



Co-commissioning Conflicts of Interest Audit: Summary report

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Description	In September 2015, NHS England commissioned an audit of conflicts of interest management in ten primary care co-commissioning arrangements. The aim of the audit was to review how the safeguards set out in the Managing Conflicts of Interest statutory guidance were operating in practice, share learning and good practice and identify any areas for improvement. This report summarises key learning from the audit in support of commissioners' development.
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Co-commissioning Conflicts of Interest Audit: Summary Report

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Contents

Contents	4
Executive Summary.....	5
1. Introduction.....	7
1.1 Background.....	7
1.2 Scope and objectives of the audit	8
1.3 Purpose of the report.....	9
2. Key findings and lessons learned	10
2.1 Summary of the key findings.....	10
2.2 Key learning for joint and delegated co-commissioning arrangements	11
Conflicts of interest policies and processes.....	11
Governance arrangements and sub-committees of the Primary Care Commissioning Committees.....	12
Registers of Declared Interests and Registers of Procurement Decisions	12
Minute taking	14
Conflicts of Interest training	15
2.3 Recommendations for NHS England	15
3. Next steps.....	16

Executive Summary

1. In September 2015, NHS England commissioned an audit of conflicts of interest management in a sample of ten primary care co-commissioning arrangements. The aim of the audit was to review how the safeguards set out in the *Managing Conflicts of Interest* statutory guidance were operating in practice, share learning and good practice and identify any areas for improvement. The scope of the audit encompassed seven delegated arrangements and three joint arrangements and this report summarises the key learning in support of commissioners' development.
2. The audit found that the *Managing Conflicts of Interest* statutory guidance has been well received by CCGs, with all audit sites having reviewed their processes in line with the statutory guidance. The audit identified a number of examples of good practice, including the inclusion of out-of-area GPs on the Primary Care Commissioning Committee to ensure clinical input into decision-making, whilst minimising the risk of conflicts of interest.
3. The audit report highlights some inconsistencies in the processes established by the audit sites to manage conflicts of interest including:
 - **Governance arrangements**, as some sites had no clearly defined processes for managing conflicts of interest breaches;
 - **Training arrangements**, as not all audit sites had a structured conflicts of interest training programme;
 - **Processes to declare and record conflicts**, including inconsistencies in minute taking and frequency of updating Declarations of Interest.
4. In light of the findings, the report recommends that joint and delegated co-commissioning arrangements:
 - Establish **processes** to ensure that any potential conflicts are identified and effectively managed throughout the full decision making life-cycle, including at sub-committees of the Primary Care Commissioning Committee;
 - Define the procedures to follow when a **breach** is detected;
 - Document procedures to manage conflicts of interest risks relating to **contract monitoring**;
 - Consider the key decisions the Primary Care Commissioning Committee is likely to make and the potential **conflicts of interest scenarios** and how they should be dealt with;

- Ensure members of the public can **access** the most up-to-date version of the Register of Declared Interests and Register of Procurement Decisions;
 - Collate **Declarations of Interest** on at least a quarterly basis, with confirmations provided by all members and employees that their declared interests are up-to-date;
 - Ensure that any declared conflicts of interest are promptly transferred onto the **Register of Interests**;
 - Establish and maintain a **Register of Procurement Decisions** to ensure the transparency of procurement decisions;
 - With regards to joint arrangements, ensure that all joint committee members, including NHS England staff, are included in the **Joint Committee's Register of Declared Interests**;
 - Ensure the **minutes** of primary care commissioning committee detail the nature of any conflict, who had the conflict and how the conflict was managed to ensure full transparency in the decision-making process.
5. The report highlights a number of areas of the statutory guidance where further clarity is needed on the minimum requirements. This will help to reduce the level of variation in processes for managing conflicts of interest. NHS England will be reviewing, updating and consulting on the statutory guidance on managing conflicts of interest in April 2016 , and will publish new and revised guidance in June 2016. The revised guidance will include more examples and templates to further support commissioners with practical implementation of the guidance.
6. CCGs are recommended to review the audit findings and consider and evaluate their current arrangements for managing conflicts of interest and if they could be strengthened.

