)


\(^3\) The seven key principles of the NHS Constitution [http://www.nhs.uk/NHSEngland/about/Pages/nhscoreprinciples.aspx](http://www.nhs.uk/NHSEngland/about/Pages/nhscoreprinciples.aspx)


• **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.

24. In addition, to support the management of conflicts of interest, the CCG will:

• **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**: The CCG will seek to identify and minimise the risk of conflicts of interest at the earliest possible opportunity;

• **Be balanced and proportionate**: CCG rules will be clear and robust but not overly prescriptive or restrictive. The CCG will ensure that decision-making is transparent and fair whilst not being overly constraining, complex or cumbersome.

• **Be transparent**: The CCG will document clearly the approach and decisions taken at every stage in the commissioning cycle so that a clear audit trail is evident.

25. In addition to the above, the CCG will also 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.

DECLARING CONFLICTS OF INTEREST

Statutory requirements - CCGs must make arrangements to ensure individuals declare any conflict or potential conflict in relation to a decision to be made by the group as soon as they become aware of it, and in any event within 28 days. CCGs must record the interest in the registers as soon as they become aware of it.\(^2\)

26. Individuals should take all reasonable steps to identify conflicts of interest that arise or may arise in the course of the CCG commissioning any services or the delivery of CCG business. Individuals are not required to declare all interests they may have outside of the CCG, but rather those interests which could relate to or impact on CCG business.

27. Declarations of interest must be made either orally or in writing as soon as they are aware of it and in any event no later than 28 days after becoming aware of the conflict. A form, including detail on the types of interests to be declared, to be used for this purpose is included at Appendix A to the policy.

28. Any declared interest must also be raised verbally when dealing with or discussing a matter to which it is pertinent.

29. 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.

30. It must be stressed that, in all instances, whilst advice and guidance is available, the question of whether or not to declare an interest is one which is a matter for the judgement of the individual themselves. In most cases a decision is straightforward but in cases of doubt, the preferred option is to declare the interest.

Prior to appointment

31. Individuals applying for posts at the CCG or seeking appointment to the Governing Body and Committees of the CCG will be required to declare any potential conflicts of interest during the appointment process. The materiality and extent of interests / conflicts of interest will be considered as part of the assessment of their suitability for the appointment. Where a question arises as to whether this may impact on the ability to appoint, further guidance should be sought from the CCG Chair, Chair of the Audit Committee or Accountable Officer.

On appointment

32. All CCG employees and all members of the Governing Body, Committees or sub-Committees of the CCG are required to complete a Declaration of Interests form (including a nil return if there are no interests to declare). The form is attached at Appendix A.

\(^2\) National Health Service Act 2006 (as amended by the Health and Social Care Act 2012) section 140(3)
33. Where a position at the CCG requires an individual to refrain from a role with a specified organisation(s) (e.g. the Secondary Care Specialist or the Registered Nurse undertaking a role at a local healthcare provider), this requirement will be incorporated into the individual’s contract of employment.

**Six-Monthly**

34. The CCG has a six-monthly review system in place to the register of interests is accurate and up-to-date. 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 be recorded.

**At meetings**

35. Declarations of interest will be a standing agenda item at each meeting.

36. In any meeting, where an individual is aware of an interest, previously declared or otherwise, in relation to the scheduled or likely business of the meeting, the individual concerned will bring this to the attention of the Chair of the meeting, together with details of arrangements which have been confirmed for the management of the actual or potential conflict of interest. Where no arrangements have been confirmed, the Chair of the meeting may require the individual to withdraw from the meeting or part of it.

37. Any interests declared will be recorded in the minutes. Minutes will clearly specify the nature and extent of the interest, an outline of the discussion, the action taken to manage the conflict and the decisions made with regard to the course of action taken.

**On changing role, responsibility or circumstances**

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

39. It is an individual’s responsibility to declare if their circumstances change and to make a further declaration as soon as possible and in any event within 28 days, rather than waiting to be asked as part of the CCG six-monthly reviews.

**Submission of declaration of interest forms**

40. All completed forms should be submitted to;

- Sam Lowe, Corporate Business Assistant, Warrington CCG
- E: samantha.lowe@warringtonccg.nhs.uk
- Direct Dial: 01925 843690
- CCG Office: 01925 843636
REGISTER OF CONFLICTS OF INTEREST

Statutory requirements - CCGs must maintain one or more registers of interest of: the members of the group, members of its governing body, members of its committees or sub-committees of its governing body, and its employees. CCGs must publish, and make arrangements to ensure that members of the public have access to, these registers on request.

