



MANAGING CONFLICTS OF INTEREST: REVISED STATUTORY GUIDANCE FOR CCGs

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Managing Conflicts of Interest: Revised Statutory Guidance for CCGs

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Contents

Introduction.....	6
Definition of an interest.....	10
Principles.....	13
Identification and management of conflicts of interest.....	15
Declaring interests.....	17
Register(s) of interests	19
Register of interests.....	20
Register(s) of Gifts and Hospitality	20
Gifts.....	20
Hospitality.....	21
Commercial sponsorship.....	22
Declaration of offers and receipt of gifts and hospitality	23
Publication of registers.....	23
Appointments and roles and responsibilities in the CCG.....	25
Secondary employment	25
Appointing governing body or committee members and senior employees	25
CCG lay members	26
Conflicts of Interest Guardian	27
Primary Care Commissioning Committee Chair	28
Managing conflicts of interest at meetings.....	29
Chairing arrangements and decision-making processes	29
Primary care commissioning committees and sub-committees	31
Membership of primary care commissioning committees (for joint and delegated arrangements)	32
Primary care commissioning committee decision-making processes and voting arrangements.....	33
Minute-taking	34
Managing conflicts of interest throughout the commissioning cycle	35
Designing service requirements.....	35
Provider engagement.....	35
Specifications	36
Procurement and awarding grants.....	36
Register of procurement decisions	38
CCG Improvement and Assessment Framework	41
Internal audit.....	43
Raising concerns and breaches	44
Reporting breaches.....	44
Fraud or Bribery	45
Impact of non-compliance	46
Civil implications	46
Criminal implications	46
Disciplinary implications.....	47
Professional regulatory implications.....	47
Conflicts of interest training	48

Glossary	49
Annexes	50
Annex A: Template Declaration of interests for CCG members and employees ...	52
Types of interest	53
Annex B: Template Register of interests	54
Annex C: Template Declarations of gifts and hospitality	55
Annex D: Template Register of gifts and hospitality	56
Annex E: Template declarations of interest checklist	57
Template for recording any interests during meetings	59
Template to record interests during the meeting	60
Annex F: Template for recording minutes.....	61
Annex G: Procurement checklist	63
Annex H: Template Register of procurement decisions and contracts awarded ...	66
Annex I: Template Declaration of conflict of interests for bidders/contractors	67
Annex J: Conflicts of interest policy checklist	69

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. Clinical commissioning groups (CCGs) manage conflicts of interest as part of their day-to-day activities. Effective handling of conflicts of interest is crucial to give confidence to patients, tax payers, healthcare providers and Parliament that CCG commissioning decisions are robust, fair and transparent and offer value for money. It is essential in order to protect healthcare professionals and maintain public trust in the NHS. Failure to manage conflicts of interest could lead to legal challenge and even criminal action in the event of fraud, bribery and corruption.
3. Conflicts of interest are inevitable in commissioning. It is how we manage them that matters. Section 140 of the National Health Service Act 2006 (as amended by the Health and Social Care Act 2012) (“the Act”) sets out the minimum requirements of what both NHS England and CCGs must do in terms of managing conflicts of interest.
4. To further support CCGs to manage the risks of conflicts of interest, we have issued this statutory guidance under sections 140 and 14Z8 of the Act. We expect all CCGs to fully implement this guidance. Where a CCG has decided not to comply with this statutory guidance, they must include within their next annual self-certification statement the reasons for deciding not to do so (see paragraph 125 for further details).
5. In addition to complying with this guidance, CCGs will also need to adhere to relevant guidance issued by professional bodies on conflicts of interest, including the British Medical Association (BMA)¹ the Royal College of General Practitioners² and the General Medical Council (GMC)³, and to procurement rules including The Public Contract Regulations 2015⁴ and The National Health

¹ BMA guidance on conflicts of interest for GPs in their role as commissioners and providers <http://www.bma.org.uk/support-at-work/commissioning/ensuring-transparency-and-probity>

² Managing conflicts of interest in clinical commissioning groups: http://www.rcgp.org.uk/~media/Files/CIRC/Managing_conflicts_of_interest.ashx

³ GMC | Good medical practice (2013) http://www.gmc-uk.org/guidance/good_medical_practice.asp and http://www.gmc-uk.org/guidance/ethical_guidance/21161.asp and http://www.gmc-uk.org/guidance/ethical_guidance/21161.asp

⁴ The Public Contract Regulations 2015 <http://www.legislation.gov.uk/uksi/2015/102/regulation/57/made>

Service (procurement, patient choice and competition) (no.2) regulations 2013⁵, as well as the Bribery Act 2010⁶.

6. This guidance aims to:

- Safeguard clinically led commissioning, whilst ensuring objective investment decisions;
- Enable commissioners to demonstrate that they are acting fairly and transparently and in the best interests of their patients and local populations;
- Uphold confidence and trust in the NHS;
- Support commissioners to understand when conflicts (whether actual or potential) may arise and how to manage them if they do;
- Be a practical resource and toolkit with scenarios and a web link to comprehensive case studies to help CCGs identify conflicts of interest and appropriately manage them; and
- Ensure that CCGs operate within the legal framework.

7. This guidance supersedes *Managing Conflicts of Interest Statutory Guidance*, which was published in December 2014. We have strengthened the guidance in light of findings of NHS England's 2015/16 co-commissioning conflicts of interest audit⁷, the National Audit Office's (NAO's) report on conflicts of interest management in CCGs,⁸ and feedback received from a range of stakeholders and partners, including the BMA, RCGP, GMC, NHS Clinical Commissioners, CCGs, Healthwatch England, NHS Improvement, NHS Protect, and other organisations, as part of the public consultation exercise.

8. We intend to publish guidance in 2016/17 to specifically address further developments in care models and integrated care organisations that may cause particular challenges with regard to conflicts of interest.

9. The key changes set out in this latest update of the guidance are:

⁵ *The NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013*

<http://www.legislation.gov.uk/ukxi/2013/500/contents/made>

⁶ *The Bribery Act 2010* <http://www.legislation.gov.uk/ukpga/2010/23/contents>

⁷ NHS England (2016) *Co-commissioning Conflicts of Interest Audit: Summary Findings*

<https://www.england.nhs.uk/commissioning/wp-content/uploads/sites/12/2016/04/co-comms-coi-audit-summ-rep.pdf>

⁸ National Audit Officer (2015) *Managing conflicts of interest in NHS clinical commissioning groups*

<https://www.nao.org.uk/report/managing-conflicts-of-interest-in-nhs-clinical-commissioning-groups/>

- The recommendation for CCGs to have a minimum of **three lay members** on the Governing Body, in order to support with conflicts of interest management;
- The introduction of a **conflicts of interest guardian** in CCGs. We expect that CCG audit chairs will assume this role, which will be an important point of contact for any conflicts of interest queries or issues;
- The requirement for CCGs to include a robust process for managing any **breaches** within their conflict of interest policy and for anonymised details of the breach to be published on the CCG's website for the purpose of learning and development;
- Strengthened provisions around **decision-making when a member of the governing body, or committee or sub-committee is conflicted**;
- Strengthened provisions around the management of **gifts and hospitality**, including the need for prompt declarations and a publicly accessible register of gifts and hospitality;
- A requirement for CCGs to include an **annual audit of conflicts of interest management** within their internal audit plans and to include the findings of this audit within their **annual end-of-year governance statement**;
- A requirement for all CCG employees, governing body members, members of committees and sub-committees and practice staff with involvement in CCG business, to complete **mandatory online conflicts of interest training**, which will be provided by NHS England. The online training will be supplemented by a series of face-to-face training sessions for CCG leads in key decision-making roles.

10. NHS England staff operating under a joint co-commissioning arrangement should adhere to the principles set out in this guidance, as well as NHS England's own internal Standards of Business Conduct⁹ and other relevant organisational policies.

11. The guidance is divided into the following parts:

- Definition of an interest;
- Principles;
- Identification and management of conflicts of interest;
- Declaring interests;
- Registers of interest;

⁹ NHS Commissioning Board (2012) *Standards of Business Conduct* <https://www.england.nhs.uk/wp-content/uploads/2012/11/stand-bus-cond.pdf>

- Appointments and roles and responsibilities in the CCG;
- Managing conflicts of interest at meetings;
- Managing conflicts of interest throughout the commissioning cycle;
- CCG improvement and assessment framework and internal audit;
- Raising concerns and breaches;
- Impact of non-compliance; and
- Conflicts of interest training.

12. To accompany this guidance, we have published a series of [2-page summary guides](#) for different professional groups. This includes GPs in commissioning roles, the Conflicts of Interest Guardian, CCG lay members, CCG governance lead, admin staff and Healthwatch members of the primary care commissioning committee. In addition, we have published a series of [case studies](#) to highlight potential conflicts of interest scenarios that could arise in CCGs, with advice on how to mitigate the risks.

