

# VERITA

IMPROVEMENT THROUGH INVESTIGATION

## **Independent investigation into governance concerns at Crawley CCG**

A report for  
NHS England South East

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# 1. Executive summary and recommendations

## Introduction

1.1 This is an independent investigation of concerns raised about governance issues in Crawley clinical commissioning group ('the CCG'). It was commissioned by NHS England. The concerns were reported to NHS England by the CCG in May 2017 following an internal investigation.

1.2 Verita was asked to look at the following issues:

- Potential conflicts of interest arising from the relationship between the lay chair and chief officer
- Whether the business interests of the lay chair created a conflict of interest for him
- Whether the CCG's governance processes during these events were in line with good governance practice and were able to function effectively
- Bullying of the whistle-blower [REDACTED] following the raising of these issues.

1.3 As part of the investigation a total of 25 interviews were carried out and all available documentation was examined.

## Background

1.4 Crawley CCG works closely with its neighbouring CCG, Horsham & Mid Sussex ('Horsham CCG'). Crawley CCG is relatively small, being made up of 12-member practices and covering a population of 125,000 people. The option of a joint CCG with Horsham was rejected when Crawley CCG was set up, in part because of the different demographics between the two CCG areas.

1.5 The fact that Crawley was small meant it was constrained in its administrative costs as there is a limit placed on these costs driven by the size of the population served.

1.6 When it was being set up, Crawley CCG decided to have a clinician as chief officer and a lay chair. This model is relatively unusual and present challenges as it requires a GP

to take on a role traditionally held by an NHS manager. This means that the person concerned will need to have a set of managerial skills in addition to those as a GP and a leader of GP practices. It also means that, although the GP leadership is more closely related to the day to day running of the organisation, it is harder for the organisation to distinguish between the direct interests of GPs and those of the NHS as a whole.

**1.7** Dr Amit Bhargava has held the position of chief officer in the CCG since it existed in shadow form in 2012. He is referred to in this report as “the chief officer” of the CCG. He announced his retirement in July 2017. [REDACTED] now acts as interim chief officer.

**1.8** During the events covered by this report, the CCG was chaired by Alan Kennedy. He resigned in July 2017 to be replaced by [REDACTED] who is currently acting lay chair. References to “the chair” in this report refer to Mr Kennedy.

**1.9** This investigation relates to events that happened in Crawley CCG mainly in the first half of 2017. The following is a brief summary of those events:

#### *January 2017*

**1.10** The chair had previously declared his interest in relation to a technology firm, Redwood Technologies Ltd (“Redwood”). An amended conflict of interest management plan was drawn up to ensure that he and the CCG were acting properly.

#### *March 2017*

**1.11** An issue was drawn to the attention of the CCG’s conflict of interest guardian (the chair of the audit committee). This related to the CCG chair allegedly suggesting that primary care access funds could be used to for a scheme which Redwood would be involved with. This was investigated by the audit chair who says that they gave the chair a warning (the chair denies this).

*April 2017*

**1.12** The CCG became involved in a bid for funds from the Health Foundation (a charity promoting health projects).

*May 2017*

**1.13** Concerns were raised about whether the chair's involvement in the Health Foundation bid was in breach of his conflict of interest management plan. A further investigation was carried out by the audit chair which concluded that there was a conflict of interest.

#### **The relationship between Crawley CCG and Redwood**

**1.14** The chair of Crawley CCG, Mr Kennedy, told us that that Redwood is a client of his consultancy firm, Fusion Healthcare. This interest was declared in the CCG's conflict of interest register.

**1.15** Redwood Technologies Group Limited is a group of technology companies, based in Bracknell. It is the parent company of Content Guru Limited and Redwood Technologies Limited. For the reasons set out in the report we use the term 'Redwood' to refer to these companies.

**1.16** Redwood is a "*technology partner*" to the NHS 111 Patient Relationship Manager, a project run by the Healthy London Partnership.

**1.17** It was well known within the CCG that Mr Kennedy had some kind of relationship with Redwood, however there was some confusion about the details of the relationship. The exact relationship was not clear from the conflict of interest declaration recorded in the register of interests. It would have been helpful if the register gave more details so that the type of relationship was more transparent.

**1.18** A number of people referred to Mr Kennedy's conflict as '*having been declared*' as if the declaration of an interest was the end of the story, rather than the beginning. The

purpose of an interest being declared is to put managers on notice that particular relationships are sensitive and should be handled with care.

**1.19** Crawley and Horsham CCGs have a close relationship, including having some directors working across both organisations. The complexity of relationships of this sort mean that one body often acts for another. The frequency of this sort of arrangement is likely to grow in the coming years across the country. There is a danger that such arrangements could allow organisations to avoid conflict of interest rules. This should be avoided.

**1.20** We found uncertainty within the CCG as to whether there was a direct relationship between Crawley CCG and Redwood. We were told that the intention was that while Horsham CCG had a contractual relationship with Redwood, Crawley CCG would not. However the relationships became more muddled. Whatever the exact position, the close relationship between Crawley and Horsham CCGs means that Horsham's on-going contract with Redwood created conflict issues for the chair of Crawley CCG.

**1.21** It is of concern that there is so little clarity within Crawley CCG as to its contractual relationship with Redwood, not least because of the arrangement between the company and the chair of the CCG. Crawley CCG's interactions with Redwood are documented in detail in a supplementary report.

## **The chair**

**1.22** Prior to joining the CCG, Mr Kennedy held a number of executive posts in the NHS. After leaving the NHS he set up his own health consultancy, Fusion, which has two directors, Mr Kennedy and his wife.

### *Approach to role*

**1.23** The role of the chair in the Crawley CCG constitution is fairly wide ranging, but ultimately it is responsible for leading the governing body, ensuring good governance and being involved in the outward facing role of the organisation. This role is very different from an executive one. In our interviews and review of documentation we came across

examples where Mr Kennedy took on a role more closely related to the day to day running of the organisation.

**1.24** The record shows that Mr Kennedy regularly attended meetings of the executive, particularly in the second half of the 2016/17 financial year. This is unusual for a lay chair and is a matter of concern.

**1.25** Mr Kennedy was paid on the basis that he would work two days a week for the CCG. In practice, he spent a lot more time than that working for the CCG. This is also unusual and a cause for concern as part of the role of a chair is to have some distance from the day to day problems of the CCG so that they can provide perspective and challenge.

**1.26** We saw and heard evidence about many cases where Mr Kennedy was involved in operational matters including interactions with relatively junior members of staff. There is a difference between a chair speaking to members of staff to hear about their work and a chair being involved in day to day matters or giving instructions. We do not believe that Mr Kennedy observed this distinction.

**1.27** A number of interviewees told us that Mr Kennedy's performance of his role was overly executive. In any organisation, there should be a clear line between the non- executive role of a chair and the role of executives. The failure to maintain this distinction leaves a major gap in governance. Mr Kennedy does not appear to have been aware of this. We believe that as a result he did not fulfil his responsibilities as chair of the CCG appropriately.

#### *Redwood*

**1.28** Mr Kennedy told us that his role with Redwood is as a "*marriage broker*" with other private sector bodies. Redwood is currently the only client of Fusion and Fusion's turnover is around £35,000 per year.

**1.29** Mr Kennedy told us that as far as he was aware there is no contractual relationship between Crawley CCG and Redwood. This was despite him being present at a Crawley executive meeting when a contract extension with Redwood was discussed (although he was not involved in the actual decision which was made by email subsequently) and a relationship with Redwood being referred to in Crawley CCG's annual accounts.



**1.30** Mr Kennedy was open about his connection with Redwood and many people we spoke to knew of its existence. However, there was not a widespread understanding in the CCG of the nature of the relationship.

*The conflict of interest management plan*

**1.31** A strengthened conflict of interest management plan was put in place for Mr Kennedy in January 2017 arising out of his relationship with Redwood. The plan says:

*“AK [Alan Kennedy] will undertake not to promote or champion any client with which he is working through Fusion Healthcare limited or in any other relationship. This includes referring to their services or mentioning them as potential providers in any CCG context where this information is not in the public arena.”*

*Mr Kennedy’s promotion of Redwood*

**1.32** We were told that it was not uncommon for Mr Kennedy to talk about Redwood. He organised a number of trips for people to Redwood to see their facilities. Several interviewees told us about Mr Kennedy mentioning Redwood while speaking in meetings, for example at a Sussex-wide workshop held on 6 December 2016 relating to 111.

**1.33** Interviewees told us that Mr Kennedy brought valuable knowledge about the use of digital technology to the CCG and that he had the best of intentions in sharing that knowledge. He also made clear his relationship with Redwood.

**1.34** It cannot be right, however, for the most senior person in a public body to be promoting a private provider. There are many people with expert knowledge who can give CCGs technical advice. It is not the role of a chair to provide expert knowledge to the organisation. Even if it were, Mr Kennedy’s relationship with a potential supplier made him entirely unfit to carry out this role.

**1.35** It may well have been, as several interviewees suggest, that Mr Kennedy was motivated by the best intentions to share his knowledge and enthusiasm for technological

initiatives that were valuable to the NHS. Nevertheless, he was doing so while being a paid consultant to a particular supplier. This was inappropriate.