41. The CCG will maintain a register of interest for:

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

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

- **Members of the governing body:** All members of the CCG’s committees, sub-committees/sub-groups, including:
  - Co-opted members;
  - Appointed deputies; and
  - Any members of committees/groups from other organisations.

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

- **All members of the CCG (i.e., each practice)**
  This includes each provider of primary medical services which is a member of the CCG under Section 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.

42. The CCG register will detail actual or potential conflicts of interest pertaining to the individuals listed above. The CCG register will use the template included in Appendix B and will contain the following information:

- Name of the person declaring the interest;
- Position within, or relationship with, the CCG (or NHS England in the event of joint committees);
- Type of interest e.g., financial interests, non-financial professional interests;
- Description of interest, including for indirect interests details of the relationship with the person who has the interest;
- The dates from which the interest relates; and
The actions to be taken to mitigate risk - these should be agreed with the individual’s line manager, CCG Chief Operating Officer or Conflict of Interest Guardian.

43. All interests declared will be transferred to the CCG register within 10 working days by the CCG Corporate Team who have designated responsibility for maintaining the register. In addition, the CCG will retain a private record of historic interests for a minimum of 6 years after the date on which it expired.

44. The CCG’s published register of interests will state that historic interests are retained by the CCG for the specified timeframe and the CCG Freedom of Information Team can be contacted to submit a request for this information.

DECLARATION OF GIFTS AND HOSPITALITY

45. NHS Employees of the CCG, individuals of Member Practices, Governing Body and Committee members and individuals acting on behalf of the CCG must not accept any fee or reward for work done whilst on CCG duty other than that agreed under their terms and conditions of employment. As a general rule employees should not accept gifts or hospitality arising from their employment or appointment with the CCG, except where these are of a token nature only, in which case employees should inform their manager. This includes gifts or hospitality offered by suppliers and potential suppliers of goods and services to the CCG, and any participation in quasi-official and social events either within or outside normal working hours.

46. Any offers of gifts, hospitality or sponsorship shall be recorded in accordance with the procedures detailed in this policy.

Gifts from suppliers or contractors

47. Gifts from suppliers or contractors doing business (or likely to do business) with the CCG should be declined, whatever their value (subject to this, low cost branded promotional aids may be accepted and not declared where they are under the value of a common industry standard of £6). The person to whom the gifts were offered should also declare the offer using the template for declarations of gifts and hospitality so the offer which has been declined can be recorded on the register.

Gifts from other sources (e.g. patients, families, service users);

48. CCG staff should not ask for any gifts. Modest gifts under a value of £50 may be accepted and do not need to be declared. Gifts valued at over £50 should be treated with caution and only be accepted on behalf of an organisation (i.e. to an organisation’s charitable funds), not in a personal capacity. These should be declared by staff.

49. A common sense approach should be applied to the valuing of gifts (using an actual amount, if known, or an estimate that a reasonable person would make as to its value). Multiple gifts from the same source over a 12 month period should be treated in the same way as single gifts over £50 where the

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6 The ABPI Code of Practice for the Pharmaceutical Industry:
http://www.pmcpa.org.uk/thecode/Pages/default.aspx
cumulative value exceeds £50.

50. In cases of doubt, advice should be sought from the line manager/Chief Operating Officer or the gift should be politely declined.

**Hospitality**

51. Delivery of services across the NHS relies on working with a wide range of partners (including industry and academia) in different places and, sometimes, outside of ‘traditional’ working hours. As a result, CCG staff will sometimes appropriately receive hospitality. Staff receiving hospitality should always be prepared to justify why it has been accepted, and be mindful that even hospitality of a small value may give rise to perceptions of impropriety and might influence behaviour.

52. Hospitality means offers of meals, refreshments, travel, accommodation, and other expenses in relation to attendance at meetings, conferences, education and training events etc.

53. **Overarching principles:**
   - CCG staff should not ask for or accept hospitality that may affect, or be seen to affect, their professional judgement;
   - Hospitality must only be accepted when there is a legitimate business reason and it is proportionate to the nature and purpose of the event;
   - Particular caution should be exercised when hospitality is offered by actual or potential suppliers or contractors, these can be accepted if modest and reasonable, but individuals should always obtain senior approval and declare these.