Definition of an interest

13. 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.
14. 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.
15. Interests can be captured in four different categories:
 - i. **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 (see paragraph 56-57);
- 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).
- ii. **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.

- iii. **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.
- iv. **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.

16. CCGs should provide clear guidance to their employees, members and governing body and committee members on what might constitute a conflict of interest, providing examples of situations that may arise. A range of conflicts of interest case studies can be found [here](#).
17. The above categories and examples are not exhaustive and the CCG should 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.

Principles

18. This section sets out a series of principles for those who are serving as members of CCG governing bodies, CCG committees or take decisions where they are acting on behalf of the public or spending public money.
19. CCGs should observe the principles of good governance in the way they do business. These include:

- The Nolan Principles¹⁰ (as set out below)
- The Good Governance Standards for Public Services (2004), Office for Public Management (OPM) and Chartered Institute of Public Finance and Accountancy (CIPFA)¹¹
- The seven key principles of the NHS Constitution¹²
- The Equality Act 2010¹³
- The UK Corporate Governance Code¹⁴
- Standards for members of NHS boards and CCG governing bodies in England¹⁵

20. 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;
- **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;

¹⁰ The 7 principles of public life <https://www.gov.uk/government/publications/the-7-principles-of-public-life>

¹¹ The Good Governance Standards for Public Services , 2004, OPM and CIPFA <http://www.opm.co.uk/wp-content/uploads/2014/01/Good-Governance-Standard-for-Public-Services.pdf>

¹² The seven key principles of the NHS Constitution <http://www.nhs.uk/NHSEngland/thenhs/about/Pages/nhscoreprinciples.aspx>

¹³ The Equality Act 2010 <http://www.legislation.gov.uk/ukpga/2010/15/contents>

¹⁴ UK Corporate Governance Code <https://www.frc.org.uk/Our-Work/Codes-Standards/Corporate-governance/UK-Corporate-Governance-Code.aspx>

¹⁵ Standards for members of NHS boards and CCG governing bodies in England <http://www.professionalstandards.org.uk/publications/detail/standards-for-members-of-nhs-boards-and-clinical-commissioning-group-governing-bodies-in-england>

- **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.

21. In addition, to support the management of conflicts of interest, CCGs should:

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

22. In addition to the above, CCGs need to bear in mind:

- A perception of wrongdoing, impaired judgement or undue influence can be as detrimental as any of them actually occurring;
- If in doubt, it is better to assume the existence of a conflict of interest and manage it appropriately rather than ignore it.
- For a conflict of interest to exist, financial gain is not necessary.

Identification and management of conflicts of interest

23. Conflicts of interest are a common and sometimes unavoidable part of the delivery of healthcare. As such, it may not be possible or desirable to completely eliminate the risk of conflicts. Instead, it may be preferable to recognise the associated risks and put measures in place to manage the conflicts appropriately when they do arise.
24. As a minimum, CCGs should have robust systems in place to identify and manage conflicts of interest. This will involve creating an environment in which CCG staff, governing body and committee members, and member practices feel able, encouraged and obliged to be open, honest and upfront about actual or potential conflicts. Transparency in this regard will lead to effective identification and management of conflicts. The effect should be to make everyone aware of what to do if they suspect a conflict and ensure decision-making is efficient, transparent and fair. To this end, CCGs should implement this statutory guidance in a manner that is clear and robust, but not overly prescriptive or complex.
25. The Accountable Officer has overall accountability for the CCG's management of conflicts of interest. CCGs should identify a team or individual within their organisation, such as the CCG's governance lead, with responsibility for:
 - The day-to day management of conflicts of interest matters and queries;
 - Maintaining the CCG's register(s) of interest and the other registers referred to in this Guidance;
 - Supporting the Conflicts of Interest Guardian to enable them to carry out the role effectively (see paragraph 67 onwards);
 - Providing advice, support, and guidance on how conflicts of interest should be managed; and
 - Ensuring that appropriate administrative processes are put in place.
26. Through this team or individual, CCGs should provide clear guidance to their staff, governing body and committee members, and GP member practices on what might constitute a conflict of interest, including examples of possible conflicts and situations in which a conflict may arise. This may be achieved through training and wide promotion of the CCG's policy on conflicts of interest management. Annex J sets out a conflicts of interest checklist for CCGs to follow when developing their conflicts of interest policy.
27. Such a team or individual should be appropriately trained and their identity well publicised so that their expertise can be called upon when required.
28. There will be occasions where an individual declares an interest in good faith but, upon closer consideration, it is clear that this does not constitute a genuine conflict of interest. The team or individual who has designated responsibility for

maintaining the registers of interest should provide advice on this and decide whether it is necessary for the interest to be declared.

29. There will be other occasions where the conflict of interest is profound and acute. In such scenarios (such as where an individual has a direct financial interest which gives rise to a conflict, e.g., secondary employment or involvement with an organisation which benefits financially from contracts for the supply of goods and services to a CCG) it is likely that CCGs will want to consider whether, practically, such an interest is manageable at all. If it is not, the appropriate course of action may be to refuse to allow the circumstances which gave rise to the conflict to persist. This may require an individual to step down from a particular role and/or move to another role within the CCG. CCGs should ensure that their HR policies, governing body and committee terms of reference and standing orders are reviewed to ensure that they enable the CCG to take appropriate action to manage conflicts of interest robustly and effectively in such circumstances.
30. The following sections set out the other steps that CCGs should put in place to support the appropriate management of conflicts of interest.

Declaring interests

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.¹⁶

31. CCGs will need to ensure that, as a matter of course, declarations of interest are made and regularly confirmed or updated. An example template declaration of interest form is annexed at Annex A.
32. All persons referred to in paragraph 35 (Register of Interests) must declare any interests. Declarations of interest should be made as soon as reasonably practicable and by law within 28 days after the interest arises (this could include an interest an individual is pursuing). Further opportunities to make declarations include:

On appointment:

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

Six-monthly:

CCGs should have systems in place to satisfy themselves on a six-monthly basis that their register of interests is accurate and up-to-date. Declarations of interest should be 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:

All attendees are required to declare their interests as a standing agenda item for every governing body, committee, sub-committee or working group meeting, before the item is discussed. Even if an interest has been recorded in the register of interests, it should still be declared in meetings where matters relating to that interest are discussed. Declarations of interest should be recorded in minutes of meetings (see paragraph 93-94 for further advice on record keeping).

¹⁶ National Health Service Act 2006 (as amended by the Health and Social Care Act 2012) section 140(3)

On changing role, responsibility or circumstances:

Whenever an individual's role, responsibility or circumstances change in a way that affects the individual's interests (e.g., where an individual takes on a new role outside 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. It should be made clear to all individuals who are required to make a declaration of interests that if their circumstances change, it is their responsibility to make a further declaration as soon as possible and in any event within 28 days, rather than waiting to be asked. It should also be clear who such individuals should formally notify, and how that team or person can be contacted. CCGs may wish to consider including this requirement in employees' contracts.

33. Whenever interests are declared they should be promptly reported to the individual or team within the CCG who has designated responsibility for maintaining the register of interests. This individual should ensure that the register of interests is updated accordingly. Paragraph 34 onwards sets out further information on maintaining a register of interests.

Register(s) of interests

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.

34. CCGs should maintain one or more registers of interest and one or more registers of gifts and hospitality.

35. Register(s) of interest should be maintained 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.

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

37. An interest should remain on the public register for a minimum of 6 months

after the interest has expired. In addition, the CCG must retain a private record of historic interests for a minimum of 6 years after the date on which it expired. The CCG's published register of interests should state that historic interests are retained by the CCG for the specified timeframe, with details of whom to contact to submit a request for this information.

Register of interests

38. CCGs should maintain one or more registers detailing actual or potential conflicts of interest pertaining to the individuals listed in paragraph 35 above. An example declaration of interest(s) form and register of interests for use by CCGs are annexed at Annexes A and B. These templates can be adapted by CCGs but, as a minimum, they should 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 or a senior manager within the CCG.

Register(s) of Gifts and Hospitality

39. CCGs should maintain one or more registers of gifts and hospitality for the individuals listed in paragraph 35 above. CCGs should ensure that robust processes are in place to ensure that such individuals do not accept gifts or hospitality or other benefits, which might reasonably be seen to compromise their professional judgement or integrity.

40. All the individuals listed in section 35 need to consider the risks associated with accepting offers of gifts, hospitality and entertainment when undertaking activities for or on behalf of the CCG or their GP practice. This is especially important during procurement exercises, as the acceptance of gifts could give rise to real or perceived conflicts of interests, or accusations of unfair influence, collusion or canvassing.