**1.36** We were told that in March 2017 Mr Kennedy developed a proposal for the use of £200,000 funding that had been allocated by NHS England for resilience. This included approaching a relatively junior manager with an idea as to how the money could be spent and explaining how Redwood could help. He went on to write and circulate a seventeen-page document. Mr Kennedy described this as *“building a straw man for others to use to do what they wish”*.

**1.37** For the lay chair of the CCG to be drafting a proposal on his own initiative is inappropriate and indicates a lack of understanding of his role. Furthermore, it is wrong for a lay chair of an organisation to approach a relatively junior member of the organisation encouraging them to take a particular course of action. On top of this, Mr Kennedy was acting in this way to promote a private company which stood to gain from the proposal if the money was allocated to this project.

*Summary comment on Mr Kennedy as chair*

*We spoke to a large number of people across the CCG who heard Mr Kennedy talking about Redwood or attended trips he organised to Redwood who do not see anything strange about this situation. We agree with the view of a manager who told us that they felt that the CCG had “normalised” the chair’s behaviour. Looking back, it is hard to see how Mr Kennedy’s relationship with Redwood was tolerated for so long. This can only be because the conflict had continued for a long period of time and had grown gradually as first Horsham CCG and then Crawley CCG developed links with Redwood.*

#### **Health Foundation bid**

**1.38** Mr Kennedy became aware via an email that the Health Foundation was taking bids for money that could be used by the CCG to help control emergency and urgent care costs. He forwarded the email to staff inside the CCG and to Sussex Community NHS Foundation Trust suggesting a bid. Mr Kennedy confirmed to us that he spoken directly to Redwood to

“raise awareness” of the Health Foundation initiative and encouraged the CCG’s head of digital to contact them. He went on to email senior managers in the CCG to say:

*“Whilst I can’t be involved in developing the bid, Redwood have a bid team to do the leg work”.*

**1.39** On 2 May 2017 Mr Kennedy wrote an email to managers in the CCG entitled ‘*The Health Foundation Bid Team: Bulletin 1*’. This listed a partnership for the bid which included the CCG and Redwood. The email said:

*“I am suggesting that because I have more flexible time than most and because I have been involved with both Redwood and NHS London re PRM that I take the lead in corralling our efforts.”*

**1.40** It is unusual for the chair of a CCG to be involved in this sort of work, but particularly unusual for the chair to take the lead in this way.

**1.41** Interviewees pointed out to us that the bid was being raised at a sensitive time for the CCG as it was the end of the financial year and at a time when the CCG was under severe financial pressure. They told us that the Health Foundation bid was therefore not a priority for the CCG.

### **Mr Kennedy’s interpretation of his management plan**

**1.42** Mr Kennedy made a number of arguments as to why his actions did not conflict with the management plan, which he believes is “*ambiguous*”.

**1.43** Mr Kennedy argued that he brought specialist knowledge to his role in a similar way that a GP does to the CCG, and that this justified his conflict.

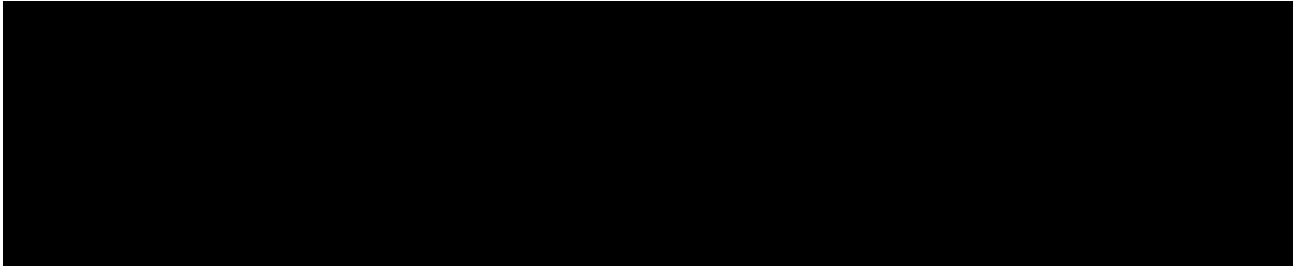
**1.44** We see no equivalence between the position of GPs and that of Mr Kennedy. While Parliament has decided that GPs can have a dual role, there is no equivalent for people who just happen to have specialist knowledge. The fact that special provision was made for the position of GPs between their two roles within the NHS does not weaken the conflict requirements with regards to non-GPs and private companies.

1.45 Mr Kennedy argued that as the Health Foundation money was not “public money” and that therefore this reduced the conflict.

1.46 Preparing the bid took time of CCG employees and therefore public money, however. Besides, there is no reason to apply a lower standard towards conflicts because the money was provided by a charity rather than the public purse. There is therefore no validity to Mr Kennedy’s argument on this point.

1.47 Mr Kennedy argues that as he was not involved in a formal procurement he had not breached his management plan.

1.48 However, we see no basis for Mr Kennedy’s assertion that it was acceptable for him to be involved in initial conversations leading up to service design. It was wrong for an interested party to be involved in any stage of the process.



*General comment*

*We do not find the wording of Mr Kennedy’s management plan to be ambiguous. We believe that it clearly states that Mr Kennedy should not promote his clients.*

*As someone holding a senior post in a public body it was Mr Kennedy’s responsibility to give impartial advice. However, he was not in a position to give such advice to the CCG. His contention that his conflicts were justified by his ability to give advice are therefore irrelevant.*

## Evaluation of Mr Kennedy's behaviour

**1.50** We considered Mr Kennedy's actions against the standard of the Nolan principles. We conclude as follows:

- Principle 1 - Selflessness  
Given that Mr Kennedy was being paid by Redwood and promoted projects from which Redwood stood to benefit, he is not able to demonstrate his compliance with this principle.
- Principle 2 - Integrity  
Mr Kennedy placed himself under an obligation to an organisation that might have sought to influence his work and gain financial advantage from this relationship. Although he declared his interest he did not manage it appropriately.
- Principle 3 - Objectivity  
The payments by Redwood to Mr Kennedy meant that he could not act without bias.
- Principle 7 - Leadership  
The issues we have identified would be serious for anyone, the fact that he was the most senior person in the organisation make them all the more so.



### The chief officer

**1.52** Dr Amit Bhargava has been a GP in Crawley since 1991. He went through a national recruitment process to be appointed as chief officer of the CCG when it was first set up.

**1.53** We were told that although he was committed and passionate about the development of health and health services to local people, Dr Bhargava was unsuited to this role. Some interviewees commented about his poor grasp of governance, his limited understanding of finance and his lack of administrative grip.

**1.54** Dr Bhargava was paid for four days as chief officer but only worked at the CCG's offices three days a week. He said that this arrangement was properly approved and was not unusual. Senior staff, however, told us of their resentment as they worked as hard but were not paid for any additional time. This did not set a good example to the organisation and Mr Kennedy should have tackled the matter.

**1.55** Dr Bhargava invited lay members to attend executive meetings on the basis that "*no decisions would be made about the people of Crawley without them being there*". This was based on a misunderstanding of the governance of the organisation. Executives needed to be responsible for management and implementation and the lay members free to provide oversight and scrutiny. Combining both in the executive meeting undermined this critical relationship. These arrangements made it more difficult for the lay members to hold the executive to account at governing body meetings. It reduced the opportunity for proper challenge and scrutiny. It also meant that the executive and governing body meetings were effectively merging. Governing body meetings were therefore, in effect, taking place in private and the residents of Crawley were having decisions taken about them without their knowledge.

**1.56** A number of interviewees identified the benefits of the chief officer and chair working closely together. However, we were also told about concern that the relationship had become too close. This meant that there was a lack of distance between the two which meant that the challenge which is necessary in a chair/chief officer relationship was missing.

**1.57** Dr Bhargava appears to have limited knowledge of Mr Kennedy's conflict. He had not discussed Mr Kennedy's relationship with Redwood with him. Dr Bhargava ought to have paid more attention to the conflict.

**1.58** In response to ██████████'s investigation into Mr Kennedy, Dr Bhargava veered from questioning the robustness of the investigation to trying to shift the blame for Mr Kennedy's

actions to other people. As chief officer he should have been altogether more detached and objective in his approach and helped the organisation find its way through this difficulty.

## Response of the CCG to issues raised with them

### ██████████'s investigation

1.59 The CCG's conflict of interest policy says that allegations of conflict of interest should be investigated by the conflict of interest guardian. That role is undertaken by ██████████ ██████████ ██████████. On receiving the allegation on 2 May 2017 ██████████ ██████████ took advice on next steps including from a senior HR advisor. ██████████ was anxious to complete ██████████ investigation quickly and having reviewed the evidence met Mr Kennedy on 4 May 2017. The length of the meeting is disputed, but after the meeting Mr Kennedy sent further information to ██████████ for consideration.

1.60 Mr Kennedy felt that he was not given sufficient opportunity to put his case and that ██████████ did not listen to what he told ██████████. In hindsight, Mr Kennedy could have been given more warning and opportunity to prepare for his interview. However, the ultimate test of whether Mr Kennedy was given adequate opportunity to provide input to the report of and whether ██████████ was listening to the points that he made is the quality of the report that ██████████ produced. We comment on that below.