54. **Meals and Refreshments:**
   - Under a value of £25 may be accepted and need not be declared;
   - Of a value between £25 and £75\(^9\) may be accepted and must be declared;
   - Over a value of £75 should be refused unless (in exceptional circumstances) senior approval is given. A clear reason should be recorded on the CCGs register of interest as to why it was permissible to accept;
   - A common sense approach should be applied to the valuing of meals and refreshments (using an actual amount, if known, or an estimate that a reasonable person would make as to its value).

55. **Travel and Accommodation:**

\(^9\) The ABPI Code of Practice for the Pharmaceutical Industry: [http://www.pmcps.org.uk/thecode/Pages/default.aspx](http://www.pmcps.org.uk/thecode/Pages/default.aspx)
• Modest offers to pay some or all of the travel and accommodation costs related to attendance at events may be accepted and must be declared;

• Offers which go beyond modest, or are of a type that the CCG itself might not usually offer, need approval by line manager/Chief Operating Officer, should only be accepted in exceptional circumstances, and must be declared. A clear reason should be recorded on the CCGs register of interest as to why it was permissible to accept travel and accommodation of this type;

• A non-exhaustive list of examples includes:
  • Offers of business class or first class travel and accommodation (including domestic travel); and
  • Offers of foreign travel and accommodation.

**Payment for speaking at a meeting/conference**

56. Should a member of staff, Member Practices, Governing Body and Committee members and individuals acting on behalf of the CCG, be asked to speak at an event relating to CCG business for which a payment is offered and it is delivered in working hours then there are two choices open to the member of staff which must be agreed with their line manager:

• The payment should be credited to the CCG.

• The member of staff takes annual leave or unpaid leave and the payment is made to the member of staff as a private matter between the organisation making the payment and the individual member of staff. The member of staff remains responsible for any tax liability which arises.

**Sponsored events**

57. Sponsorship of NHS events by external parties is valued. Offers to meet some or part of the costs of running an event secures their ability to take place, benefiting NHS staff and patients. Without this funding there may be fewer opportunities for learning, development and partnership working. However, there is potential for conflicts of interest between the organiser and the sponsor, particularly regarding the ability to market commercial products or services. As a result there should be proper safeguards in place to prevent conflicts occurring.

58. When sponsorships are offered, the following principles must be adhered to:

• Sponsorship of CCG events by appropriate external bodies should only be approved if a reasonable person would conclude that the event will result in clear benefit for the CCG and the NHS;

• During dealings with sponsors there must be no breach of patient or individual confidentiality or data protection rules and legislation;
• No information should be supplied to the sponsor from which they could gain a commercial advantage, and information which is not in the public domain should not normally be supplied;

• At the CCG’s discretion, sponsors or their representatives may attend or take part in the event but they should not have a dominant influence over the content or the main purpose of the event;

• The involvement of a sponsor in an event should always be clearly identified in the interest of transparency;

• The CCG should make it clear that sponsorship does not equate to endorsement of a company or its products and this should be made visibly clear on any promotional or other materials relating to the event;

• Staff should declare involvement with arranging sponsored events to the CCG.

Other forms of sponsorship

59. Organisations external to the CCG or NHS may also sponsor posts or research. However, there is potential for conflicts of interest to occur, particularly when research funding by external bodies does or could lead to a real or perceived commercial advantage, or if sponsored posts cause a conflict of interest between the aims of the sponsor and the aims of the organisation, particularly in relation to procurement and competition. There needs to be transparency and any conflicts of interest should be well managed. For further information, please see Managing Conflicts of Interest in the NHS: Guidance for staff and organisations.

Private Transactions

60. Individual staff, Member Practices, Governing Body and Committee members and individuals acting on behalf of the CCG, must not seek or accept preferential rates or benefits in kind for private transactions carried out with companies with which they have had, or may have, official dealings on behalf of the CCG. (This does not apply to concessionary agreements negotiated with companies by NHS management, or by recognised staff interests, on behalf of all staff – for example, NHS staff benefits schemes).

Donations in relation to the organisation

61. Employees must check with their line manager/Chief Operating Officer before making any requests for donations to clarify appropriateness and/or financial or contractual consequences of acquisition. Requests for equipment or services should not be made without the express permission of a senior manager.

62. Donations/Gifts from individuals, charities, companies (as long as they are not associated with known health-damaging products) – often related to individual pieces of equipment or items – provide additional benefits to patients but may have resource implications for the CCG. Further guidance
regarding charitable funds and gifts and donations can be requested from the Chief Finance Officer.