Gifts

41. A 'gift' is defined as any item of cash or goods, or any service, which is provided for personal benefit, free of charge or at less than its commercial value.
42. All gifts of any nature offered to CCG staff, governing body and committee members and individuals within GP member practices by suppliers or contractors linked (currently or prospectively) to the CCG's business should be declined, whatever their value. The person to whom the gifts were offered should also declare the offer to the team or individual who has designated responsibility for maintaining the register of gifts and hospitality so the offer which has been declined can be recorded on the register.
43. Gifts offered from other sources should also be declined if accepting them might give rise to perceptions of bias or favouritism, and a common sense approach should be adopted as to whether or not this is the case. The only exceptions to the presumption to decline gifts relates to items of little financial value (i.e., less than £10) such as diaries, calendars, stationery and other gifts acquired from meetings, events or conferences, and items such as flowers and small tokens of appreciation from members of the public to staff for work well done. Gifts of this nature do not need to be declared to the team or individual who has designated responsibility for maintaining the register of gifts and hospitality, nor recorded on the register.
44. Any personal gift of cash or cash equivalents (e.g. vouchers, tokens, offers of remuneration to attend meetings whilst in a capacity working for or representing the CCG) must always be declined, whatever their value and whatever their source, and the offer which has been declined must be declared to the team or individual who has designated responsibility for maintaining the register of gifts and hospitality and recorded on the register.

Hospitality

45. A blanket ban on accepting or providing hospitality is neither practical nor desirable from a business point of view. However, individuals should be able to demonstrate that the acceptance or provision of hospitality would benefit the NHS or CCG.
46. Modest hospitality provided in normal and reasonable circumstances may be acceptable, although it should be on a similar scale to that which the CCG might offer in similar circumstances (e.g., tea, coffee, light refreshments at meetings). A common sense approach should be adopted as to whether hospitality offered is modest or not. Hospitality of this nature does not need to be declared to the team or individual who has designated responsibility for maintaining the register of gifts and hospitality, nor recorded on the register, unless it is offered by suppliers or contractors linked (currently or prospectively) to the CCG's business in which case all such offers (whether or not accepted) should be declared and recorded.

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

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

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

Commercial sponsorship

48. CCG staff, governing body and committee members, and GP member practices may be offered commercial sponsorship for courses, conferences, post/project funding, meetings and publications in connection with the activities which they carry out for or on behalf of the CCG or their GP practices. All such offers (whether accepted or declined) must be declared so that they can be included on the CCG's register of interests, and the team or individual designated by the CCG to provide advice, support, and guidance on how conflicts of interest should be managed should provide advice on whether or not it would be appropriate to accept any such offers. If such offers are reasonably justifiable and otherwise in accordance with this statutory guidance then they may be accepted. CCGs should consider whether they wish to adopt a system of prior approval for acceptance of such sponsorship from a member of the CCG with appropriate seniority.

49. Notwithstanding the above, acceptance of commercial sponsorship should not in any way compromise commissioning decisions of the CCG or be dependent on the purchase or supply of goods or services. Sponsors should not have any influence over the content of an event, meeting, seminar, publication or training event. The CCG should not endorse individual companies or their products. It should be made clear that the fact of sponsorship does not mean that the CCG endorses a company's products or services. During dealings with sponsors there must be no breach of patient or individual confidentiality or data

protection legislation. Furthermore, no information should be supplied to a company for their commercial gain unless there is a clear benefit to the NHS. As a general rule, information which is not in the public domain should not normally be supplied.

Declaration of offers and receipt of gifts and hospitality

50. A draft template for declaring gifts and hospitality is annexed at Annex C. All hospitality or gifts declared must be promptly transferred to a register of gifts and hospitality that all CCGs should maintain. This should include any gifts and hospitality declared in meetings. A template gifts and hospitality register for use by CCGs is annexed at Annex D. These templates can be adapted by CCGs but, as a minimum, they should 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.

Publication of registers

51. CCGs should publish the register(s) of interest and register(s) of gifts and Hospitality, referred to above, and the Register of procurement decisions described below, in a prominent place on the CCG's website.

52. 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 should retain a confidential un-redacted version of the register(s).

53. All persons who are required to make a declaration of interest(s) or a declaration of gifts or hospitality should be made aware that the register(s) will be published in advance of publication. This should be done by the provision of a fair processing notice that details the identity of the data controller, the purposes for which the registers are held and published, and contact details for the data protection officer. This information should additionally be provided to individuals identified in the registers because they are in a relationship with the person making the declaration.
54. The register(s) of interests (including the register of gifts and hospitality) must be published as part of the CCG's Annual Report and Annual Governance Statement. A web link to the CCG's registers is acceptable.

Appointments and roles and responsibilities in the CCG

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

Secondary employment

56. CCGs should take all reasonable steps to ensure that employees, committee members, contractors and others engaged under contract with them are aware of the requirement to inform the CCG if they are employed or engaged in, or wish to be employed or engage in, any employment or consultancy work in addition to their work with the CCG. The purpose of this is to ensure that the CCG is aware of any potential conflict of interest. Examples of work which might conflict with the business of the CCG, including part-time, temporary and fixed term contract work, include:
- Employment with another NHS body;
 - Employment with another organisation which might be in a position to supply goods/services to the CCG;
 - Directorship of a GP federation; and
 - Self-employment, including private practice, in a capacity which might conflict with the work of the CCG or which might be in a position to supply goods/services to the CCG.
57. **CCGs should require that individuals obtain prior permission to engage in secondary employment, and reserve the right to refuse permission where it believes a conflict will arise which cannot be effectively managed.** CCGs should ensure that they have clear and robust organisational policies in place to manage issues arising from secondary employment. 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.

Appointing governing body or committee members and senior employees

58. On appointing governing body, committee or sub-committee members and senior staff, CCGs will need to consider whether conflicts of interest should exclude individuals from being appointed to the relevant role. This will need to be considered on a case-by-case basis but the CCG's constitution should reflect the CCG's general principles.
59. The CCG will need to assess the materiality of the interest, in particular whether the individual (or any person with whom they have a close association

as listed in paragraph 15 and 35) could benefit (whether financially or otherwise) from any decision the CCG might make. This will be particularly relevant for governing body, committee and sub-committee appointments, but should also be considered for all employees and especially those operating at senior level.

60. The CCG will also need to 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.
61. Any individual who has a material interest in an organisation which provides, or is likely to provide, substantial services to a CCG (whether as a provider of healthcare or commissioning support services, or otherwise) should recognise the inherent conflict of interest risk that may arise and should not be a member of the governing body or of a committee or sub-committee of the CCG, in particular if the nature and extent of their interest and the nature of their proposed role is such that they are likely to need to exclude themselves from decision-making on so regular a basis that it significantly limits their ability to effectively perform that role. Specific considerations in relation to delegated or joint commissioning of primary care are set out below.
62. CCGs should set out in their constitution a statement of the conduct expected of individuals involved in the CCG, e.g. members of the governing body, members of committees, and employees, which reflect the safeguards in this guidance. This should reflect the expectations set out in the Standards for Members of NHS Boards and Clinical Commissioning Groups¹⁷.

CCG lay members

63. Lay members play a critical role in CCGs, 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.
64. By statute, 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 matters¹⁸ and serve as the chair of the audit committee¹⁹; 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

¹⁷ *Standards for members of NHS boards and CCG governing bodies in England*
<http://www.professionalstandards.org.uk/publications/detail/standards-for-members-of-nhs-boards-and-clinical-commissioning-group-governing-bodies-in-england>

¹⁸ *Section 12(3) NHS (CCG) Regulations 2012*
http://www.legislation.gov.uk/uksi/2012/2996/pdfs/uksi_20122996_en.pdf

¹⁹ *Section 14(2) NHS (CCG) Regulations 2012*
http://www.legislation.gov.uk/uksi/2012/2996/pdfs/uksi_20122996_en.pdf

functions²⁰). In light of lay members' expanding role in primary care co-commissioning, we strongly recommend that all CCGs consider increasing this requirement within their constitution to a minimum of three lay members on their governing body. We would encourage CCGs to consider appointing more than three lay members, if they have the means to do so.

65. Where there are difficulties in recruiting additional lay members, CCGs could consider 'sharing' lay members between, for instance, CCGs in the same Sustainability and Transformation area. The additional lay member should have knowledge and insight of the geographical area covered in the CCG constitution.
66. We would encourage all three CCG lay members to attend the primary care commissioning committee; the additional third lay member could assume the role of the Chair or Vice-Chair of this committee.