1.61 ██████████ spoke to Mr Kennedy in preparing ██████████ report. He was given the opportunity to submit evidence and he did so. Nevertheless, Mr Kennedy deliberately misrepresented the situation to give people the opposite impression. This was damaging for the CCG's subsequent response to ██████████'s report.

1.62 Mr Kennedy told us that he felt that the outcome of ██████████'s report should have been reported to his "*line manager*". However, there is no obvious path after a conflict of interest investigation when the person involved is the chair of the organisation. ██████████ took HR advice from the most senior source available and reported the issue to NHS England. This appears to us to be an appropriate response in the circumstances.

1.63 Mr Kennedy assumes that once the report had gone to NHS England he would have no further opportunity to "*present my side of the story*". However, ██████████'s report made no specific recommendation relating to Mr Kennedy and it was always intended that

he would have had further opportunity to put his case before any action against him was taken.

**1.64** We have examined ██████'s report. We believe that the report is of a high standard and that ██████ has carried out ██████ responsibilities fully and well. We note that Mr Kennedy's comments on the report itself relate to the weight that ██████ gave different pieces of evidence, rather than any missing evidence. Ultimately the weight was a matter for ██████ to make a judgement on. ██████ exercised that judgement appropriately.

**1.65** ██████'s report contained a number of recommendations. These included approaching the chief officer to withdraw Crawley CCG from the Health Foundation bid process and contacting NHS England to notify them of the breach and discuss next steps. ██████ carried out these actions promptly and work on the bid was eventually stopped.

**1.66** Following the completion of the report, circulation was kept limited. We understand why circulation was restricted and that this was done based on advice received in the interests of 'protecting confidentiality'. We also accept that the situation where an organisation is dealing with allegations relating to the most senior person in the organisation is challenging. However, given that the report contained no confidential information it is difficult to see what confidentiality was being protected. We believe that it would have been better for the CCG if the report had been circulated more widely as this would have acted to dispel rumours about what it contained. Ultimately the decision on the circulation was one for ██████ and the head of governance to take. The approach that they took was with the best of motives and based on the advice received.

#### *Response of governing body to ██████'s report*

**1.67** Following the completion of the report Mr Kennedy resigned as chair and ██████, lay member for public and patient engagement, was appointed as acting chair in his place. There was an email correspondence involving ██████, the chief officer and NHS England as to what to do next and in particular whether the CCG should conduct a further investigation internally.

**1.68** This was a difficult and, to some extent, unprecedented situation as it involved the chair of the CCG. An argument can be made that it is appropriate for a CCG to resolve its



own internal HR matters wherever possible. However, this is clearly difficult when the person involved is the most senior in the organisation. In particular there was concern as to whether the CCG could be sufficiently objective to take this matter forward. Good governance principles would suggest that there be external oversight in these circumstances, although no formal process currently exists for this.

**1.69** Following the completion of ██████'s report, it could have been appropriate for the CCG to convene a panel to review whether ██████ investigation had followed due process or to look at implementing its findings. It would not, however, be appropriate to simply re-do the investigation. It would be even more inappropriate if the motivation for re-doing the investigation was unhappiness about the conclusion the first investigation reached. We believe that it is essential to be clear about this distinction.

**1.70** We do not believe that the acting chair, ██████, understood the distinction. Ultimately ██████ told us that the purpose of setting up the panel was to "*decide whether the initial finding was correct*". We believe that this was indeed ██████ motivation and that this is the natural reading of an email that ██████ sent to NHS England about next steps. That was inappropriate.

**1.71** ██████ also raised issues about the process. It is clear that the concerns arose because Mr Kennedy had misleadingly told ██████ that he had not had an opportunity to put his case. ██████ continued to hold these concerns even though ██████ assured him that this was not the case. ██████ told us that ██████ did this because ██████ wanted to be even handed between Mr Kennedy and ██████. However, Mr Kennedy was someone who had just had a formal complaint about him upheld, while ██████ was the independent person who had been tasked by the CCG to carry out an independent investigation. Mr Kennedy had a clear interest in the outcome while ██████ was an independent reviewer. To give equal weight to their two viewpoints is wrong.

**1.72** The evidence suggests that Dr Bhargava was a partisan on Mr Kennedy's side following the completion of ██████'s report. This is clear both from the emails from the accounts of his meeting with ██████ on 8 May 2017.

**1.73** The response of the governing body to the allegations against Mr Kennedy was to try to protect their colleague. It would have been better if they had avoided discussion of the

matter and allowed the proper processes to be followed. For the governing body to act inappropriately in this way amounted to bullying.

1.74 Similarly, Dr Bhargava's response to ██████████'s report appears to have been motivated by a desire to protect a valued colleague. Dr Bhargava should have been taking a position of strict neutrality, particularly as the second in command of the organisation which was dealing with problems relating to the most senior person. He completely failed to fulfil his responsibilities in this regard.

1.75 It is also clear that Dr Bhargava acted inappropriately towards ██████████, most particularly in their meeting of 8 May where an independent observer describes him as hostile, angry and bullying. Dr Bhargava's behaviour was unacceptable and we uphold the allegation of bullying against him.

### **Overall conclusions**

1.76 The following are our conclusions in relation to the issues in our terms of reference.

#### *Conflicts of interest arising from the relationship between the lay chair and chief officer*

1.77 Neither the chair or the chief officer were well suited to their roles. As a result, the chair became overly executive, while the chief officer did not have the grip on management issues that he should have. The two post holders came to rely on each other and this played a part in the problems discussed in the report.

#### *Whether the business interests of the lay chair created a conflict of interest for him*

1.78 The evidence is overwhelming that Mr Kennedy's business interests created a conflict for him and that this conflict was not handled appropriately by either the CCG or Mr Kennedy.

*Whether the CCG's governance processes during these events were in line with good governance practice and were able to function effectively*

**1.79** Notwithstanding the issues that lead up to the events, the audit chair and head of governance handled the situation well. Others, such as the chief officer and the current acting chair did not act appropriately.

*Bullying of the whistle-blower following the raising of these issues*

**1.80** We find the allegation of bullying by the chief officer to be upheld.

*Wider issues*

**1.81** We have the following comments on the wider issues flowing from our report:

- Architecture of CCGs - it is essential to get clarity on the roles of chair and chief officer. This is particularly important in a CCG that has a GP chief officer, rather than an NHS manager.
- Appointments - it seems clear that neither the chair nor chief officer were temperamentally suited to their roles. In future it would be desirable if more emphasis was placed on the importance of chairs having distance from the day to day running of the organisation and ensuring that chief officers have the necessary skills to fulfil a management role.
- Financial control - that NHS bodies have the processes in place to ensure that payments are not made if unbudgeted or the right contractual framework is absent.
- Management of conflicts - It is noticeable that in this case the conflict in question had been declared, but also that it existed for a long period of time and evolved over time. We have identified a specific recommendation relating to recording more information on conflict of interest registers. More generally it should be understood that significant commercial interests with potential suppliers to the NHS are not compatible with senior roles in an NHS body.

**1.82** The governance failings highlighted in this report are many and varied. They make a good case study for lessons on how the governance of public bodies should be carried out and what should be avoided.

### Supplementary report

**1.83** In considering the conflict of interest allegation relating to Mr Kennedy it is important to be clear about the relationship between the CCG and Redwood. However, despite looking into this issue we remain unclear as to what the exact relationship between the two organisations is.

**1.84** We interviewed ██████████ chief finance officer of the CCG for the first time in July 2017. Given that the chair had by this time resigned over the issue we assumed that it would be easy to pinpoint Crawley CCG's relationship with Redwood. Following our interview with ██████████ our understanding was that there was a contract for £1 between Horsham CCGs and Redwood. Given the nominal sum involved, this did not appear to present major governance issues.

**1.85** Subsequent to our first interview with ██████████ we examined the Crawley CCG Annual Report & Accounts for the past financial year (2016/17). Under the "*Related Party Transactions*" section there is a reference to "*Redwood Technology Limited*". We emailed ██████████ about this but were still not clear of the relationship after reading ██████████ response and therefore arranged a second interview with ██████████.

**1.86** ██████████ told us that in financial year 2016/17 Horsham CCG had a contract with Redwood for the sum of £1. ██████████ told us that the contract was extended in spring 2017.

**1.87** It had been planned to take a paper to the joint Crawley and Horsham executive meeting in February 2017, however this did not happen as the meeting was not quorate by the time the item was reached. The decision was subsequently approved by the Crawley CCG executive by email (Mr Kennedy was excluded from the decision). It is poor practice for a decision involving the expenditure of a substantial sum of money to be made in this way as there is no opportunity for discussion and risks the decision being 'noddled through'. The fact that the chair of the CCG had a financial connection to the organisation concerned

should have put all involved on notice to make sure that this decision was handled with particular care, but that was not the case.

**1.88** The documentation presented to the executive committee to make this decision could hardly be less clear. The paper itself gives no indication that it is seeking approval for expenditure. It does not indicate the level of expenditure being approved or what the purpose of any expenditure would be. Although the covering email asking for approval refers to a one year extension, it does not include any costs.

**1.89** The documentation of the decision once it had been taken was also poor. No reference is made in the minute of the decision to the sum to which the CCG is committing or which organisation is spending the money. It is not clear what the CCG has committed itself to, i.e. whether the arrangement is for 2017/18 only or goes on for a number of years.