63. Any gifts to the organisation should be receipted and a letter of thanks should be sent.

Donations to an individual

64. Personal monetary gifts to an employee or appointed member should be politely but firmly declined. Where a member of staff is a beneficiary to a Will of a patient who has been under their care, the member of staff must inform their line manager of the gift or gifts so that consideration can be given to whether or not it is appropriate in all the circumstances for that member of staff to retain the gift or gifts in order to avoid subsequent claims by the beneficiaries to the Estate of inducement, reward or corruption.

65. In order to determine whether the bequest should be accepted it may be necessary to have the gift valued and where the gift has a value over a certain amount for the gift to either be returned to the Estate or the gift to be donated to a Charity of the member of staff's choice. Where the gift is to be returned to the Estate and the Trustees of the Estate are of the view having regards to all the circumstances that the member of staff should retain the gift regardless of its value, it may be appropriate for the Trustees to provide a disclaimer for future claims against the gift to avoid subsequent claims on the gift or allegations of inducement or reward being made against the member of staff or the CCG at some point in the future.

Recording of gifts, hospitality and sponsorship

66. All offers of gifts and hospitality must be declared and recorded in line with the limits included in this policy.

67. Gifts, hospitality and sponsorship will be recorded in a central register in accordance with the guidelines. The form at Appendix C should be completed and returned to the CCG Corporate Team within two weeks so that the details can be recorded on the central Register. Failure to notify the CCG may lead to disciplinary action against a member of staff.

68. Where gifts, hospitality or sponsorship are offered, but declined, the offer should still be recorded in the register using the form attached at Appendix C.

69. It is acknowledged that there may be circumstances where hospitality may be offered by an organisation, as an integral element of a strategic partnership relationship. A fund should be established so that the CCG may meet the costs of that hospitality, thus enabling the benefits to the strategic relationship, but not compromising compliance with the Standards of Business Conduct. Acceptance of such hospitality and associated funding agreement will be authorised by the Chief Finance Officer and recorded in the Register of Hospitality, Gifts and Sponsorship.
MAINTAINING A REGISTER OF GIFTS AND HOSPITALITY

70. The CCG register will detail all hospitality or gifts declared including any gifts and hospitality declared in meetings. The CCG register will use the template included in Appendix D and will contain the following information:

- Recipient’s name;
- Current position(s) held by the individual (within the CCG);
- Date of offer and/or receipt;
- Details of the gifts of hospitality;
- The estimated value of the gifts or hospitality;
- Details of the supplier/offeror (e.g. their name and the nature of their business);
- Details of previous gifts and hospitality offered or accepted by this offeror/supplier;
- Details of the officer reviewing/approving the declaration made and date;
- Whether the offer was accepted or not; and
- Reasons for accepting or declining the offer.

71. All hospitality or gifts declared will be transferred to the CCG register within 10 working days by the CCG Corporate Team which has designated responsibility for maintaining the register.

72. The CCG will publish its register in a prominent place on the CCG website and as part of the CCG’s Annual Report and Annual Governance Statement.

73. 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 for the CCG, who should seek appropriate legal advice where required, and the CCG will retain a confidential un-redacted version of the register.

ROLES AND RESPONSIBILITIES

NHS employers

74. The CCG is responsible for ensuring that the requirements of this policy and supporting documents are brought to the attention of all staff and that machinery is put in place for ensuring that the guidelines are effectively implemented. These responsibilities are particularly important given the corporate responsibility set out in the Bribery Act for organisations to ensure that their anti-corruption procedures are robust.

75. Such awareness will be promoted in:

- A clause in written statements of terms and conditions of employment;
- Publication on the CCG’s intranet site for staff; and
• Staff awareness and training sessions.

NHS staff

76. NHS staff are expected to:

• Ensure that the interests of patients remain paramount at all times;
• Be impartial and honest in the conduct of their official business;
• Use the public funds entrusted to them to the best advantage of the service, always ensuring value for money; and
• Register with the CCG any interest outside the workplace which could be construed as affecting any part of their work within the CCG.

77. It is also the responsibility of staff to ensure that they do not:

• Abuse their official position for personal gain or to benefit their family or friends; and
• Seek to advantage or further private business or other interests, in the course of their official duties.

78. It is the responsibility of all staff to raise any concerns regarding staff business conduct.

79. All NHS staff should ensure that they are not placed in a position that risks, or appears to risk, conflict between their private interests and their NHS duties.