Conflicts of Interest Guardian

67. To further strengthen scrutiny and transparency of CCGs' decision-making processes, all CCGs should have a Conflicts of Interest Guardian (akin to a Caldicott Guardian). This role should be undertaken by the CCG audit chair, provided they have no provider interests, as audit chairs already have a key role in conflicts of interest management. They should be supported by the CCG's Head of Governance or equivalent, who should have responsibility for the day-to-day management of conflicts of interest matters and queries. The CCG Head of Governance (or equivalent) should keep the Conflicts of Interest Guardian well briefed on conflicts of interest matters and issues arising.
68. The Conflicts of Interest Guardian should, in collaboration with the CCG's governance lead:
 - 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;
 - Provide independent advice and judgment where there is any doubt about how to apply conflicts of interest policies and principles in an individual situation;
 - Provide advice on minimising the risks of conflicts of interest.
69. Whilst the Conflicts of Interest Guardian has an important role within the

²⁰ Section 12(4) NHS (CCG) Regulations 2012
http://www.legislation.gov.uk/ukxi/2012/2996/pdfs/ukxi_20122996_en.pdf

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 ongoing and daily basis.

Primary Care Commissioning Committee Chair

70. 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 CCG audit chairs 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.
71. CCG audit chairs 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 due to specific local circumstances (for example where there is a lack of other suitable lay candidates for the role), this will need to be clearly recorded and appropriate further safeguards may need to be put in place to maintain the integrity of their 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.

Managing conflicts of interest at meetings

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.

72. CCGs should review their governance structures and policies for managing conflicts of interest to ensure that they reflect the guidance and are appropriate. This should include consideration of the following:
- The **make-up of their 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

73. 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.
74. 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).
75. 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 (see paragraph 67) or another member of the governing body.
76. It is good practice for the chair, with support of the CCG's Head of Governance or equivalent and, 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.

77. To support chairs in their role, they should have access to a declaration of interest checklist prior to meetings, which should include details of any declarations of conflicts which have already been made by members of the group. A template declaration of interest checklist has been annexed at Annex E.
78. The chair should ask at the beginning of each meeting if anyone has any conflicts of interest to declare in relation to the business to be transacted at the meeting. Each member of the group should declare any interests which are relevant to the business of the meeting whether or not those interests have previously been declared. Any new interests which are declared at a meeting must be included on the CCG's relevant register of interests to ensure it is up-to-date.
79. 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.
80. 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.
81. When a member of the meeting (including the chair or vice chair) has a conflict of interest in relation to one or more items of business to be transacted at the meeting, the chair (or vice chair or remaining non-conflicted members where relevant as described above) must decide how to manage the conflict. The appropriate course of action will depend on the particular circumstances, but could include one or more of the following:
 - Where the chair has a conflict of interest, deciding that the vice chair (or another non-conflicted member of the meeting if the vice chair is also conflicted) should chair all or part of the meeting;
 - Requiring the individual who has a conflict of interest (including the chair or vice chair if necessary) not to attend the meeting;
 - Ensuring that the individual concerned does not receive the supporting papers or minutes of the meeting which relate to the matter(s) which give rise to the conflict;
 - Requiring the individual to leave the discussion when the relevant matter(s) are being discussed and when any decisions are being taken in relation to

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

- Allowing the individual to participate in some or all of the discussion when the relevant matter(s) are being discussed but requiring them to leave the meeting when any decisions are being taken in relation to those matter(s). This may be appropriate where, for example, the conflicted individual has important relevant knowledge and experience of the matter(s) under discussion, which it would be of benefit for the meeting to hear, but this will depend on the nature and extent of the interest which has been declared;
- Noting the interest and ensuring that all attendees are aware of the nature and extent of the interest, but allowing the individual to remain and participate in both the discussion and in any decisions. This is only likely to be the appropriate course of action where it is decided that the interest which has been declared is either immaterial or not relevant to the matter(s) under discussion. The conflicts of interest [case studies](#) include examples of material and immaterial conflicts of interest.

Primary care commissioning committees and sub-committees

82. There are three general practice co-commissioning models:

- **Greater involvement** is simply an invitation to CCGs to collaborate more closely with their NHS England teams to ensure that decisions taken about healthcare services are strategically aligned across the local health economy.
- **Joint commissioning** enables one or more CCGs to assume responsibility for jointly commissioning primary medical services with their 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(s) of interests.
- **Delegated commissioning** enables CCGs to assume responsibility for commissioning general practice services.

83. Each CCG with joint or delegated primary care co-commissioning arrangements must establish a primary care commissioning committee for the discharge of their primary medical services functions. This committee should be separate from the CCG governing body. The interests of all primary care commissioning committee members must be recorded on the CCG's register(s) of interests.

84. The primary care commissioning committee should:

- For joint commissioning, take the form of a joint committee established between the CCG (or CCGs) and NHS England; and

- In the case of delegated commissioning, be a committee established by the CCG.

85. As a general rule, meetings of the primary care commissioning committee, including the decision-making and deliberations leading up to the decision, should be held in public unless the CCG has concluded it is appropriate to exclude the public where it would be prejudicial to the public interest to hold that part of the meeting in public. Examples of where it may be appropriate to exclude the public include:

- Information about individual patients or other individuals which includes sensitive personal data is to be discussed ;
- Commercially confidential information is to be discussed, for example the detailed contents of a provider's tender submission;
- Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings is to be discussed;
- To allow the meeting to proceed without interruption and disruption.

Membership of primary care commissioning committees (for joint and delegated arrangements)

86. CCGs (and NHS England with regards to joint arrangements) can agree the full membership of their primary care commissioning committees, within the following parameters:

- The primary care commissioning committee must be constituted to have a **lay and executive majority**, where lay refers to non-clinical. This ensures that the meeting will be quorate if all GPs had to withdraw from the decision-making process due to conflicts of interest.
- The primary care commissioning committee should have a lay chair and lay vice chair (see paragraph 70 to 71 for further information).
- **GPs** can, and should, be members of the primary care commissioning committee to ensure sufficient clinical input, but must not be in the majority. CCGs may wish to consider appointing retired GPs or out-of-area GPs to the committee to ensure clinical input whilst minimising the risk of conflicts of interest.
- A standing invitation must be made to the CCG's **local HealthWatch** representative and a **local authority representative from the local Health and Wellbeing Board** to join the primary care commissioning committee as non-voting attendees, including, where appropriate, for items where the public is excluded for reasons of confidentiality.

- Other individuals could be invited to attend the primary care commissioning committee on an ad-hoc basis to provide **expertise** to support with the decision-making process.

86. CCGs could also consider reciprocal arrangements with other CCGs, for example exchanging GP representatives from their respective GP member practices, or sharing lay or executive members, in order to ensure a majority of lay and executive members and to support effective clinical representation within the primary care commissioning committee.
87. Where a CCG is engaged in joint commissioning arrangements alongside NHS England, the joint role of NHS England in decision-making will provide an additional safeguard in managing conflicts of interest. However, CCGs should still satisfy themselves that they have appropriate arrangements in place in relation to conflicts of interest with regard to their own role in the decision-making process. NHS England representatives need to take similar precautions.

Primary care commissioning committee decision-making processes and voting arrangements

88. The primary care commissioning committee is a decision-making committee, which should be established to exercise the discharge of the primary medical services functions. As such CCGs need to amend their constitution to include this committee.
89. The quorum requirements for primary care commissioning committee meetings must include a majority of lay and executive members in attendance with eligibility to vote.
90. In the interest of minimising the risks of conflicts of interest, it is recommended that GPs do not have voting rights on the primary care commissioning committee. The arrangements do not preclude GP participation in strategic discussions on primary care issues, subject to appropriate management of conflicts of interest. They apply to decision-making on procurement issues and the deliberations leading up to the decision.
91. Whilst sub-committees or sub-groups of the primary care commissioning committee can be established e.g., to develop business cases and options appraisals, ultimate decision-making responsibility for the primary medical services functions must rest with the primary care commissioning committee. For example, whilst a sub-group could develop an options appraisal, it should take the options to the primary care commissioning committee for their review and decision-making. CCGs should carefully consider the membership of sub-groups. They should also consider appointing a lay member as the chair of the group.
92. It is important that conflicts of interests are managed appropriately within sub-

committees and sub-groups. As an additional safeguard, it is recommended that sub-groups submit their minutes to the primary care commissioning committee, detailing any conflicts and how they have been managed. The primary care commissioning committee should be satisfied that conflicts of interest have been managed appropriately in its sub-committees and take action where there are concerns.