**1.90** Although we were told that the contract extension was for Horsham rather than Crawley CCG the invoice was raised to Crawley CGG who paid it promptly. The distinction between Redwood having a contract with Horsham CCG and one with Crawley CCG has particular significance as emphasis had been placed, not least by the chief finance officer, on the argument that Horsham had a relationship with Redwood rather than Crawley. This is for the obvious reason that the chair of Crawley CCG had a financial interest in Redwood. The executive team, and the chief finance officer in particular, should have made it a priority to ensure that the distinction was maintained. Ensuring that this was done was the responsibility of the chief finance officer and not doing so represents a failure to carry out ■■■ responsibilities.

**1.91** Despite having been made aware of Mr Kennedy's conflict, ■■■ appears to have done nothing about it. The declaration should have put the whole CCG on notice to pay attention to any future relationships with Redwood. In failing to notice that Crawley CCG was making an unauthorised payment to Redwood, even when this was specifically highlighted in the CCGs accounts, ■■■ failed to discharge ■■■ responsibilities.

**1.92** The payment terms were generous to Redwood. It seems to us unusual for a CCG to pay a monthly fee spread throughout the year in one go right at the beginning of the year.

**1.93** The payment of the full sum by the wrong organisation within a couple of days of the start of the financial year raises questions of financial control.

**1.94** The documentation is unclear but it would appear that the quotation from Redwood is substantially more expensive than the alternatives. The paper makes no reference to this or its implications.

**1.95** This issue demonstrates failings at a number of levels:

- Poor contracting practice
- Poor financial governance (eg documentation of expenditure approvals)
- Poor financial control
- A failure by the chief finance officer to respond appropriately to the chair's conflict of interest declaration.

**1.96** These failings would be disappointing in any organisation. When they relate to a supplier which has a financial relationship with the chair of the CCG, they give serious cause for concern.

**1.97** In our conversations with the chief finance officer, [REDACTED] has not demonstrated a grip on these issues. Despite being given advance warning [REDACTED] has been unprepared and unable to explain the circumstances behind these issues. [REDACTED] appeared to have given no consideration to how the issue of the wrong payment might be resolved (in cash or accounting terms), although [REDACTED] told us that this has now been addressed. We found [REDACTED] explanations confused and unclear.

## **Recommendations**

In addition to the conclusions that we have set out in this report we make two specific recommendations for NHS bodies going forward:

**R1** Conflict of interest registers should provide details of the relationship being declared.

**R2** CCG governing bodies should see the declaration of a conflict of interest as the beginning of the management process for the conflict, rather than as an end in itself.

## 2. Introduction

2.1 This report provides an independent account of concerns raised about governance issues in Crawley clinical commissioning group ('the CCG'). Issues were reported to NHS England by the CCG's conflict of interest guardian following an internal investigation in May 2017. NHS England commissioned this independent investigation in the following month.

2.2 A conflict of interest was first reported to the conflict of interest guardian by the head of governance on 2 May 2017. In accordance with [REDACTED] responsibilities, the guardian carried out an immediate investigation concluding that there had been a breach of the CCG's policy. [REDACTED] recommended that management action be taken.

2.3 The outcome of the investigation prompted discussion amongst the governing body and between the CCG and NHS England about how the matter was to be handled. NHS England subsequently decided that an external review was necessary. [REDACTED] NHS England contacted Verita to commission an independent investigation of the reported conflict of interest and the CCG's handling of the matter.

2.4 Verita is a consultancy specialising in the management and conduct of investigations, reviews and inquiries. Kieran Seale and Ed Marsden carried out the investigation supported by Nicola Salmon. We have had the benefit of the experience of Chris Stephens, senior associate and, until recently, chair of the Judicial Appointments Commission. Mr Stephens has acted as peer reviewer. Biographies of the team are included as Appendix A.

### 3. Terms of reference

3.1 The following is a summary of the terms of reference for this investigation. The full terms of reference are shown in Appendix B.

#### Commissioner

3.2 NHS England (South East) is commissioning Verita to carry out an independent investigation into allegations relating to governance issues at Crawley CCG. The allegations are raised on information provided by a whistle-blower from within the CCG.

3.3 The investigation is commissioned by [REDACTED] NHS England South East using the powers available to NHS England to investigate whistle-blowing allegations.

#### Scope

3.4 The investigation will examine issues relating to:

- Potential conflicts of interest arising from the relationship between the lay chair and chief officer;
- Whether the business interests of the lay chair created a conflict of interest for him;
- Whether the CCG's governance processes during these events were in line with good governance practice and were able to function effectively;
- Bullying of the whistle-blower following the raising of these issues; and
- Any other relevant issues that arise during the investigation.

3.5 Although Verita's investigation is not part of a disciplinary process, the outputs of Verita's work may be used by NHS England or the CCG as part of a disciplinary process in the future.



## **4. Approach and structure**

**4.1** The investigation was undertaken in private. It comprised 25 formal interviews and examination of all available documentation including formal documents such as constitutions and policies and a large number of emails exchanged between the parties. A list of interviewees is included as Appendix C and summary of the documentation is in Appendix D.

**4.2** We conducted interviews with members of the CCG governing body, the heads of HR and governance and the NHS England liaison officer. We also spoke to the lay member responsible for audit at Horsham & Mid-Sussex CCG. We met the lay chair and clinical chief officer of Coastal & West Sussex CCG for comparative purposes as their senior leadership arrangements mirror those of Crawley CCG.

**4.3** We followed established good practice in conducting the work, for example by offering interviewees the opportunity to be accompanied and to comment on and make amendments to the transcripts of their interview.

**4.4** We made findings, comments and recommendations based on our interviews and the information available to us to the best of our knowledge and belief.

**4.5** Any significant concerns that came to light during the work were reported immediately to NHS England. This included our concerns about the overall management of Crawley CCG which we reported to [REDACTED] on 11 July 2017.

### **Structure of this report**

**4.6** The report is divided into a number of sections. Section 1 is the executive summary and section 2 provides an introduction. Section 3 contains the terms of reference. The approach and structure are set out in this section (4). Section 5 provides background information useful to the understanding of our investigation. The relationship between Crawley CCG and Redwood Technologies Group (Redwood), with which the chair was associated, is summarised in section 6. The roles and actions of the chair and chief officer are looked at in detail in sections 7 and 8 respectively. These sections also discuss the relationship between these two officers. Section 9 considers how the CCG responded to the

issues that were raised with them, and discusses the allegations of bullying of the whistleblower. Our conclusions and recommendations are described in section 10 together with our thoughts on moving forward.

**4.7** Further information about the contractual relationship between Crawley CCG is included as a supplementary report.

**4.8** Our findings from interviews and documents are set out in ordinary text. Our comments and opinions are in ***bold italics***.

## 5. Background

### Crawley CCG

5.1 Crawley is a town of a little over 100,000 people in West Sussex. Gatwick Airport is located on the edge of the town and after the Second World War Crawley was designated as a New Town. These factors mean that Crawley has a different demographic from much of the rest of West Sussex and from neighbouring areas.

5.2 Crawley CCG works closely with its neighbouring CCG, Horsham & Mid Sussex (generally referred to in this report as Horsham CCG). According to the joint Crawley and Horsham & Mid Sussex 2017 'Equality Report' the age breakdowns of the two CCG's are:

- Under 17s - Crawley 23.7%, Horsham 22%
- Working age - Crawley 63.1%, Horsham 58.6%
- Over 65 - Crawley 13.2%, Horsham 19.4%.

5.3 Within the population of Horsham 90.5% is 'White British', with 9.5% coming from Black and Minority Ethnic (BAME) groups. In Crawley 72.1% are white, while 28% come from BAME backgrounds. (Note - Horsham figures are for the district council area, not all of which lies within the CCG area).

5.4 Crawley CCG is made up of 12 member practices and covers a population of 125,000 people. The CCG is small compared with many others in the area. For example, Horsham & Mid Sussex CCG is made up of 23 GP practices covering 225,000 people while Coastal West Sussex CCG caters for nearly 500,000 people.

5.5 When the CCG was being created, consideration was given to an organisation covering both Crawley and Horsham, but this option was rejected. The chief officer of Crawley CCG, Dr Amit Bhargava, told us that in 2012 the GPs decided that Crawley should be a separate CCG, *"because the population is very different from Horsham and Mid Sussex; we have 30% diversity, we have much more deprivation, we are much more like a borough of London than rural Sussex."*

**5.6** Dr Bhargava talked about the particular health inequality issues that Crawley faces, which he described as “*inner city problems*”. He told us that these are quite different from areas only a short distance away:

*“We had issues with rising populations and we have a lot of homeless, we have people with substance misuse and mental health problems which were not dealt with, and dementia.*

*So, we chose those as the most vulnerable to be the ones we focused on, using the opportunities of innovation that we were given through CCG work - because transformation was the goal.”*

**5.7** Although the option of Crawley and Horsham being a single CCG was rejected, the two CCGs have always worked closely together. This includes shared officer posts for all roles below chief officer level. Over time this co-operation has increased so that the governing bodies and executives of the two organisations now also meet together.