Member Practices, Governing Body and Committee/Sub-Committee members and individuals acting on behalf of the CCG

80. Governing Body, Committee/Sub-Committee members and individuals acting on behalf of the CCG (and its constituent Member Practices), must act in accordance with this policy in circumstances whether they are either employed fully by the CCG, hold appointments with the CCG, are employed on a sessional basis or on an honorary contract, or provide services under a service level agreement with the CCG.

81. Member Practices and individuals of those individual Practices acting on their behalf in exercise of the CCG’s commissioning functions must act in accordance with this policy.

Secondary employment

82. All employees, committee members, contractors and others engaged under contract with the CCG are required to inform their line manager 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.

83. 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.

84. If individuals have employment other than their employment with the CCG, they must write to their Manager giving details of the hours and days worked and duties carried out, seeking agreement that this work will not be detrimental to their employment within the CCG.

85. The CCG reserves the right to refuse permission where it believes a conflict will arise which cannot be effectively managed. In particular, it is unacceptable for pharmacy advisers or other advisers, employees or consultants to the CCG on matters of procurement to themselves be in receipt of payments from the pharmaceutical or devices sector.

86. Employees should be advised not to engage in outside employment during any periods of sickness absence from the CCG. To do so may lead to a referral being made to the Local Counter Fraud Specialist for investigation which may lead to criminal and/or disciplinary action in accordance with the CCG’s Anti-Fraud Policy.

Appointing governing body or committee members and senior employees

87. On appointing governing body, committee or sub-committee members and senior staff, the CCGs will consider declared conflicts of interest as part of the recruitment process.

88. Whether individuals should be excluded from being appointed to the relevant role due to a conflict of interest will be considered on a case-by-case basis using the principles set out in the CCG Constitution, this policy and associated statutory guidance.

89. 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 will also be considered for all employees and especially those operating at senior level.

90. The CCG will also 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.

91. 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.
CCG lay members

92. Lay members play a critical role in the CCG, providing scrutiny, challenge and an independent voice in support of robust and transparent decision-making and management of conflicts of interest. They chair a number of CCG committees, including the Audit Committee and Primary Care Commissioning Committee.

93. By statute, the CCGs must have at least two lay members (one of whom must have qualifications, expertise or experience such as to enable the person to express informed views about financial management and audit matters\textsuperscript{10} and serve as the chair of the audit committee\textsuperscript{11}; and the other, knowledge of the geographical area covered in the CCG’s constitution such as to enable the person to express informed views about the discharge of the CCG’s functions\textsuperscript{12}).

94. In light of lay members’ expanding role in primary care co-commissioning, the CCG will increase the number of lay members on the governing body to three. The third lay member will assume the role of Chair or Vice Chair of the Primary Care Commissioning Committee and in line with statutory guidance may be shared with another CCG in the same Sustainability and Transformation area.

Conflicts of Interest Guardian

95. The Chair of the Audit Committee has a lead role in ensuring that the Governing Body and wider CCG act with the utmost probity at all times. The Chair of the Audit Committee oversees key elements of governance including the appropriate management of conflicts of interest in line with national guidance.

96. To further strengthen scrutiny and transparency of the CCGs’ decision-making processes, the CCG has a Conflicts of Interest Guardian. This role is undertaken by the CCG audit chair. The Conflicts of Interest Guardian is supported by the CCG’s Chief Operating Officer, who has responsibility for the day-to-day management of conflicts of interest matters and queries. The CCG Chief Operating Officer will keep the Conflicts of Interest Guardian briefed on conflicts of interest matters and issues arising.

97. The Conflicts of Interest Guardian will, in collaboration with the CCG’s Chief Operating Officer:

- Act as a conduit for GP practice staff, members of the public and healthcare professionals who have any concerns with regards to conflicts of interest;
- Be a safe point of contact for employees or workers of the CCG to raise any concerns in relation to this policy;
- Support the rigorous application of conflict of interest principles and policies;

\textsuperscript{10} Section 12(3) NHS (CCG) Regulations 2012 \url{http://www.legislation.gov.uk/uksi/2012/2996/pdfs/uksi_20122996_en.pdf}
\textsuperscript{11} Section 14(2) NHS (CCG) Regulations 2012 \url{http://www.legislation.gov.uk/uksi/2012/2996/pdfs/uksi_20122996_en.pdf}
\textsuperscript{12} Section 12(4) NHS (CCG) Regulations 2012 \url{http://www.legislation.gov.uk/uksi/2012/2996/pdfs/uksi_20122996_en.pdf}
• Provide independent advice and judgment where there is any doubt about how to apply conflicts of interest policies and principles in an individual situation; and
• Provide advice on minimising the risks of conflicts of interest.