Minute-taking

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

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

94. An example of good minute keeping is annexed at Annex F.

Managing conflicts of interest throughout the commissioning cycle

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

Designing service requirements

96. 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.
97. 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

98. It is good practice to engage relevant providers, especially clinicians, in confirming that the design of service specifications will meet patient needs. This may include providers from the acute, primary, community, and mental health sectors, and may include NHS, third sector and private sector providers. Such engagement, done transparently and fairly, is entirely legal. However, conflicts of interest, as well as challenges to the fairness of the procurement process, can arise if a commissioner engages selectively with only certain providers (be they incumbent or potential new providers) in developing a service specification for a contract for which they may later bid.
99. 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.
100. As the service design develops, it is good practice to engage with a range of providers on an on-going basis to seek comments on the proposed design e.g., via the commissioners website and/or via workshops with interested parties (ensuring a record is kept of all interaction). NHS Improvement²¹ has issued guidance on the use of provider boards in service design.²²

²¹ 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

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

Specifications

102. Commissioners should seek, as far as possible, to specify the outcomes that they wish to see delivered through a new service, rather than the process by which these outcomes are to be achieved. As well as supporting innovation, this helps prevent bias towards particular providers in the specification of services. However, they also need to ensure careful consideration is given to the appropriate degree of financial risk transfer in any new contractual model.
103. 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

104. CCGs will need to 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 commissioner entering into a new contract, extending an existing contract, or materially altering the terms of an existing contract, then it is a decision that should be recorded.
105. NHS England and CCGs must comply with two different regimes of procurement law and regulation when commissioning healthcare services: the NHS procurement regime, and the European procurement regime:
- The NHS procurement regime – the NHS (Procurement, Patient Choice and Competition (No.2)) Regulations 2013: made under S75 of the 2012 Act; apply only to NHS England and CCGs; enforced by NHS Improvement; and
 - The European procurement regime – Public Contracts Regulations 2015 (PCR 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

two bodies, including Monitor’s functions in relation to the National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013 (PPCCR)

²² *Monitor, Case closure decision on Greater Manchester and Cheshire cancer surgery services, January 2014*

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284832/ManchesterCaseClosure.pdf

healthcare services falling below the threshold value if there is likely to be interest from providers in other member states.

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

106. The National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013²³ state:

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

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

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

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

107. 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.
108. An obvious area in which conflicts could arise is where a CCG commissions (or continues to commission by contract extension) healthcare services, including GP services, in which a member of the CCG has a financial or other interest. This may most often arise in the context of co-commissioning of primary care, particularly with regard to delegated commissioning, where GPs are current or possible providers.

²³ *The National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013*
<http://www.legislation.gov.uk/ukxi/2013/500/contents/made>

109. A procurement template, provided in Annex G, sets out factors that the CCG should address when drawing up their plans to commission general practice services. We expect the use of this or a similar template to help the CCG in providing evidence of their deliberations on conflicts of interest.
110. CCGs will be required to make the evidence of their management of conflicts publicly available, and the relevant information from the procurement template should be used to complete the register of procurement decisions. Complete transparency around procurement will provide:
- Evidence that the CCG is seeking and encouraging scrutiny of its decision-making process;
 - A record of the public involvement throughout the commissioning of the service;
 - A record of how the proposed service meets local needs and priorities for partners such as the Health and Wellbeing Boards, local Healthwatch and local communities;
 - Evidence to the audit committee and internal and external auditors that a robust process has been followed in deciding to commission the service, in selecting the appropriate procurement route, and in addressing potential conflicts.
111. External services such as commissioning support services (CSSs) can play an important role in helping CCGs decide the most appropriate procurement route, undertake procurements and manage contracts in ways that manage conflicts of interest and preserve the integrity of decision-making. When using a CSS, CCGs should have systems to assure themselves that a CSS' business processes are robust and enable the CCG to meet its duties in relation to procurement (including those relating to the management of conflicts of interest). This would require the CSS to declare any conflicts of interest it may have in relation to the work commissioned by the CCG.
112. A CCG cannot, however, lawfully delegate commissioning decisions to an external provider of commissioning support. Although CSSs are likely to play a key role in helping to develop specifications, preparing tender documentation, inviting expressions of interest and inviting tenders, the CCG itself will need to:
- Determine and sign off the specification and evaluation criteria;
 - Decide and sign off decisions on which providers to invite to tender; and
 - Make final decisions on the selection of the provider.

Register of procurement decisions

113. CCGs need to maintain a register of procurement decisions taken, either for the procurement of a new service or any extension or material variation of a current contract. This must include:

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

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

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

115. 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.

Declarations of interests for bidders / contractors

116. As part of a procurement process, it is good practice to ask bidders to declare any conflicts of interest. This allows commissioners to ensure that they comply with the principles of equal treatment and transparency. When a bidder declares a conflict, the commissioners must decide how best to deal with it to ensure that no bidder is treated differently to any other. Please see Annex I for a declaration of interests for bidders/ contractors template.
117. It will not usually be appropriate to declare such a conflict on the register of procurement decisions, as it may compromise the anonymity of bidders during the procurement process. However, commissioners should retain an internal audit trail of how the conflict or perceived conflict was dealt with to allow them to provide information at a later date if required. Commissioners are required under regulation 84 of the Public Contract Regulations 2015 to make and retain records of contract award decisions and key decisions that are made during the procurement process (there is no obligation to publish them). Such records must include “communications with economic operators and internal deliberations” which should include decisions made in relation to actual or perceived conflicts of interest declared by bidders. These records must be retained for a period of at least three years from the date of award of the contract.

Contract Monitoring

118. The management of conflicts of interest applies to all aspects of the commissioning cycle, including contract management.
119. Any contract monitoring meeting needs to consider conflicts of interest as part of the process i.e., the chair of a contract management meeting should invite declarations of interests; record any declared interests in the minutes of the meeting; and manage any conflicts appropriately and in line with this guidance. This equally applies where a contract is held jointly with another organisation such as the Local Authority or with other CCGs under lead commissioner arrangements.
120. 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.
121. CCGs should be mindful of any potential conflicts of interest when they disseminate any contract or performance information/reports on providers, and manage the risks appropriately.

CCG Improvement and Assessment Framework

122. NHS England is introducing a new Improvement and Assessment Framework for CCGs from 2016/17 onwards. The management of conflicts of interest is a key indicator of the new framework.
123. As part of the new framework, CCGs will be required on an *annual* basis to confirm via self-certification:

- That the CCG has a clear policy for the management of conflicts of interest in line with the statutory guidance and a robust process for the management of breaches;
- That the CCG has a minimum of three lay members;
- That the CCG audit chair has taken on the role of the Conflicts of Interest Guardian;
- The level of compliance with the mandated conflicts of interest on-line training, as of 31 January annually.

124. In addition, CCGs will be required to report on a *quarterly* basis via self-certification whether the CCG:

- Has processes in place to ensure individuals declare any interests which may give rise to a conflict or potential conflict as soon as they become aware of it, and in any event within 28 days, ensuring accurate up to date registers are complete for:
 - conflicts of interest,
 - procurement decisions and
 - gifts and hospitality
- Has made these registers available on its website and, upon request, at the CCG's HQ.
- Is aware of any breaches of its policies and procedures in relation to the management of conflicts of interest and how many:
 - To include details of how they were managed;
 - Confirmation that anonymised details of the breach have been published on the CCG website;
 - Confirmation that they been communicated to NHS England.

125. Where a CCG has decided not to comply with one or more of the requirements of this statutory guidance – whether in relation to any of the matters referred to in paragraphs 123 and 124 above or otherwise – we expect this to be discussed in advance with NHS England. CCGs must also include within their

self-certification statements the reasons for deciding not to do so, on a “comply or explain” basis.

126. In addition there is a requirement for each CCG to undertake an annual internal audit on the management of conflicts of interest to provide further assurance about the degree of compliance with the statutory guidance (as set out in paragraph 127 onwards). Consideration of the indicator should form part of this audit.

Internal audit

127. All CCGs will need to undertake an audit of conflicts of interest management as part of their internal audit on an annual basis.
128. We will be communicating further guidance on the scope and remit of this audit in the summer of 2016 on NHS England's website. To ensure consistency in approach, NHS England will provide a template for the audit.
129. We would expect in 2016/17 that CCGs complete the audit in quarter three or quarter four of the financial year, to enable the updates in this guidance to be implemented prior to the audit taking place.
130. The results of the audit should be reflected in the CCG's annual governance statement and should be discussed in the end of year governance meeting with NHS regional teams. A template annual governance statement for 2016/17 will be published on NHS England's website soon.

Raising concerns and breaches

132. 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 the CCG's policy on conflicts of interest management, and to report these concerns. These individuals should not ignore their suspicions or investigate themselves, but rather speak to the designated CCG point of contact for these matters (the point of contact may vary in CCGs in accordance with the CCG's conflicts of interest and whistleblowing policies).
133. Any non-compliance with the CCG's conflicts of interest policy should be reported in accordance with the terms of that 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).
134. Effective management of conflicts of interest requires an environment and culture where individuals feel supported and confident in declaring relevant information, including notifying any actual or suspected breaches of the rules. In particular, the team or individual designated by the CCG to provide advice, support, and guidance on how conflicts of interest should be managed, should ensure that organisational policies are clear about the support available for individuals who wish to come forward to notify an actual or suspected breach of the rules, and of the sanctions and consequences for any failure to declare an interest or to notify an actual or suspected breach at the earliest possible opportunity.
135. Anonymised details of breaches should be published on the CCG's website for the purpose of learning and development.