1. Introduction

1.1 Background

“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”

NHS England (2014) Managing Conflicts of Interest Statutory Guidance for CCGs

7. Commissioners manage conflicts of interest as part of their day-to-day activities. Effective handling of such conflicts is crucial for the maintenance of public trust in the commissioning system. Importantly, it also serves to give confidence to patients, providers, Parliament and tax payers that commissioning decisions are robust, fair, transparent and offer value for money.
8. In 2014, NHS England invited Clinical Commissioning Groups (CCGs) to take on an increased role in the commissioning of general practice (GP) services, through one of three co-commissioning models:
 - **Greater involvement:** where CCGs collaborate more closely with their local NHS England teams in decisions about primary care services;
 - **Joint commissioning:** where one or more CCGs jointly commission GP services with NHS England through a joint committee;
 - **Delegated commissioning:** where CCGs assume full responsibility for the commissioning of GP services.
9. The intention of co-commissioning is to empower and enable CCGs to improve primary care services locally for the benefit of patients and local communities. It aims to bring more clinical leadership into general practice commissioning and enable more local decision making in support of the development of out-of-hospitals services. However, it is recognised that co-commissioning creates risk which needs to be carefully managed.
10. In light of this, in December 2014 NHS England published statutory guidance on *Managing Conflicts of Interest* for CCGs, in collaboration with national partners and regulators. The statutory guidance sets out the minimum requirements of what CCGs must do in respect of managing conflicts of interest, including:
 - 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 members and employees and ensure that these interests are entered into the relevant register;
 - Make arrangements for managing conflicts and potential conflicts of interest e.g. developing appropriate policies and procedures;
 - Have regard to guidance published by NHS England and Monitor on conflicts of interest;
 - Establish a primary care commissioning committee for the discharge of primary medical services functions. This committee must have a lay and executive majority to mitigate the risk of real and perceived conflicts of interest and have a lay chair and lay vice-chair.
11. With regards to NHS England staff, they are bound by the codes set out in the NHS England's Standards of Business Conduct, but are also required to adhere to the statutory guidance when serving on a joint committee with one or more CCGs.
12. When the statutory guidance was published, NHS England agreed to undertake a sample audit to review how the conflicts of interest safeguards were operating in practice, share learning and good practice and identify any areas for further support. This report sets out the key findings from the audit.

1.2 Scope and objectives of the audit

13. In September 2015, NHS England commissioned its internal audit team to evaluate the arrangements for managing conflicts of interest at a non-statistical sample of ten primary care co-commissioning arrangements. This included seven delegated arrangements and three joint commissioning arrangements (where both CCGs' and NHS England's arrangements were reviewed). The aims of the audit were to:
- Understand and evaluate compliance with the statutory guidance on managing conflicts of interest;
 - Identify and report on good practice in managing conflicts of interest across the co-commissioning arrangements visited;
 - Identify areas in the statutory guidance where further clarity was required;
 - Identify and report upon lessons or areas for improvement.

14. The focus of this audit was on the 'design'¹ of mechanisms to manage conflicts of interest in relation to the commissioning of primary care services and how these met the requirements set out in the statutory guidance. The audit focussed on the following areas:

- Governance arrangements;
- Processes to identify and declare conflicts;
- Mechanisms to record, maintain and publish conflicts of interest;
- Commissioning and contract monitoring;
- Processes to identify and manage non-compliance.

15. The audit included a desktop review of key documentation and interviews with CCG and NHS England representatives, as well as Healthwatch, Local Medical Committee and Local Pharmaceutical Committee representatives. The scope did not include the identification of actual or potential conflicts of interest, or confirmation that primary care commissioning decisions were appropriate.

1.3 Purpose of the report

16. The purpose of the report is:

- **To summarise the key findings and lessons from the audit:** Commissioners are encouraged to review their arrangements for managing conflicts of interest in light of the findings and consider whether they need to be enhanced;
- **To set out the next steps and actions for NHS England:** The audit made a number of recommendations for NHS England and the report sets out how NHS England will address these in the refresh of the statutory guidance on managing conflicts of interest.

¹ The audit focussed on whether mechanisms and controls were in place in line with the statutory guidance, which, if operating effectively, would reduce the co-commissioning arrangement's conflicts of interest risk. However, due to the small number of decisions made across the co-commissioning arrangements as a result of the timing of the work, the audit could not perform sufficient work to confirm that those controls and mechanisms were being operated in line with their design. It is proposed that future work is undertaken to evaluate operating effectiveness.