98. Whilst the Conflicts of Interest Guardian has an important role within the management of conflicts of interest, executive members of the CCG’s governing body have an on-going responsibility for ensuring the robust management of conflicts of interest, and all CCG employees, governing body and committee members and member practices will continue to have individual responsibility in playing their part on an on-going and daily basis.

Primary Care Commissioning Committee Chair

99. The primary care commissioning committee must have a lay chair and lay vice chair. To ensure appropriate oversight and assurance, and to ensure the CCG audit chair’s position as Conflicts of Interest Guardian is not compromised, the audit chair should not hold the position of chair of the primary care commissioning committee. This is because the CCG audit chair would conceivably be conflicted in this role due to the requirement that they attest annually to the NHS England Board that the CCG has:

• Had due regard to the statutory guidance on managing conflicts of interest; and
• Implemented and maintained sufficient safeguards for the commissioning of primary care.

100. The CCG audit chair can however serve on the primary care commissioning committee provided appropriate safeguards are put in place to avoid compromising their role as Conflicts of Interest Guardian. Ideally the CCG audit chair would also not serve as vice chair of the primary care commissioning committee. However, if this is required it will need to be clearly recorded and appropriate further safeguards may need to be put in place to maintain the integrity of the audit chair’s role as Conflicts of Interest Guardian in circumstances where they chair all or part of any meetings in the absence of the primary care commissioning committee chair.

GOVERNANCE ARRANGEMENTS AND DECISION MAKING

**Statutory requirements** - CCGs must make arrangements for managing conflicts of interest, and potential conflicts of interest, in such a way as to ensure that they do not, and do not appear to, affect the integrity of the group’s decision-making.

101. The CCG will review on an annual basis through internal audit its governance structures and policies for managing conflicts of interest to ensure that they reflect the guidance and are appropriate.

102. Particular consideration will be given to the following:
• The make-up of the governing body and committee structures and processes for decision-making;
• Whether there are sufficient management and internal controls to detect breaches of the CCG’s conflicts of interest policy, including appropriate external oversight and adequate provision for raising concerns under this policy;
• How non-compliance with policies and procedures relating to conflicts of interest will be managed (including how this will be addressed when it relates to contracts already entered into); and
• Identifying and implementing training or other programmes to assist with compliance, including participation in the training offered by NHS England.

Chairing arrangements and decision-making processes

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

104. 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).

105. 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.

106. It is good practice for the chair, with support of the CCG’s Chief Operating Officer, if required, the Conflicts of Interest Guardian, to proactively consider ahead of meetings what conflicts are likely to arise and how they should be managed, including taking steps to ensure that supporting papers for particular agenda items of private sessions/meetings are not sent to conflicted individuals in advance of the meeting where relevant.

107. To support chairs in their role, a declaration of interest checklist will be provided prior to meetings, which will include details of any declarations of conflicts which have already been made by members of the group. A template declaration of interest checklist is included in Appendix E.

108. 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 register of interests to ensure it is up-to-date.

109. Following declarations if the chair finds that exclusions arising from a conflict of interest will affect the quoracy of the meeting then they must postpone the agenda item until a quorum can be achieved without conflict.

110. 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.

111. 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.

112. 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; and
- 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. The conflicts of interest case studies provided by NHS England include examples of material and immaterial conflicts of interest.

Primary care commissioning committees and sub-committees

113. The CCG jointly commission general practice with NHS England under the Joint commissioning model. This enables the CCG to assume responsibility for jointly commissioning primary medical services with the local NHS England team via a joint committee. It is a requirement for each joint committee to have a register of interests and for the interests of both CCG and NHS England representatives to be included on this register. These interests should also be recorded on the CCG’s main register of interests.

114. The CCG, jointly with the local NHS England team, will review on an annual basis the arrangements for the joint committee including the terms of
reference, membership, decision-making processes and voting arrangements to ensure it meets all statutory guidance.

Minute-taking

115. It is imperative that the CCG ensures complete transparency in its 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).