Reporting breaches

136. All CCGs must have a clear process for managing breaches of their conflicts of interest policy. The process should be detailed in their policy (see Annex J for a checklist of suggested matters to include in the conflicts of interest policy) and should include information on:
 - How the breach should be recorded;
 - How it should be investigated;
 - The governance arrangements and reporting mechanisms;
 - How this policy links to whistleblowing and HR policies;
 - Who to notify at NHS England and when to do so;
 - The process for publishing the breach on the CCG website;

- What type of breaches should be recorded (the conflicts of interest case studies include examples of material and immaterial breaches).
136. CCGs should ensure that employees, governing body members, committee or sub-committee members and GP practice members are aware of how they can report suspected or known breaches of the CCG's conflicts of interest policies, including ensuring that all such individuals are made aware that they should generally contact the CCG's designated Conflicts of Interest Guardian in the first instance to raise any concerns. They should also be advised of the arrangements in place to ensure that they are able to contact the Conflicts of Interest Guardian on a strictly confidential basis.
 137. The CCG's conflicts of interest policy should make it clear that anyone who wishes to report a suspected or known breach of the 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.
 138. CCGs should also ensure that the Conflicts of Interest Guardian is in a position to cross refer to and comply with other CCG policies on raising concerns, counter fraud, or similar as and when appropriate.
 139. All such notifications should be treated with appropriate confidentiality at all times in accordance with the CCG's policies and applicable laws, and the person making such disclosures should expect an appropriate explanation of any decisions taken as a result of any investigation.
 140. Furthermore, providers, patients and other third parties can make a complaint to NHS Improvement²⁴ 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.

Fraud or Bribery

141. 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.

²⁴ https://www.gov.uk/government/uploads/system/uploads/attachmenmonitor_data/file/283505/SubstantiveGuidanceDec2013_0.pdf

Impact of non-compliance

142. Failure to comply with the CCG's policies on conflicts of interest management, pursuant to this statutory guidance, can have serious implications for the CCG and any individuals concerned.

Civil implications

143. If conflicts of interest are not effectively managed, CCGs could face civil challenges to decisions they make. 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

144. Failure to manage conflicts of interest could lead to criminal proceedings including for offences such as fraud, bribery and corruption. This could have implications for CCGs and linked organisations, and the individuals who are engaged by them.
145. 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.
146. 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.
147. 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

148. CCGs should 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

149. Statutorily regulated healthcare professionals who work for, or are engaged by, CCGs are under professional duties imposed by their relevant regulator to act appropriately with regard to conflicts of interest (see paragraph 5). CCGs should report statutorily regulated healthcare professionals to their regulator if they believe that they have acted improperly, so that these concerns can be investigated. Statutorily regulated healthcare professionals should be made aware that the consequences for inappropriate action could include fitness to practise proceedings being brought against them, and that they could, if appropriate, be struck off by their professional regulator as a result.

Conflicts of interest training

150. All CCGs must ensure that training is offered to all employees, governing body members, members of CCG committees and sub-committees and practice staff with involvement in CCG business on the management of conflicts of interest. This is to ensure staff and others within the CCG understand what conflicts are and how to manage them effectively.

151. All such individuals should have training on the following:

- What is a conflict of interest;
- Why is conflict of interest management important;
- What are the responsibilities of the organisation you work for in relation to conflicts of interest;
- What should you do if you have a conflict of interest relating to your role, the work you do or the organisation you work for (who to tell, where it should be recorded, what actions you may need to take and what implications it may have for your role);
- How conflicts of interest can be managed;
- What to do if you have concerns that a conflict of interest is not being declared or managed appropriately;
- What are the potential implications of a breach of the CCG's rules and policies for managing conflicts of interest.

152. NHS England is developing an online training package for CCG employees, governing body members, members of CCG committees and sub-committees and practice staff with involvement in CCG business. This will be rolled out in the autumn of 2016. This will need to be completed on a yearly basis to raise awareness of the risks of conflicts of interest and to support staff in managing conflicts of interest. The annual training will be mandatory and will need to be completed by all staff by 31 January of each year. CCGs will be required to record their completion rates as part of their annual conflicts of interest audit.

153. NHS England will also continue to provide face-to-face training on conflicts of interest to key individuals within CCGs and to share good practice across CCGs and NHS England.

Glossary

The Act: the National Health Service Act 2006 (as amended by the Health and Social Care Act 2012)

BMA: British Medical Association

CASC: Clinical Advisory Sub-Committee

CCG: Clinical Commissioning Group

CIPFA: The Chartered Institute for Public Finance and Accounting

CQC: Care Quality Commission

CSS: Commissioning Support Service

RCGP: Royal College of General Practitioners

GP: General Practitioner

NAO: National Audit Office

NICE: National Institute for Clinical Excellence

OPM: Office for Public Management

PCCC: Primary Care Commissioning Committee

PCR: Public Contract Regulations 2015

Annexes

Annex A **Template Declaration of interests for CCG members and employees**

For CCG members and employees to complete when declaring any interest(s). The information should be transferred onto the CCG's register of interest(s) promptly.

Annex B **Template Register of interests for CCGs**

For CCGs to record all declared interests. Up-to-date registers should be maintained at all times. The register must be published on the CCG's website and made available at the CCG's headquarters.

Annex C **Template Declarations of gifts and hospitality**

For CCG members and employees to complete on the offer of a gift and/or hospitality, whether accepted or declined. The information should be promptly transferred onto the CCG's register of gifts and hospitality. Individuals should complete the template following discussion with their line manager or a senior manager in the CCG.

Annex D **Template Registers of gifts and hospitality**

For CCGs to record all declared gifts and hospitality. Up-to-date registers should be maintained at all times. The register must be published on the CCG's website and made available at the CCG's head office.

Annex E **Template Declarations of interest checklist**

For the chair of a governing body, committee and sub-committee meeting. The checklist will assist both the meeting Chair and the secretariat to give due consideration to managing conflicts of interest whilst planning and conducting the meeting. The checklist incorporates templates:

- *for recording any new interests declared during the meeting*
- *a summary report which should be reviewed by the chair in advance of the meeting to ensure they are aware of all associated discussions which take place at sub-committee and working group levels.*

With thanks to NHS Fylde and Wyre CCG for their contribution in developing this template.

Annex F **Template for recording minutes**

For CCGs to use to record the minutes of the meeting. The headings should prompt the meeting Chair and secretariat to include declarations of interest as a standard agenda item and record any information accordingly.

Annex G

Procurement checklist

For CCGs to implement when procuring services from providers, to ensure full due consideration is given to the process of procurement. CCGs are advised to address the factors set out in the procurement template when drawing up their plans to commission general practice services. The procurement template includes a template to record procurement decisions and contracts awarded. The information should be promptly transferred onto the CCG's register of procurement decisions and contracts awarded.

Annex H

Template Register of procurement decisions and contracts awarded

For CCGs to complete and maintain up to date records of all procurement decisions and contracts. The register must be updated whenever a procurement decision is taken. The register of procurement decisions and contracts awarded should be published on the CCG's website and made available at the CCG's head office.

Annex I

Template Declaration of interests for bidders/ contractors

For all bidders and/or contractors to declare any potential conflicts of interest that could arise if the Relevant Organisation was to take part in any procurement process and/or provide services under, or otherwise enter into any contract with, the CCG, or with NHS England.

Annex J

Conflicts of interest policy checklist

For CCGs to consider when developing their conflicts of interest policy. The checklist should initiate discussions on all the relevant sections to be included in the conflicts of interest policy. The conflict of interest policy should be reviewed on an annual basis. With thanks to Southwark CCG for their contribution in developing this template.

These templates are intended to be a helpful resource and can be adapted to your individual CCG's needs. Word and excel versions of the templates are available on the NHS England [website](#).