2. Key findings and lessons learned

2.1 Summary of the key findings

17. The statutory guidance on managing conflicts of interest has been well received by CCGs. All audit sites had reviewed and updated their policies for managing conflicts of interest in light of the guidance. In most cases, training had been provided to individuals in decision-making roles, such as members of the Governing Body and the Primary Care Commissioning Committees, on the identification and management of conflicts of interest.
18. There was strong engagement from CCG and NHS England stakeholders in the audit and a strong awareness of the need to effectively manage conflicts of interest and declare and record interests in a timely manner. The audit sites demonstrated a strong awareness of the conflicts of interest risks associated with commissioning primary medical services and had taken steps to review their governance structures and procedures to manage these effectively.
19. All the co-commissioning arrangements audited were implemented on 1 April 2015 and the number of primary care decisions they had taken up to the end of December 2015 varied. Whilst decisions had been made in relation to practice closures, practice mergers, PMS reviews and payments for various GP schemes and projects; at the time of the audit only one co-commissioning arrangement had made a primary care commissioning procurement decision, which resulted in the award of a contract to a provider. The audit therefore focused upon the mechanisms and processes set up to manage conflicts of interest.
20. A number of examples of good practice were identified during the audit, including:
 - Some Primary Care Commissioning Committees included either retired GPs or GPs 'co-opted' from another CCG to sit on the committee. This reduced the likelihood of conflicts of interest arising, whilst maintaining clinical input in the decision making process;
 - There was evidence of proactive consideration of conflicts of interest ahead of Primary Care Commissioning Committee meetings, so that Chairs could consider how known conflicts of interest would be managed in advance of the meeting;
 - A number of CCGs had incorporated a review of their general practice co-commissioning arrangements, including management of conflicts of interest, within their internal audit plans.
21. The audit identified a number of inconsistencies in the processes developed to manage conflicts of interest and deliver the requirements set out in the statutory guidance in the following areas:

- **Governance arrangements**, as some sites had no clearly defined processes for managing conflicts of interest breaches;
- **Training arrangements**, as not all audit sites had a structured conflicts of interest training programme;
- **Processes to declare and record conflicts**, including inconsistencies in minute taking.

22. The findings are expanded upon in section 2.2, which also makes recommendations for joint and delegated arrangements moving forward.

2.2 Key learning for joint and delegated co-commissioning arrangements

23. The following section outlines some of the inconsistencies identified in the processes developed to manage conflicts of interest and makes recommendations for co-commissioning arrangements. Section 2.3 summarises the recommendations for NHS England and section 3 how NHS England will seek to address these.

Conflicts of interest policies and processes

24. The statutory guidance requires that there are sufficient management and internal controls to detect breaches of the CCG's conflicts of interest policy, including appropriate external oversight and adequate provision for whistleblowing. Whilst none of the co-commissioning arrangements had identified a breach with regards to their conflicts of interest policy, there was a lack of detail on the procedures to be followed were a breach to be identified, including how any contracts affected by the breach would be managed.

Recommendation 1 - Each co-commissioning arrangement should define the procedures to follow when a breach is detected.

25. Whilst all of the CCG conflicts of interest policies reviewed applied to all activities of the co-commissioning arrangement, most audit sites had not documented specific procedures to manage conflicts of interest with regards to contract monitoring.

Recommendation 2 - Each co-commissioning arrangement should document their procedures to manage conflicts of interest risks related to contract monitoring.

26. The conflicts of interest guidance states that commissioners should agree in advance how a range of possible conflicts of interest scenarios will be handled. The CCG conflicts of interest policies reviewed contained some examples of the types of conflicts of interests that may occur. However, very few case studies were included within the policies to demonstrate how these should be managed.

Recommendation 3 - Co-commissioning arrangements should consider the key decisions the Primary Care Commissioning Committee is likely to make and identify some conflicts of interest scenarios that may arise and agree how they will be dealt with.

Governance arrangements and sub-committees of the Primary Care Commissioning Committees

27. The statutory guidance on managing conflicts of interest sets out how Primary Care Commissioning Committees should be constituted. Out of the ten audit sites, one was not in compliance with the guidance as it had not established a separate Primary Care Commissioning Committee. In addition, there were variations in the composition of Primary Care Commissioning Committees, particularly concerning the inclusion of GP members and their voting rights.