116. An example template used for CCG minute keeping is included in Appendix F.

MANAGING CONFLICTS OF INTEREST THROUGHOUT THE COMMISSIONING CYCLE

117. 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 must 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. The NHS England conflicts of interest case studies include examples of this.

Designing service requirements

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

119. Public involvement supports transparent and credible commissioning decisions. It should happen at every stage of the commissioning cycle from needs assessment, planning and prioritisation to service design, procurement and monitoring. CCGs have legal duties under the Act to properly involve patients and the public in their respective commissioning processes and decisions.

Provider engagement

120. 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 the CCG 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.

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

122. 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 CCG website and/or via workshops with interested parties (ensuring a record is kept of all interaction). NHS Improvement\(^\text{13}\) has issued guidance on the use of provider boards in service design.\(^\text{14}\)

123. 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.

New Care Models

125. Where the CCGs is commissioning new care models, 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.

126. New care models may refer to but are not exclusively 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.

127. Further advice and support to help manage conflicts of interest in the commissioning of new care models is included in Appendix K. It summarises key aspects of the statutory guidance which are of particular relevance to commissioning new care models.

Specifications

128. The CCG should seek, as far as possible, to specify the outcomes to be delivered through a new service, rather than the process by which these outcomes are to be achieved. As well as supporting innovation, this helps prevent bias towards particular providers in the specification of services. However, careful consideration must be given to the appropriate degree of financial risk transfer in any new contractual model.

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\(^{13}\) NHS Improvement is the organisation which brings together Monitor and the NHS Trust Development Authority, and is a combination of the continuing statutory functions and legal powers vested in those two bodies, including Monitor’s functions in relation to the National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013 (PPCCR)

129. 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**

130. The CCGs must be able to recognise and manage any conflicts or potential conflicts of interest that may arise in relation to the procurement of any services or the administration of grants. “Procurement” relates to any purchase of goods, services or works and the term “procurement decision” should be understood in a wide sense to ensure transparency of decision making on spending public funds. The decision to use a single tender action, for instance, is a procurement decision and if it results in the CCG 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.

131. The CCG 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 2105): 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.

132. 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.

133. The National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013\(^1\) 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.**

\(^1\) The National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013

http://www.legislation.gov.uk/uksi/2013/500/contents/made
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.

An obvious area in which conflicts could arise is where the CCG commissions (or continues to commission by contract extension) healthcare services, including GP services, in which a member of the CCG has a financial or other interest. This may most often arise in the context of co-commissioning of primary care, particularly with regard to delegated commissioning, where GPs are current or possible providers.

The procurement template, in Appendix G, sets out factors that the CCG will address when drawing up plans to commission general practice services.

CCG is required to make the evidence of its management of conflicts publicly available, and the relevant information from completed procurement template should be used to complete the CCG 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; and
- 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.

Commissioning Support Services (CSS)

Anyone contracted to provide services or facilities directly to the CCG will be subject to the same provisions of this policy in relation to managing conflicts of interests. This requirement will be set out in the contract for their services.
140. The CCG contracts for commissioning support for a number of CCG functions. Members of staff from the CSS are often in a position to influence the decisions of the CCG. As such, the CCG will require the CSS, to provide on a regular basis, a register of interests for senior members of staff supporting the CCG.

141. Where a CSS supports the CCG in undertaking procurement, the CSS will help to demonstrate that the CCG is acting fairly and transparently by assessing whether providers meet pre-qualifying criteria and which provider provides best value for money against the specification and evaluation criteria. However, the CCG will:
   - Determine and sign-off the specification and evaluation criteria;
   - Decide and sign-off decision on which providers to invite to tender; and
   - Make the final decision on the selection of the provider.

**Register of Procurement Decisions**

142. The CCG will maintain a register of procurement decisions taken, to 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; and
   - The award decision taken.

143. In the interests of transparency, the value of all contracts will be published following the agreement of the contract. Where it is decided to commission services through Any Qualified Provider (AQP), the type of services being commissioned and the agreed price for each service will also be included. Such details will also be set out in the annual report.

144. The register will be updated whenever a procurement decision is taken and will be available on the CCG website and available on request for inspection at the CCG’s headquarters. A template of the register used by the CCG is included in Appendix H. Updated copies will be presented to the Audit Committee on a regular basis.

145. The Register of Procurement Decisions will form part of the annual accounts and will therefore be signed off by the external auditors.