Types of interest

Type of Interest	Description
Financial Interests	<p>This is where an individual may get direct financial benefits from the consequences of a commissioning decision. This could, for example, include being:</p> <ul style="list-style-type: none"> • 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 owner interests), a partner or owner of a private or not-for-profit company, business, partnership or consultancy which is doing, or which is likely, or possibly seeking to do, business with health or social care organisations. • A management consultant for a provider; • In secondary employment (see paragraph 56 to 57); • 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).
Non-Financial Professional Interests	<p>This is where an individual may obtain a non-financial professional benefit from the consequences of a commissioning decision, such as increasing their professional reputation or status or promoting their professional career. This may, for example, include situations where the individual is:</p> <ul style="list-style-type: none"> • 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, BMA or a medical defence organisation would not usually by itself amount to an interest which needed to be declared); • An advisor for Care Quality Commission (CQC) or National Institute for Health and Care Excellence (NICE); • A medical researcher.
Non-Financial Personal Interests	<p>This is where an individual may benefit personally in ways which are not directly linked to their professional career and do not give rise to a direct financial benefit. This could include, for example, where the individual is:</p> <ul style="list-style-type: none"> • 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 groups with an interest in health.
Indirect Interests	<p>This is where an individual has a close association with an individual who has a financial interest, a non-financial professional interest or a non-financial personal interest in a commissioning decision (as those categories are described above). For example, this should include:</p> <ul style="list-style-type: none"> • Spouse / partner; • Close relative e.g., parent, grandparent, child, grandchild or sibling; • Close friend; • Business partner.

Annex B: Template Register of interests

Name	Current position (s) held in the CCG i.e. Governing Body member; Committee member; Member practice; CCG employee or other	Declared Interest (Name of the organisation and nature of business)	Type of Interest			Is the interest direct or indirect ?	Nature of Interest	Date of Interest		Action taken to mitigate risk
			Financial Interest	Non-Financial Professional Interest	Non-Financial Personal Interest			From	To	

Annex C: Template Declarations of gifts and hospitality

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

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

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

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

Signed:

Date:

Signed:

Position:

Date:

(Line Manager or a Senior CCG Manager)

Please return to <insert name/contact details for team or individual in CCG nominated to provide advice, support, and guidance on how conflicts of interest should be managed, and administer associated administrative processes>

Annex D: Template Register of gifts and hospitality

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

Annex E: Template declarations of interest checklist

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

Timing	Checklist for Chairs	Responsibility
<p>In advance of the meeting</p>	<ol style="list-style-type: none"> 1. The agenda to include a standing item on declaration of interests to enable individuals to raise any issues and/or make a declaration at the meeting. 2. A definition of conflicts of interest should also be accompanied with each agenda to provide clarity for all recipients. 3. Agenda to be circulated to enable attendees (including visitors) to identify any interests relating specifically to the agenda items being considered. 4. Members should contact the Chair as soon as an actual or potential conflict is identified. 5. Chair to review a summary report from preceding meetings i.e., sub-committee, working group, etc., detailing any conflicts of interest declared and how this was managed. <p>A template for a summary report to present discussions at preceding meetings is detailed below.</p> <ol style="list-style-type: none"> 6. A copy of the members' declared interests is checked to establish any actual or potential conflicts of interest that may occur during the meeting. 	<p>Meeting Chair and secretariat</p> <p>Meeting Chair and secretariat</p> <p>Meeting Chair and secretariat</p> <p>Meeting members</p> <p>Meeting Chair</p> <p>Meeting Chair</p>

<p>During the meeting</p>	<p>7. Check and declare the meeting is quorate and ensure that this is noted in the minutes of the meeting.</p> <p>8. Chair requests members to declare any interests in agenda items- which have not already been declared, including the nature of the conflict.</p> <p>9. Chair makes a decision as to how to manage each interest which has been declared, including whether / to what extent the individual member should continue to participate in the meeting, on a case by case basis, and this decision is recorded.</p> <p>10. As minimum requirement, the following should be recorded in the minutes of the meeting:</p> <ul style="list-style-type: none"> • Individual declaring the interest; • At what point the interest was declared; • The nature of the interest; • The Chair’s decision and resulting action taken; • The point during the meeting at which any individuals retired from and returned to the meeting - even if an interest has not been declared; • Visitors in attendance who participate in the meeting must also follow the meeting protocol and declare any interests in a timely manner. <p>A template for recording any interests during meetings is detailed below.</p>	<p>Meeting Chair</p> <p>Meeting Chair</p> <p>Meeting Chair and secretariat</p> <p>Secretariat</p>
<p>Following the meeting</p>	<p>11. All new interests declared at the meeting should be promptly updated onto the declaration of interest form;</p> <p>12. All new completed declarations of interest should be transferred onto the register of interests.</p>	<p>Individual(s) declaring interest(s)</p> <p>Designated person responsible for registers of interest</p>

Template for recording any interests during meetings

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

Template to record interests during the meeting.

Meeting	Date of Meeting	Chairperson (name)	Secretariat (name)	Name of person declaring interest	Agenda Item	Details of interest declared	Action taken

Annex F: Template for recording minutes

XXXX Clinical Commissioning Group Primary Care Commissioning Committee Meeting

Date: 15 February 2016
Time: 2pm to 4pm
Location: Room B, XXXX CCG

Attendees:

Name	Initials	Role
Sarah Kent	SK	XXX CCG Governing Body Lay Member (Chair)
Andy Booth	AB	XXX CCG Audit Chair Lay Member
Julie Hollings	JH	XXX CCG PPI Lay Member
Carl Hodd	CH	Assistant Head of Finance
Mina Patel	MP	Interim Head of Localities
Dr Myra Nara	MN	Secondary Care Doctor
Dr Maria Stewart	MS	Chief Clinical Officer
Jon Rhodes	JR	Chief Executive – Local Healthwatch

In attendance from 2.35pm

Neil Ford NF Primary Care Development Director

Item No	Agenda Item	Actions
1	Chairs welcome	
2	Apologies for absence <apologies to be noted>	
3	<p>Declarations of interest</p> <p><i>SK reminded committee members of their obligation to declare any interest they may have on any issues arising at committee meetings which might conflict with the business of XXX clinical commissioning group.</i></p> <p><i>Declarations declared by members of the Primary Care Commissioning Committee are listed in the CCG's Register of Interests. The Register is available either via the secretary to the governing body or the CCG website at the following link: http://xxxccg.nhs.uk/about-xxx-ccg/who-we-are/our-governing-body/</i></p> <p>Declarations of interest from sub committees. <i>None declared</i></p> <p>Declarations of interest from today's meeting</p>	

	<p><i>The following update was received at the meeting:</i></p> <ul style="list-style-type: none"> • <i>With reference to business to be discussed at this meeting, MS declared that he is a shareholder in XXX Care Ltd.</i> <p><i>SK declared that the meeting is quorate and that MS would not be included in any discussions on agenda item X due to a direct conflict of interest which could potentially lead to financial gain for MS.</i></p> <p><i>SK and MS discussed the conflict of interest, which is recorded on the register of interest, before the meeting and MS agreed to remove himself from the table and not be involved in the discussion around agenda item X.</i></p>	
4	Minutes of the last meeting <date to be inserted> and matters arising	
5	<p>Agenda Item <Note the agenda item></p> <p><i>MS left the meeting, excluding himself from the discussion regarding xx.</i></p> <p><conclude decision has been made></p> <p><Note the agenda item xx></p> <p><i>MS was brought back into the meeting.</i></p>	
6	Any other business	
7	Date and time of the next meeting	

Annex G: Procurement checklist

Service:	
Question	Comment/ Evidence
1. How does the proposal deliver good or improved outcomes and value for money – what are the estimated costs and the estimated benefits? How does it reflect the CCG’s proposed commissioning priorities? How does it comply with the CCG’s commissioning obligations?	
2. How have you involved the public in the decision to commission this service?	
3. What range of health professionals have been involved in designing the proposed service?	
4. What range of potential providers have been involved in considering the proposals?	
5. How have you involved your Health and Wellbeing Board(s)? How does the proposal support the priorities in the relevant joint health and wellbeing strategy (or strategies)?	
6. What are the proposals for monitoring the quality of the service?	
7. What systems will there be to monitor and publish data on referral patterns?	
8. Have all conflicts and potential conflicts of interests been appropriately declared and entered in registers?	
9. In respect of every conflict or potential conflict, you must record how you have managed that conflict or potential conflict. Has the management of all conflicts been recorded with a brief explanation of how they have been managed?	
10. Why have you chosen this procurement route e.g., single action tender? ²⁵	

²⁵Taking into account all relevant regulations (e.g. the NHS (Procurement, patient choice and competition) (No 2) Regulations 2013 and guidance (e.g. that of Monitor).