28. The majority of the processes and mechanisms that co-commissioning arrangements had in place to manage conflicts of interests focussed on decision-making at the Primary Care Commissioning Committee. However, often primary care options appraisals and proposals were prepared outside of the Primary Care Commissioning Committee in working groups or sub-committees. Whilst the statutory guidance is applicable to all CCG activities, in most cases, the decision-making committees did not have visibility of, or gain assurance over, the management of conflicts of interest within their supporting groups.

Recommendation 4 - Co-commissioning arrangements should establish processes to ensure that any potential conflicts are identified and effectively managed throughout the full decision making life-cycle, including where tasks are carried out by sub-committees or working groups outside the Primary Care Commissioning Committee. They should ensure that records are maintained to demonstrate this to the Primary Care Commissioning Committee and presented as part of any options papers.

Registers of Declared Interests and Registers of Procurement Decisions

29. The statutory guidance requires that co-commissioning arrangements publish and make arrangements to ensure that members of the public have access to both the Register of Declared Interests and Register of Procurement

Decisions on request, including publishing the Register of Procurement Decisions in the Annual Report and Accounts. The audit found:

- All co-commissioning arrangements had published a Register of Interests on their website, however, for two this was not the current version;
- There was variation on whether a full or partial register was published. For example, some CCGs published a Register of Declared Interests that detailed only Governing Body members, whereas other CCGs published a Register of Declared Interests that detailed Governing Body members, GP members and employees;
- Where a partial register had been published, there were a number of instances where there was no notification to flag to the public that a full register was available upon request;
- In addition, only one audit site had made the Register of Procurement Decisions available in the Annual Report and Accounts.

Recommendation 5 - Co-commissioning arrangements should have suitable arrangements in place to ensure members of the public can access the most up-to-date versions of the Register of Declared Interests and Register of Procurement Decisions.

30. The audit found that co-commissioning arrangements had established a process to send reminders to members and employees to consider whether their interests were up-to-date and to request any updates to be added to the Register of Interests. The frequency of the reminders varied between monthly, quarterly, six-monthly and annually. In addition, four co-commissioning arrangements did not require “nil” responses from employees to confirm they had reviewed their interests and had no changes to declare.

Recommendation 6 - Declarations of interests should be undertaken on at least a quarterly basis, with confirmations provided by all CCG employees, members, of the governing body and its committees and sub-committees that their declared interests are up-to-date.

31. Only six of the co-commissioning arrangements had established a Register of Procurement Decisions, even though CCGs should have a Register to capture other procurement decisions they are making.

Recommendation 7 - It is important for co-commissioning arrangements to establish and maintain a Register of Procurement Decisions to ensure the transparency of procurement decisions.

32. Two of the three joint committees included in the audit had not required its NHS England members to be included on the Register of Declared Interests. In these instances, pre-existing CCG Registers of Declared Interests were being used and NHS England members of the joint committee had not been added. The joint commissioning arrangement which included NHS England members on its Register of Declared Interests had set up a specific register for the Joint Committee.

Recommendation 8 - To provide increased transparency and ensure easy access to recorded interests, all joint committee members, including NHS England, should be included in the Joint Committee's Register of Declared Interests.

33. Whilst the statutory guidance requires NHS England staff to adhere to the statutory guidance when serving on a joint committee with one or more CCGs, there was sometimes a lack of clarity on whether NHS England members should be subject to, for example, ongoing training and periodic declarations of interests. NHS England members should adhere to the full requirements of the statutory guidance when serving on a joint committee.

Minute taking

34. The statutory guidance states that all decisions, and details of how any conflict of interest issue has been managed, should be recorded in meeting minutes. However, there was considerable variation in the level of detail maintained in the minutes of Primary Care Commissioning Committee meetings to document the identification and management of conflicts of interests. The audit identified a number of instances where the minutes flagged the identification of conflicts in decisions to be made by the committee, but did not detail the nature of the conflict, who had the conflict and how the conflict was managed. For other decisions made, there was no evidence in the minutes to demonstrate that conflicts had been considered to confirm that no conflicts existed.

Recommendation 9 - It is imperative that co-commissioning arrangements maintain full transparency in relation to decisions regarding general practice services through the minutes of primary care commissioning committee meetings.

35. Instances were found where conflicts declared in meetings had not been transferred to the register of interests in a timely manner. Transparency of the management of conflicts in decision making is vital to maintain confidence in the integrity of decision making.