146. Although it is not a requirement to keep a register of services that may be procured in the future, it is good practice to ensure planned service developments and possible procurements are transparent and available for the public to see. The CCG will endeavour to meet this requirement by including proposed procurements within its Commissioning Plans and Reports to the Governing Body.

**Bidders in Procurement Processes**
147. As part of a procurement process, bidders will be asked to complete a formal declaration at the invitation to tender stage of the procurement process. This form is enclosed as Appendix I. This allows the CCG to ensure that it complies with the principles of equal treatment and transparency. When a bidder declares a conflict, the CCG will decide how best to deal with it to ensure that no bidder is treated differently to any other.

148. 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, the CCG will retain an internal audit trail of how the conflict or perceived conflict was dealt with to allow it to provide information at a later date if required.

Contract Monitoring

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

150. Any contract monitoring meeting must 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 policy and using the approved CCG templates. 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.

151. 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.

152. The CCG will consider any potential conflicts of interest when disseminating any contract or performance information/reports on providers, and will manage the risks appropriately.

RAISING CONCERNS AND BREACHES

153. It is the duty of every CCG employee, governing body member, committee or sub-committee member and GP practice member to speak up about genuine concerns in relation to the administration of this policy, and to report these concerns. These individuals should not ignore their suspicions or investigate themselves, but rather speak to the CCG Conflict of Interest Guardian or Chief Operating Officer.

154. Any non-compliance with this policy should be reported in accordance with the terms of the policy, and CCG’s whistleblowing policy (where the breach is being reported by an employee or worker of the CCG) or with the whistleblowing policy of the relevant employer organisation (where the breach is being reported by an employee or worker of another organisation).

155. The CCG is committed to creating an environment and culture where individuals feel supported and confident in declaring relevant information, including notifying any actual or suspected breaches of the rules.
Reporting breaches

156. This policy should be read in conjunction with the existing Fraud Policy & Response Plan and/or Whistleblowing Policy. All individuals subject to this policy are encouraged to raise concerns about any issue or suspicion of malpractice at the earliest possible stage.

157. Individuals who wish to report a suspected or known breach of this policy either in respect of themselves or colleagues should raise it in the first instance with the CCG Conflict of Interest Guardian or Chief Operating Officer.

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

159. All such 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 will receive an appropriate explanation of any decisions taken as a result of any investigation.

160. All reports of a suspected or known breach of this policy will be investigated by the CCG Conflict of Interest Guardian or Chief Operating Officer. An independent external investigator may be asked to lead the investigation if deemed necessary by the Conflict of Interest Guardian.

161. The Conflict of Interest Guardian will determine the point at which the local office of NHS England is notified of any suspected or known breach on a case by case basis.

162. Furthermore, 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.

163. Anonymised details of breaches will be published on the CCG’s website for the purpose of learning and development.

Fraud or Bribery

164. 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.

NON-COMPLAINECE

165. Failure to comply with this policy which is pursuant to statutory guidance, can have serious implications for the CCG and any individuals concerned.

Civil implications

166. If conflicts of interest are not effectively managed, the CCG could face civil challenges to decisions it makes. 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

167. 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 the CCG and linked organisations, and the individuals who are engaged by it.

168. 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.

169. 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.

170. 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**

171. The CCG will ensure that individuals who fail to disclose any relevant interests or who otherwise breach the CCG’s rules and policies relating to the management of conflicts of interest are subject to investigation and, where appropriate, to disciplinary action. CCG staff, governing body and committee members in particular should be aware that the outcomes of such action may, if appropriate, result in the termination of their employment or position with the CCG.

**Professional regulatory implications**

172. Statutorily regulated healthcare professionals who work for, or are engaged by the CCG 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 it believes that they have acted improperly, so that these concerns can be investigated. Statutorily regulated healthcare professionals should be 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.
KEY CONTACTS IN RELATION TO THIS POLICY

CCG Conflict of Interest Guardian

Mr Gareth Hall
E: garethhall@nhs.net

CCG Chief Operating Officer

Mr Nick Armstrong
E: nicholas.armstrong@nhs.net
Direct Dial: 07904046267

CCG Corporate Team Lead for Conflicts of Interest

Sam Lowe, Corporate Business Assistant
E: sam.lowe@nhs.net
Direct Dial: 01925 843690
CCG Office: 01925 843636
Appendix A – Template Declaration of interests for CCG members and employees

For the current versions of the following appendices please visit - https://www.england.nhs.uk/publication/conflicts-of-interest-management-templates/

Appendix B – Template Register of interests for CCGs

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