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

Template: Procurement decisions and contracts awarded

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

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

Signed:

On behalf of:

Date:

Please return to <insert name/contact details for team or individual in CCG nominated for procurement management and administrative processes>

Annex H: Template Register of procurement decisions and contracts awarded

Ref No	Contract/ Service title	Procurement description	Existing contract or new procurement (if existing include details)	Procurement type – CCG procurement, collaborative procurement with partners	CCG clinical lead	CCG contract manger	Decision making process and name of decision making committee	Summary of conflicts of interest declared and how these were managed	Contract awarded (supplier name & registered address)	Contract value (£) (Total)	Contract value (£) to CCG

Annex I: Template Declaration of conflict of interests for bidders/contractors

Name of Organisation:	
Details of interests held:	
Type of Interest	Details
Provision of services or other work for the CCG or NHS England	
Provision of services or other work for any other potential bidder in respect of this project or procurement process	
Any other connection with the CCG or NHS England, whether personal or professional, which the public could perceive may impair or otherwise influence the CCG's or any of its members' or employees' judgements, decisions or actions	

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

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

Signed:

On behalf of:

Date:

Annex J: Conflicts of interest policy checklist

In accordance with the Health and Social Care Act 2012, there is a legal requirement for Clinical Commissioning Groups (CCGs) to manage the process of conflicts of interest, both actual and perceived. The aim of the conflicts of interest policy checklist is to support CCGs to develop their conflict of interest policy. It is recommended that the CCG makes a commitment to reviewing their conflicts of interest policy (subject to changes) annually to ensure all material is up to date. CCGs should refer to ***Managing Conflicts of Interest: Revised Statutory Guidance for CCGs*** when developing the conflicts of interest policy.

Conflicts of interest policy- checklist	Key areas for consideration
Introduction to the policy	<ul style="list-style-type: none"> • Introduction; • Aims and objectives of the policy; • Consider the CCG's constitution and specified requirements in terms of conducting business appropriately; • Consider the legal requirements in terms of managing conflicts of interest; • Consider any other appropriate regulations; • Scope of the policy <whom the policy applies to> • Commitment to review <include frequency>
Definition of an interest	<ul style="list-style-type: none"> • Definition of an interest: • Types of an interest, including: <ul style="list-style-type: none"> ○ Financial interests; ○ Non-financial professional interests ○ Non-financial personal interests; or ○ Indirect interests where an individual has a close association with an individual who has a financial interest, a non-financial professional interest or a non-financial personal interest in a commissioning decision <p>Refer to paragraphs 13 to 17 of the CCG Guidance for further information</p>
Principles	<ul style="list-style-type: none"> • Principles of good governance for consideration, include those set out in the following: <ul style="list-style-type: none"> ○ The Seven Principles of Public Life (commonly known as the Nolan Principles); ○ The Good Governance Standards of Public Services; ○ The Seven Key Principles of the NHS Constitution; ○ The Equality Act 2010.
Declaring conflicts of interest	<ul style="list-style-type: none"> • Consideration should be given to the statutory requirements; • Detail the types of interests to be declared - as outlined in the <i>definition of an interest</i> section; • Details of when a conflict of interest should be declared; • State the contact details of the nominated person to

	<p>whom declarations of interest should be reported to;</p> <ul style="list-style-type: none"> • Consider visual formats including a flowchart detailing the process of declaring conflicts of interest in various settings i.e. meetings, the transfer of information onto registers of interest, etc. <p>A declaration on interests template should be appended to the policy</p>
<p>Register(s) of conflicts of interest</p>	<ul style="list-style-type: none"> • Consideration should be given to the statutory requirements; • One or more registers of interest should be maintained for the following: <ul style="list-style-type: none"> ○ All CCG employees; ○ All members of the CCG; ○ Members of the governing body; ○ Members of the CCG's committees and sub-committees; ○ Any self-employed consultants or other individuals working for the CCG under a contract for services. • Stipulate the period of time within which registers of interest have to be updated- upon receiving a declaration of interest in line with the guidance; • Stipulate publication arrangements for registers of interests in line with the guidance. <p>A register of interests template should be appended to the policy</p>
<p>Declaration of gifts and hospitality</p>	<ul style="list-style-type: none"> • Consideration should be given to the statutory requirements; • Consideration of risks when accepting gifts and hospitality; • Define acceptable types of gifts and hospitality; • Define the process for reporting gifts and hospitality; • State the contact details of the nominated person to whom declarations of gifts and hospitality should be reported to. <p>A declaration of gifts and hospitality form template should be appended to the policy.</p>
<p>Maintaining a register of gifts and hospitality</p>	<ul style="list-style-type: none"> • Consideration should be given to the statutory requirements; • Consideration should be given to the time period for updating the registers of gifts and hospitality upon receiving a declaration of gifts and hospitality in line with the guidance; • Stipulate publication arrangements for registers of gifts and hospitality in line with the guidance. <p>A register of gifts and hospitality template should be appended to the policy</p>

<p>Roles and responsibilities</p>	<ul style="list-style-type: none"> • Key considerations when appointing governing body or committee members including the following: <ul style="list-style-type: none"> ○ Whether conflicts of interest should exclude individuals from appointment; ○ Assessing materiality of interest; ○ Determining the extent of the interest. • The role of CCG lay members in managing organisational conflicts of interest, including the following: <ul style="list-style-type: none"> ○ Conflicts of interest guardian; ○ Primary care commissioning committee Chair.
<p>Governance arrangements and decision making</p>	<ul style="list-style-type: none"> • Consider the CCG’s policy of secondary employment and procedure for declaring details- how will this impact on appointing governing board members. • Define the procedure to be followed in governing body, committee and sub-committee meetings, including: <ul style="list-style-type: none"> ○ Declarations of interest checklist (a template should be appended to the policy); ○ Register of interests declared to be available for the Chair in advance of the meeting; ○ Process for declaring interests during the meeting; ○ Recording minutes of the meeting including interests declared. • Procedures to be followed for managing conflicts of interest which arise during a governing body, committee or sub-committee meeting, including, where appropriate: <ul style="list-style-type: none"> ○ Excluding the conflicted individual(s) from any associated discussions and decisions; ○ Actions to be taken if the exclusion affects the quorum of the meeting- including postponing the agenda item until a quorum can be achieved without conflict; ○ Clearly recording the agenda item for which the interest has been declared. <p>See paragraphs 72 to 94 of the CCG Guidance (Managing conflicts of interest at meetings) for further details</p> <ul style="list-style-type: none"> • Consider openness and transparency in decision making processes through: <ul style="list-style-type: none"> ○ Effective record keeping in the form of clear minutes of the meeting. ○ All minutes should clearly record the context of discussions, any decisions and how any conflicts of interest were raised and managed. <p>A template for recording minutes of the meeting should be appended to the policy.</p>
<p>Managing conflicts of interest throughout</p>	<ul style="list-style-type: none"> • Key areas for consideration include the following: • Service design, this can either increase or reduce the

<p>the commissioning cycle</p>	<p>level of perceived or actual conflicts of interest;</p> <ul style="list-style-type: none"> ○ Consider public and patient involvement and provider engagement in service design; ○ Consider how you involve PPI in needs assessment, planning and prioritisation to service design, procurement and monitoring; ○ Consider how you will engage relevant providers, especially clinicians, in confirming the design of service specifications- ensuring an audit train/ evidence base is maintained; ○ Consider how you ensure provider engagement is in accordance with the three main principles of procurement law, namely equal treatment, non-discrimination and transparency ○ Are specifications clear and transparent. <ul style="list-style-type: none"> ● Procurement, are there clear processes to recognise and manage any conflicts or potential conflicts of interest that may arise in relation to procurement <ul style="list-style-type: none"> ○ Consideration should be given to statutory regulations and guidance when procuring and contracting clinical services; ○ Consideration should be given to how you ensure transparency and scrutiny of decisions i.e. keeping records of any conflicts and how these were managed; ○ Maintaining register of procurement decisions detailing decisions taken, either for the procurement of a new service or any extension or material variation of a current contract. <p>A procurement template and register of procurement decisions should be appended to the policy.</p> <ul style="list-style-type: none"> ● Contract monitoring, consider conflicts of interest as part of the process i.e., the Chair of a contract management meeting should invite declarations of interests; <ul style="list-style-type: none"> ○ Process for recording any declared interests in the minutes of the meeting; and how these are managed; ○ Consider commercial sensitivity of information i.e. which information should be disseminated. <p>A template for recording minutes of the contract meeting should be appended to the policy.</p>
<p>Raising concerns</p>	<ul style="list-style-type: none"> ● Key areas for consideration: <ul style="list-style-type: none"> ○ When should a concern regarding conflicts of interest be reported; ○ What is the process for reporting concerns; ○ Who should concerns be raised with; ○ How will concerns be investigated; ○ Who is responsible for making the decision; ○ How do you ensure confidentiality; ○ Reporting requirements.
<p>Breach of conflicts of interest policy</p>	<ul style="list-style-type: none"> ● Consider and agree a clear, defined process for managing breaches of the CCG's conflicts of interest policy, including:

	<ul style="list-style-type: none">○ How the breach is recorded;○ How it is investigated;○ The governance arrangements and reporting mechanisms;○ Clear links to whistleblowing and HR policies;○ Communications and management of any media interest;○ When and who to notify NHS England;○ Process for publishing the breach on the CCG website.
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