Recommendation 10 - Co-commissioning arrangements should ensure that declared conflicts of interest are promptly transferred to the register of interests.

Conflicts of Interest training

36. The statutory guidance requires CCGs to provide training to their staff to raise awareness of conflicts and what they should do when they are identified. The audit found that:

- Co-commissioning arrangements had not defined the frequency of conflicts of interest training for members and employees;
- Where training had been delivered, this had largely been focussed on members of the Governing Body and those on the Primary Care Commissioning Committees, responsible for making decisions;
- A small number of audit sites had rolled out structured training to all employees. However, two co-commissioning arrangements had not provided any structured training to members or employees, including those on the commissioning committee.

Recommendation 11 - Each co-commissioning arrangement should provide training to members and employees and define the frequency of ongoing training. Consideration should be given to providing more regular training to individuals in 'higher risk' roles e.g. procurement.

37. We recommend that CCGs review the report to consider and evaluate their current arrangements based on the observations raised. Each co-commissioning arrangement should consider whether their processes to manage conflicts of interest can be enhanced.

2.3 Recommendations for NHS England

38. The audit made a number of recommendations for NHS England and how it should consider strengthening the current guidance on managing conflicts of interest. The audit sites requested greater clarity in the statutory guidance on the minimum requirements and expectations of commissioners. This included more clarity on:

- The scope of employees to be included in the **Register of Declared Interests**;
- The scope of decisions that should be included in the **Register of Procurement Decisions**;
- The frequency of **confirmations of declared interests** and the requirement to obtain positive confirmation;
- The minimum standards for documenting potential conflicts and their management in **minutes**, supported by case study examples;
- Practical applicability of the conflicts of interest statutory guidance for NHS England members of **joint committees**;
- **Training** requirements on conflicts of interest management; and
- More guidance on management of conflicts of interest **breaches** and management of conflicts of interests in relation to **contract monitoring**.

39. The audit concluded that greater clarity in these areas would reduce the risk of variability in the development of processes to manage conflicts of interest.

40. In addition, many co-commissioning arrangements reported that they required further support to understand the practical implementation of the statutory guidance within different scenarios. The audit recommended that NHS England facilitates the sharing of knowledge through case studies and worked examples.

41. Section 3 of the report sets out how NHS England will address these recommendations.

3. Next steps

42. NHS England welcomes the findings and recommendations made by the audit. The audit demonstrates that commissioners are taking seriously their responsibilities in relation to conflicts of interest and putting in place processes to ensure that they are appropriately managed.

43. We recognise that there are areas for improvement - both for CCGs and NHS England teams - and will be looking at how we can best support commissioners to address these.

44. We have reviewed the statutory guidance on managing conflicts of interest in light of the audit findings, strengthening the provisions and providing absolute clarity on the minimum standards required. This includes addressing the points of ambiguity outlined in section 2.3. In addition, we have included more

templates and worked examples in the guidance to support commissioners with its practical implementation. Revised guidance will be shared for engagement in April 2016, with a view to publishing final guidance in June 2016.

45. The audit has highlighted a number of examples of good practice for both co-commissioning arrangements. We will look at how we can best facilitate the on-going sharing of learning through case studies and other mechanisms.
46. We will also provide further training to CCG lay members on conflicts of interest management in support of their roles chairing the Primary Care Commissioning Committees. Further information on the training programme can be found [here](#).
47. Finally, our internal auditors will undertake another audit within the 2016/17 financial year in order to follow up on the development of processes to manage conflicts of interest within primary care co-commissioning and to obtain evidence on the on-going operational effectiveness of conflicts of interest management.
48. Below is a summary of the key actions that NHS England will take based on the findings from the audit:

NHS England Actions	Timescale
Review and update the statutory guidance on managing conflicts of interest to take account of the findings and messages from the audit.	February - March 2016
Issue the revised statutory guidance for engagement.	April 2016
Provide national training for CCG lay members on managing conflicts of interest.	February – March 2016 and in 2016/17
Finalise and publish revised statutory guidance on managing conflicts of interest.	June 2016
Continue to obtain feedback from co-commissioning arrangements on conflicts of interest management and facilitate the sharing of knowledge and learning between CCGs.	FY2016/17
Plan a follow up audit of the effectiveness of conflicts of interest management practices within co-commissioning arrangements.	FY2016/17