**5.8** Interviewees told us that the small size of Crawley CCG may have made it harder to run. They noted that the allowance for expenditure on management costs that CCGs are given is related to the size of the CCG. Crawley CCG therefore had a low management cost allowance. An interviewee outside the CCG told us:

*“My worry about it [Crawley CCG] was whether it was big enough to grow, frankly, because I always thought Crawley was too small. I understood why it wanted to stand alone, but that wasn’t the right thing... I think there is a critical mass for organisational size.”*

**5.9** The interviewee stressed that this issue made the job more difficult, rather than impossible. They told us:

*“That said, that is not a “It was bound to fail”; I don’t believe that. I think you can make things work, but it is more difficult to make them work.”*

**5.10** Another interviewee from outside the CCG told us:

*“Although I absolutely understand a real passion and drive for the population and the unique needs of Crawley, which I think is completely laudable, from the outset Crawley CCG was too small to enable effectiveness.”*

**5.11** A further interviewee from outside Crawley CCG told us that they found the CCG to be overly focussed on the local perspective:

*“It’s a very insular organisation... the focus is on the Crawley population rather than the wider system ... they clearly have a strategy around what they want for the Crawley population irrespective of anything else. They don’t have very good relationships with the system, in terms of provider and commissioner relationships, it’s one of the worst across Kent, Surrey and Sussex.”*

#### *Comment*

***The trade-offs between accountability and administrative cost and between local focus and the national system are recurring ones in the NHS. The motivation for making Crawley CCG a stand-alone organisation was to create a CCG with strong local accountability focussing on the needs of the local area.***

***However, the CCG’s administrative cost limit is driven by its population size. The fact that Crawley was small, presented challenges for the organisation. The focus on local needs also raises the issue of whether national priorities are given the right emphasis.***

#### **Choice of lay chair and clinical chief officer**

**5.12** A key decision made when Crawley CCG was set up was to have a lay chair and a GP chief officer who would be the accountable officer<sup>1</sup>. Under this model a GP leads the day to day running of the organisation, supported by an NHS manager in a role such as chief operating officer. The lay chair, who is not involved in the day to day running of the organisation, provides oversight and leadership in areas such as governance.

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<sup>1</sup> Technically speaking the role of “accountable officer” is a responsibility that is discharged by the chief officer of a CCG. In practice many people use the terms interchangeably as a job title. In this report we have generally used the term “chief officer”.

**5.13** The alternative structure is to have a GP as the chair of the organisation and a manager as the chief officer. This structure was adopted by Horsham CCG and most CCGs across the country. In this model the GP chair provides strategic and policy leadership to the organisation while the chief officer runs the management functions.

**5.14** The legislation creating CCGs emphasised the aim of putting GPs in charge of NHS commissioning. Therefore, both these options were open to CCGs to choose from.

*Comment*

*While the model adopted by Crawley was not unique, it does present challenges as it requires a GP to take on a role traditionally held by an NHS manager. This means that the person concerned will need to have a set of managerial skills in addition to those as a GP and a leader of GP practices.*

**5.15** Crawley CCG appointed Alan Kennedy as lay chair and Dr Bhargava, a Crawley GP, as chief officer. Dr Bhargava told us:

*“I chose to be chief officer rather than chair because I had noticed if you have to make a decision, the person who signs the cheque is the one whose voice is best heard, not the clinical chairs, and we had a number of things to do because there was lots of deprivation...”*

**5.16** Mr Kennedy told us of this model:

*“It was quite unusual - one of only 20 CCGs in the country where the GP wants to be the Accountable Officer - not, in my view, a natural fit for GPs, but Dr Bhargava was keen on it.”*

**5.17** He continued:

*“Amit had been clearly associated with leadership roles in Crawley in different guises for many years, and it just seemed a natural culmination for him to be an AO [accountable officer] in a membership-based body.*

*“But when you think about the heritage of GPs, they are usually dealing ... one-to-one with people. They had not grown up through the management, the leadership, so they had not picked up the people management skills that you would do, like we would do over years. You make mistakes in the early part of your career and hopefully you learn from others as well.*

*“Amit suddenly went from being a jobbing general practitioner to becoming the accountable officer... I remember those early conversations with the members, NHS England and Amit ... they recognised that was a challenge for Amit.”*

**5.18** We asked Dr Bhargava whether he thought that the choice of being a chief officer rather than a chair was a good one. He told us that it followed naturally from the previous roles that he had held:

*“I have been PEC (Professional Executive Committee) chair, so I have been an executive chair and medical director for Crawley PCT (Primary Care Trust). What was clear at that time was that a lot of the things that the clinicians were wanting to do was improving care for what we were doing in the community, because it’s always been about the shifting of the balance of power.*

*“So it was about localism and that’s what the CCG was about. Because I had been involved in the CCG clinical commissioning bid, the intent for [REDACTED] whatever you think of him, was that there would be more clinical AOs and with management support”.*

**5.19** [REDACTED] NHS England told us that a feature of the Horsham model of having a chief officer who was not a clinician was that it created more distance between the GP leadership. He pointed out that GPs who run CCGs have to balance leadership of the GPs with the wider objectives of the CCG. He told us:

*“The other interest for the GPs ... is their own primary care business. So to have the clinical AO [accountable officer] blurs that even more. When you are talking to*

*a commissioner, are they thinking as a businessman running the primary care piece or the commissioner?"*

**5.20** ██████ told us that the presence of a career manager as chief officer can act as a buffer. The lack of this in the structure adopted by Crawley puts additional responsibility on the lay chair to oversee governance good practice:

*"The Lay Chair has a bigger responsibility on governance and oversight and should be supporting more the lay member for governance on that, so that is a big responsibility. It is that counter-balance".*

*"That check and balance needs to be there. The good thing about the clinical ones [chief officers] is that you get the GPs involved, but [also] to have that 'are you sure?', and not just that governance process but also just generally around.*

*"Clinicians are very good at progressing and driving things that they are passionate about, and we find across many CCGs that developments, and schemes in place are the ones that the GPs have a passion about rather than the ones that necessarily the population need. In this situation, the relationship against that check and balance is 'what is really good for our population?', or is it that 'that's just what you're interested in'?"*

**5.21** We asked the chief officer of Coastal West Sussex CCG which shares Crawley's model about the decision to have a GP chief officer. ██████ told us that this was an issue that the CCG had *"spent some time debating as an organisation and have revisited on subsequent occasions"*. ██████ told us:

*"The time that the decision was made, certainly I felt that my skill base would allow me to have a different set of conversations with other providers, but I very much saw the responsibility not just as clinical leadership but as managerial leadership as well. We also thought that the mixture of the commissioner and a lay Chair would give us an extra degree of robustness.*

*"There was something about indicating the strength of the commitment to being a clinically led organisation that was supported by management that was very important for us at the inception of the CCG. As time has gone on, I have made a*



*number of unique relationships across the system and with a number of practices. I think I am in a unique position to be able to speak as somebody who understands the situation from a clinical perspective, but also understands the managerial context.*

*“We were very clear at the beginning that this would not be a role that we **must** have a clinician in. Again, in conversations that we have had is at a time that I was to step away, that we would look at what the organisation needed, as opposed to feeling we had to have a clinical accountable officer, because we recognise that there are probably very few people who wanted to take on the managerial challenge of doing both sets of things.*

#### *Comment*

*In the model adopted by Crawley the GP leadership is more closely linked to the day to day running of the organisation. This provides the benefits of direct GP input that Dr Bhargava identifies. However, it also creates challenges in ensuring that the direct interests of GPs are distinguished from those of the NHS as a whole.*

#### **Office holders**

**5.22** Dr Bhargava has held the position of chief officer in the CCG since it existed in shadow form in 2012. He is referred to in this report as “the chief officer” of the CCG. He announced his retirement in July 2017. [REDACTED] interim chief officer.

**5.23** During the events covered by this report, the CCG was chaired by Alan Kennedy. He resigned in July 2017 to be replaced by [REDACTED] who is currently acting lay chair. References to “the chair” in this report refer to Mr Kennedy.

#### **The events covered by the report**

**5.24** This investigation relates to events that happened in Crawley CCG mainly in the first half of 2017. The events stem from an allegation of conflict of interest relating to the

chair of the CCG. The following is a brief summary of those events which are dealt with in greater detail in later chapters.

#### *January 2017*

**5.25** The chair had previously declared his interest in relation to a technology firm, Redwood Technologies Ltd. In late 2016 an updated conflict of interest management plan was drawn up to ensure that he and the CCG were acting properly. This plan was signed by the chair, the chief officer and audit chair on 12 January 2017.

#### *March 2017*

**5.26** An issue was drawn to the attention of the CCG's conflict of interest guardian (the lay member for audit, generally referred to in this report as the 'audit chair'). This related to the CCG chair allegedly suggesting that primary care access funds could be used to for a scheme which Redwood would be involved with. This was investigated by the audit chair who says ■■■ gave the chair a warning (this is disputed by the chair).

#### *April 2017*

**5.27** The CCG became involved in a bid for funds from the Health Foundation (a charity promoting health projects).

#### *May 2017*

**5.28** The head of governance raised concerns about the chair's relationship with Redwood in relation to the Health Foundation bid and whether this was in breach of his conflict of interest management plan. A further investigation was carried out by the audit chair which concluded that there was a conflict of interest.

## 6. The relationship between Crawley CCG and Redwood

6.1 The chair of Crawley CCG, Mr Kennedy, told us that that Redwood is a client of his consultancy firm, Fusion Healthcare. This interest was declared in the CCG's conflict of interest register. We will examine Mr Kennedy's relationship with Redwood in more detail in the next section. In this section, we examine the relationship between the CCG and Redwood.

### Redwood

6.2 Redwood Technologies Group Limited is a group of technology companies based in Bracknell. It is the parent company of Content Guru Limited and Redwood Technologies Limited. Together the three companies operate as the "*Redwood Group*". Redwood provides communication and IT support to the NHS as well as a wide range of other organisations.

6.3 Redwood is a "*technology partner*" to the NHS 111 Patient Relationship Manager a project run by the Healthy London Partnership<sup>1</sup>. The partnership brings together the NHS in London (clinical commissioning groups and NHS England) with local government and other bodies. One of their work streams relates to digital health and includes the 'Storm Assist' solution for Patient Relationship Management. A presentation to the Digital Health and Care Congress describes this as "*an innovative cloud-based technology designed to improve patient experience in urgent care*".

6.4 We were given a statement from [REDACTED] deputy chief executive officer of Redwood Technologies Group Limited. [REDACTED] says that whilst Content Guru Limited and Redwood Technologies Limited are part of the same corporate group, "*they carry out distinct roles and provide distinct services to different sectors in the technologies market*". [REDACTED] says that "*Content Guru provides cloud based integration services and operates the "Storm" cloud platform. Redwood is a core technologies and systems business. It is also a recognised brand in the NHS and is a systems provider to various NHS bodies*".

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<sup>1</sup> Presentation to the Digital Health and Care Congress, 5th July 2016:  
[https://www.kingsfund.org.uk/sites/default/files/media/T3C\\_Samit\\_Shah.pdf](https://www.kingsfund.org.uk/sites/default/files/media/T3C_Samit_Shah.pdf)

6.5 [REDACTED] says that Content Guru entered into a consultancy arrangement with Fusion on 28 January 2015. [REDACTED] says that Mr Kennedy has “acted as a ‘marriage broker’ by introducing Content Guru to interesting people in the wider healthcare eco-system. Most of these people have been representatives of other private technology companies, with potentially complementary product or service to Content Guru”. [REDACTED] goes on to say that Mr Kennedy’s remuneration is “in no way connected to, or contingent upon, sales or Content Guru winning work”. [REDACTED] adds:

*“Fusion (and Mr Kennedy) have only ever provided services to Content Guru. Neither Fusion nor Mr Kennedy have ever worked for or received payment from Redwood.*

*“Neither Fusion nor Alan Kennedy invoiced Content Guru (or any other Redwood Technologies Group company) for services in relation to the Health Foundation bid (or any other project related to Crawley CCG). Nor was there any agreement or future expectation of this happening. This would not have been appropriate and is not the sort of work Content Guru (or any other Redwood Technologies Group company) pays Fusion for.”*

#### *Comment*

*We note that Mr Kennedy’s company provides services to Content Guru rather than to one of the other Redwood companies. However, Mr Kennedy formally declared his interest as “Redwood Technology Limited”. The term “Redwood” was used in all the interviews that we held as part of our investigation, including by Mr Kennedy. It is also routinely used in the documentation that we have seen, including by Mr Kennedy. If there were a significant distinction between a relationship with Content Guru and the other parts of Redwood, that would open up the question of why Mr Kennedy did not declare Content Guru as in interest, or make the distinction to us or his colleagues. In fact, we do not believe that this is a significant distinction and we have therefore used the term “Redwood” in our report.*

*Our investigation is into the actions of Crawley CCG and its officers. We have not looked into the actions of Redwood and nothing in our report should be taken as criticism of them.*

## Management of the conflict

6.6 We asked a number of interviewees about the relationship between Redwood and the Crawley CCG. It was well known within the CCG that Mr Kennedy had some kind of relationship with Redwood, not least because of the declaration by Mr Kennedy on the CCG's conflict of interest register. However, the register does not provide any details of what the relationship was, merely including the name of the company. We found that there was some confusion about the details of the relationship, which was described to us by staff and even governing body members in vague terms. A number of interviewees told us that Mr. Kennedy was "on the board" of Redwood (this is not the case).

6.7 [REDACTED] chair of the clinical reference group and a member of the Crawley CCG governing body told us, for example:

*"Over the years I had the impression that he was working with Redwood but, yet again, that wasn't something I'd directly known as a solid fact; it was just an impression that he was working closely with Redwood but I didn't know what on."*

6.8 [REDACTED] another member of the governing body told us:

*"He had some sort of involvement with Redwood, that's as much as I know, I don't know what that involvement was."*

### Comment

***While the existence of a relationship between Mr Kennedy and Redwood was well known in the CCG, the exact nature of the relationship was not well understood. It would have been helpful if the register of interests gave more details so that the type of relationship was more transparent.***

### Recommendation

R1 Conflict of interest registers should provide details of the relationship being declared.

6.9 [REDACTED] was chief operating officer of Crawley CCG from when it was set up to May 2015. [REDACTED] told us that Mr Kennedy's relationship with Redwood was a concern to [REDACTED] when [REDACTED] was in post. [REDACTED] told us that [REDACTED] had raised [REDACTED] concerns and that it had been agreed that there should be no contractual relationship between the CCG and Redwood because of Mr Kennedy's link to Redwood. [REDACTED] told us:

*"It was very clear that he had some sort of business arrangement with them, although he wasn't an owner, and that he knew absolutely that there was no way that the CCG was going to have any relationship with Redwood whatsoever."*

6.10 We told [REDACTED] that the CCG may currently has a relationship with Redwood. [REDACTED] was concerned by this and commented:

*"They didn't in my day, and it was very clear that they couldn't."*

6.11 Many of the directors at Crawley CCG have changed since [REDACTED] left. One who has been in post for the whole of the CCG's existence is the chief finance officer, [REDACTED] holds this post jointly as chief finance officer of Horsham & Mid Sussex CCG).

[REDACTED]. We asked [REDACTED] if [REDACTED] recalled [REDACTED] raising the issue of the implications for the CCG of the chair's relationship with Redwood [REDACTED] said that [REDACTED] did not recall [REDACTED] raising it and "certainly never formally".

6.12 We asked [REDACTED] about [REDACTED] understanding of the chair's conflict of interest. [REDACTED] told us that [REDACTED] was aware that the chair has declared an interest with regards to Redwood for a number of years. [REDACTED] told us that:

*"Fusion had a number of customers and that therefore, including Redwood, there was a conflict of interest. Any discussions Alan was involved in, as the Chair of Crawley CCG, would put him in that conflict. He had a management plan that he agreed he wouldn't be involved in those discussions and wouldn't, in any way, be promoting Fusion or any companies who might be associated with Fusion."*

6.13 In terms of the implications of the declaration for Crawley CCG, [REDACTED] made a distinction between Horsham CCG, which had an established relationship with Redwood, and Crawley CCG. [REDACTED] told us:

*“As the Chair of an organisation the expectation would be that, having declared that conflict of interest, then clearly, they would not be involved in anything that would result in a situation where they were involved in any discussions around contracts, or promoting their business or any other customers business to the CCG’s.*

*“If there had been examples - clearly with Redwood it was identified, it was declared as a conflict of interest that Alan hadn’t been involved in any of those discussions, or decisions, around Horsham & Mid Sussex which, as I say, Horsham & Mid Sussex was involved. I’m not clear about when Crawley CCG became part of the MOU [Memorandum of Understanding]. ██████████ manager dealing with the contract] is very clear that Crawley CCG are not part of the MOU and there wasn’t a contract between them.”*

**6.14** We asked ██████████ if, as chief finance officer ██████████ had taken any action when ██████████ first became aware of the conflict ██████████ told us:

*“I’m not sure I was directly involved in that. I don’t recall being directly involved in that. What I was aware of was that, and I can’t remember when it was put in place, but there was an agreed declaration of conflict of interest. Actually, I’m not sure whether it would be four years ago - I’d have to go back and check ... It would have been declared and there was an agreed management plan, in terms of that conflict of interest.”*

**6.15** We suggested to ██████████ that given the nature of the conflict it might have been appropriate to raise with the finance team the importance of identifying any interactions between Crawley CCG and Redwood ██████████ responded:

*“Clearly I didn’t do that. Having declared a conflict of interest and if we felt that Crawley CCG were having those discussions with Redwood and that Alan was involved in those discussions, then that would have been a red flag. The discussion, as I said, was with Horsham & Mid Sussex CCG and the lead people in Horsham & Mid Sussex.”*

**6.16** We asked ██████████ if when ██████████ saw an invoice from Redwood this raised any concerns for ██████████ responded:

*“No, because Horsham & Mid Sussex have a contract with Redwood and there was a contract extension that was being requested.*

6.17 The current acting chair of the CCG, ██████████ told us that ██████ was one of a number of people who went over to Redwood’s site in Bracknell to look at the system Redwood were supporting in London. We asked if there was anything improper about this ██████ responded:

*“Absolutely not, no. It was declared. Alan had made it very clear at that time that for us it was going to be an educational visit, that we were going there.”*

#### *Comment*

*A number of people we spoke to about Mr Kennedy’s conflict of interest referred to it as having been declared, but they do not appear to have acted appropriately in response to the declaration.*

*The purpose of an interest being declared is to put people on notice that particular relationships are sensitive and should be handled with care. However, the outcome was as if the declaration of an interest was regarded within the CCG as the end of the story, rather than the beginning.*

*Given that the chair of the CCG had a declared interest in relation to a potential client of the CCG it would have been good practice for the finance team to be made aware of the importance of any interactions between Crawley CCG and Redwood.*

*We discuss the CCG’s actual relationship with Redwood in detail below, but at this point It is important to note that the chief finance officer’s view was that while Horsham CCG had a contractual relationship with Redwood, this was not the case with Crawley CCG. His view was this minimised the risk arising from the chair’s relationship with Redwood.*

*The increasing complexity of relationships between organisations within the NHS with one body acting on behalf of another may mean that similar situations arise in future. There is a danger that such arrangements could allow organisations to avoid conflict of interest rules. This should be avoided.*



## *Recommendation*

**R2** CCG governing bodies should see the declaration of a conflict of interest as the beginning of the management process for the conflict, rather than as an end in itself.

### **Crawley CCG's relationship with Redwood**

**6.18** As well as a lack of clarity around Mr Kennedy's relationship with Redwood, our interviews revealed uncertainty within the CCG as to whether there was a direct relationship between Crawley CCG and Redwood. As this was an important issue we looked into it in more detail. The following is a summary of what we found, more details are set out in a supplement to this report.

**6.19** Our initial understanding was that Crawley CCG (as opposed to Horsham CCG) did not have a direct contractual relationship with Redwood. We were told that Horsham CCG had a 'proof of concept' contract to the value of £1 in financial year 2016/17. ██████ told us that the contract was for a "scoping piece of work" relating to out of hours services.

█████ told us:

*"The contract that is in place is with Horsham & Mid Sussex and Redwood and that was a contract that was signed in 2016."*

**6.20** We subsequently examined Crawley CCG's Annual Report & Accounts for 2016/17. Under the "Related Party Transactions" section (page 12) there is a reference to "Redwood Technology Limited". The sum of £39,000 appears under the heading "Payments to Related Party" and the same sum appears under the heading "Amounts owed to Related Party".

**6.21** We asked ██████ about the reference to Redwood in Crawley's accounts. ██████ told us that this originated with a quotation that was approved by Crawley CCG's executive. ██████ later told us that an invoice from Redwood for Horsham CCG was erroneously split with Crawley CCG. The decision was signed off by email and recorded in the minutes of Crawley executive group of 9 March 2017. The minutes record that Dr Bhargarva, ██████ and Mr Kennedy were all present at the meeting and say:

## *“2 Matters Arising*

### *2.1 Virtual Voting following Joint Executive and Delivery Group meeting held 09 February*

*There was an additional item regarding the one year extension to the Storm Cloud funding to Redwood Technologies which did not get raised under AOB but which required a decision by 24 February.*

*Conflict of interest declared for this item: - AK [Alan Kennedy] - Director and 25% shareholder of Fusion Healthcare Consultancy Ltd, of which Redwood Technology is a client. His wife is also a shareholder in Fusion Healthcare. This conflict was managed as AK had no part in the decision-making process.*

*Virtual voting was also carried out by email for this. Of 10 voting members, 7 responded, all of whom agreed to sign off.*

*DECISION: The Crawley Executive Group AGREED the Equality & Diversity Policy, the Equality Report and the one year extension to Storm Cloud funding for Redwood Technologies.”*

**6.22** We were given a copy of an invoice “*storm OneCall Solution for NHS Crawley CCG*”. The invoice was dated 8 March 2017 for the sum of £39,000 and was raised to Crawley CCG.

**6.23** ████████ told us that the invoicing of Crawley rather than Horsham CCG was an error. However, the invoice was paid in full by Crawley CCG on the second working day of the 2017/18 financial year (4 April 2017).

#### *Comment*

*It had been intended that Redwood would have a contract with Horsham CCG but that there would not be a direct relationship with Crawley CCG. The relationships however became more muddled. Crawley CCG’s executive approved a contract with Redwood. Redwood subsequently issued an invoice and Crawley CCG paid it.*

*Whatever the exact position, the close relationship between Crawley and Horsham CCGs means that Horsham's on-going contract with Redwood created conflict issues within Crawley.*

*As we note in the supplementary report, it is of concern that there is so little clarity within Crawley CCG as to its contractual relationship with Redwood, not least because of the relationship between the company and the chair of the CCG.*

## 7. The chair

### Background/interest in digital technology

7.1 Alan Kennedy joined the NHS as an ambulance cadet in 1974 and spent 20 years in the ambulance service, ultimately becoming an executive director in the London Ambulance Service. On leaving the London Ambulance Service Mr Kennedy became chief executive of Surrey Ambulance Service. He told us of his interest in using IT to improve services in the ambulance service and of his achievements in doing so. Subsequently Mr Kennedy became chief executive of a primary care trust - East Elmbridge & East Sussex. Following a proposal to merge the five CCGs in Surrey into a single organisation, and having turned 50, Mr Kennedy took redundancy in 2006. He then set up his own health consultancy, Fusion.

7.2 Fusion Healthcare Consultancy Ltd is registered at Companies House (05863911). The register shows that the company has two directors - Mr Kennedy and his wife. Mr Kennedy's wife is the company secretary. Mr Kennedy told us that the company initially worked in the areas of critical care and the role of social enterprises in local health systems.

7.3 Mr Kennedy later joined a company called Airwave, who provide radio communications for the police, fire and military and who were interested in working in healthcare, heading the national sales team. He later became the chief executive of a GP out of hours service in south west London. He told us that he was then offered the job of chair of Crawley CCG, which was still in shadow form prior to formal creation in April 2013.

7.4 Mr Kennedy told us that the decision to have a lay chair and GP chief officer had been made before he came into post. He told us that only 20 CCGs in the country chose this model which he described as "*not, in my view, a natural fit for GPs*". He told us that he thought it was important to be clear on the respective roles of the chair and chief officer:

*"In those early days the constitution as it was written had Amit's position and mine as equal peers, and I felt, given that standard model of governance in the rest of the NHS, the chairman is clearly the boss of the chief exec - the chairman sets the objectives and the tone and the like."*

7.5 Mr Kennedy told us that the constitution was amended to ensure that "*I was clearly seen as Amit's boss, not just for setting objectives, but for all other matters as well.*"

## Role of Chair

7.6 Crawley CCG's constitution sets out the role of the chair. The role includes:

- Leading the governing body and ensuring that it is able to fulfil the requirements of the constitution
- Building and developing the governing body
- Ensuring that the CCG has proper constitutional and governance arrangements in place
- Supporting the chief officer
- Contributing to building a shared vision of the aims, values and culture of the organisation
- Leading and influencing to achieve clinical and organisational change to enable the CCG to deliver its commissioning responsibilities
- Overseeing governance
- Ensuring that the CCG builds and maintains effective relationships
- Hold the Accountable Officer to account for the discharge of their duties.

7.7 We asked Mr Kennedy to describe what he saw the role of the chair. He told us:

*“My job partly was to provide leadership, make sure that we function as a Governing Body, making sure they were listening to the voice and opinions of not just the members, but the public as well.”*

7.8 In addition, Mr Kennedy said that it was his role to be the line manager of the chief officer and providing leadership in terms of vision for the CCG.

7.9 We asked Mr Kennedy about the transition from senior executive roles which he had previously held to that of a lay member. He told us:

*“Yes. It was very different. I had been very fortunate to work with very good Chairs and a range of very good [non-executive directors] in my role in my previous organisations ... being a lay member and therefore sometimes having to sit on your hands and let other people lead the streams of work I had previously led myself before, and where the nuances were and how to make things happen, was on occasions, particularly in the early days, quite frustrating...”*

*“I couldn’t be seen to be actively leading physical programmes of work in my right when that clearly was Amit’s role, or his team’s. Part of the way I handled that is by asking the obvious assurance questions of the Governing Body, but part was, because we used to share an open plan office in the first few years - the clinical leads for each of these chunks of work used to sit in the same area as me, so if people came across a particular problem, and all other clinical leads hadn’t done those roles before, I would talk them through if I had any experience, whether we had any contacts at a national level elsewhere for them to talk to.”*

7.10 We discussed the role of lay chair with ██████████ from NHS England ██████████ emphasised that ensuring good governance was a particularly important part of the role of a lay chair (as opposed to where CCGs have a clinician as chair):

*“The Lay Chair has a bigger responsibility on governance and oversight and should be supporting more the lay member for governance on that, so that is a big responsibility. It is that counter-balance.”*

Q. *It sounds as if governance is central to that role of Lay Chair.*

A. *I think so, yes. More so than the other way around, yes. Again, that check and balance needs to be there.”*

7.11 ██████████ chair of the audit committee at Horsham CCG told us:

*“I would argue that the role of a lay Chair isn’t actually that dissimilar [to other CCG chairs]. It is to lead the organisation at governing body level to deliver its objectives and be compliant with the regulations under which it is set up. I don’t believe that it is to get involved with the day-to-day running of the CCG.”*

7.12 As a comparator with Crawley CCG we interviewed the chair and chief officer of Coastal West Sussex CCG which, like Crawley, has a lay chair and a clinical chief officer. We asked the chair of Sussex Coastal CCG whether they saw their role as a non-executive one. They replied:

*“Absolutely, yes. That is why it has consciously got “lay chair” in the title. I am not here as a professional; I could be anybody - I am not - I have no role or function that goes beyond the chairing of the organisation and the things that flow from that. If you look at my role in the constitution, which I have done, it is very clear. It is very clear that is not what I am here for, that is what the Accountable Officer is here for and it is my job, and I do, to hold them to account for their discharge of those executive functions.”*

#### Comment

*The role of the chair in the Crawley CCG constitution is fairly wide ranging, but ultimately similar to that of chair in most organisations. That is to say that the chair is responsible for leading the governing body, ensuring good governance and being involved in the outward facing role of the organisation. As Mr Kennedy says, this role is “very different” from an executive role. In our interviews and review of documentation we came across examples where Mr Kennedy took on a role more closely related to the day to day running of the organisation. We examine this issue in the succeeding paragraphs.*

#### Executive attendance

**7.13** We examined Mr Kennedy’s involvement in the CCG executive. We asked him whether he had attended executive meetings. He told us:

*“No. I wasn’t a permanent member of that forum. If you think about all of the structures that we have in the CCG to re-attain my independence and assurance role, I was clearly a member of the Governing Body. I was an invitee to the Exec, invitee to RemCom, invitee to Audit.”*

**7.14** We asked whether he went to executive meetings. He responded, “When I was asked to, or for a certain topic”. We asked whether he attended meetings of the executive regularly. He told us:

*“No. There were occasions that Amit or others asked me, but no. I wasn’t there as a matter of routine.”*

**7.15** We showed Mr Kennedy the attendance list at the executive prepared by the head of governance. That showed that Mr Kennedy had attended eight out of twelve executive team meetings in the year 2016/17, including all seven meetings between September 2016 and March 2017.

*“No. I would have to check. That seems many more than I remember, but I wasn’t a permanent member.”*

**7.16** Eight out of twelve was the same proportion of meetings attended by Dr Bhargava during 2016/17.

**7.17** The day after his interview, Mr Kennedy wrote to us to say that he had asked the CCG to *“check the minutes re my attendance and they suggest @ 50% of mtgs I was there for specific items or all”* [sic]. He sent us a schedule showing full attendance at six of the meetings that year, including all between October 2016 and March 2017, as well as the first two items of the September 2016 meeting.

**7.18** On 25 August, commenting on his transcript Mr Kennedy told us:

*“Subsequent confirmation from ██████████ my Personal Assistant advises that out of 10 Crawley Executive meetings in the previous year that I attended 3 full and 1-part meeting.”*

**7.19** One of the clinical directors, ██████████ told us:

*“Over the last 18 months or so, when I was around, Alan was more noticeable in Exec meetings having more of a role, not saying more of, say in terms of influence, but speaking more at these meetings. However, as I say, if you look at the attendance of our accountable officer at those meetings, it is woeful, and therefore, if I was in Alan’s position, I’d want either me or my accountable officer to be at those meetings, to drive the agenda forward.”*



7.20 We asked a former senior manager at the CCG about Mr Kennedy's attendance at the executive. They told us "*he has no place there*".

7.21 We asked the chair Coastal West Sussex CCG if he attended executive meetings. He told us that, apart from an "*extraordinary circumstance*" after an assurance meeting with NHS England he had never been to the executive. Was asked the chair of Coastal West Sussex what he would think if the chair attended an executive meeting. He told us:

*"I wouldn't understand what they were doing there."*

#### *Comment*

*The record shows that Mr Kennedy regularly attended meetings of the executive, particularly in the second half of the 2016/17 financial year. This unusual for a lay chair and is a matter of concern.*

#### **Time spent working for the CCG**

7.22 Mr Kennedy was paid between £40,000 and £44,000 pa on the basis that he would work two days a week for the CCG. In practice, Mr Kennedy spent a lot more than two days working for the CCG. ██████████ HR manager told us:

*"When we were setting Amit up on his contract and they were talking about four days and I was saying, 'Well, are you sure it's four days? I know he's got GP commitments' and Alan's response was, 'Well, that means I need to increase my time commitment, because I need to supervise him'. I thought, 'Well, actually, no, you don't need to physically be there to supervise people at that level. You just need to have a relationship with them that assures you that they're doing what you expect them to do'. That was kind of surprising."*

7.23 Mr Kennedy denies that he asked to increase his time commitment.

7.24 The audit chair ██████████ told us:

*He [Mr Kennedy] spends a lot of time at the CCG; some days he spends four days a week there, which is unusual for a Chair.*

7.25 Mr Kennedy told us:

*“The contract I had with the CCG was for, initially one day a week, but I ended up doing five days a week because there was just a lot to do. Two years ago, they changed that to two days a week, and I still ended up doing five days a week.”*

7.26 We asked the chair of Coastal West Sussex about the time he spent at the CCG. He told us that he worked two days a week at the CCG:

*“One of the conversations I remember having ... when I started was ‘we may need to have a look at the review of the time’, but when we did my appraisal, we did our review and ... [agreed that] ‘it feels two days is about right to me’.*

*“I don’t struggle to fill those [two days]. I am not sure what I would be doing if I was doing four days a week”*

*Comment*

***It is unusual for a lay chair to spend as much time on the CCG as Mr Kennedy appears to have done. Again, this is a cause for concern as part of the role of a chair is to have some distance from the day to day problems of the CCG so that they can provide perspective and challenge.***

**Engagement with operational matters**

7.27 Interviewees told us about many cases where Mr Kennedy was involved in operational matters including interactions with relatively junior members of staff. We also documentation that backed this up this view. One manager told us that:

*“He [Mr Kennedy] would be quite ‘Here is something I would like us to do. Can we crack on, can we do something?’ then checking up on the progress.”*

7.28 To give one example from email correspondence, on 7 April Mr Kennedy wrote to [REDACTED] saying:

*“Dear [REDACTED], can I suggest that you give [REDACTED] a call and organise a conference call to discuss what needs to be done by whom.”*

7.29 A senior member of the CCG told us that they had seen Mr Kennedy give a presentation to the CCG about IT which gave them concern. They told us that *“he was talking as if he was the manager of IT within the CCG”*.

7.30 Another manager at the CCG told us:

*“He did get involved in things a Lay Chair wouldn't ... particularly around digital and urgent care.”*

7.31 The 111 programme director who works across the CCGs in Sussex told us:

*“I don't tend to hear much from the other Chairs in that kind of way, and in hindsight perhaps that was the difference in that particular one.”*

7.32 Many people we spoke to felt that Mr Kennedy was motivated by what was best for the CCG and from frustration at the slow rate of progress that some initiatives were making. [REDACTED] told us:

*“From what I observe of Alan's personality, in that he wants the best for our organisation and for the population that we serve, and I see that in the way he has run and developed the culture of our governing body. I felt his frustration passing the office, or when having a cup of coffee, or just picking up on vibes, where he felt we were missing the boat in technology developments or things that other CCGs were doing. I did feel an element of frustration that we weren't motoring in areas that he felt were important to the outcomes of our patients, which I understood.”*

7.33 Another member of the governing body, [REDACTED] had a similar view:

*“I think the trouble is some of this is because Alan has a lot of ideas, and was very keen to help, I think he sometimes gets to the stage where we weren’t implementing things at speed.”*

**7.34** For comparative purposes, we asked the chair of Coastal West Sussex CCG about their level of involvement in operational matters. They told us:

*“I don’t meet routinely anyone other than [the chief officer] or their immediate management team. My conversations are with the Executive team - they are not with people in the depths of the organisation...”*

*“That is a conscious decision ... so that I am not seen to be interfering beyond what they are talking about, unless it is something that we have already agreed. I do have particular interests and I will talk to people who I am particularly interested in their work, but that, again, is not to interfere with their work, it is just to help my understanding of what they do, or to offer help... I hope nobody here would feel that they are looking to me for any kind of instruction, because they will be waiting a very long time.*

*“Because I have not had a non-exec role before and been a chief executive, there is a line I am very conscious of and, if I feel myself drifting, and occasionally when you get into a conversation you do, I am at pains to stop myself and say, “This isn’t my call to make, but if it was me, here is what I would be thinking about”, because I am acutely aware that that line is there and I don’t want to cross it.*

**7.35** We told Mr Kennedy of the view of another chair that they wouldn’t speak to staff below director level. He responded:

*“That is wrong. That is not my view at all. Part of the role of the Chair is the touch and feel of the culture that the people make, and make sure that the version of events that have been told by your senior team is how the rest of the organisation sees that. I always, when I was chief exec, encouraged my chairs to get out and about to talk with ambulance staff and other staff. I always did.”*

## Comment

*It is clear that Mr Kennedy became involved in operational matters within the CCG and engaged with staff at a relatively low level in the organisation.*

*There is a difference between a chair speaking to members of staff to hear about their work and a chair being involved in day to day matters or giving instructions. We do not believe that Mr Kennedy observed this distinction.*

## Executive role

7.36 We asked interviewees for their views of how Mr Kennedy undertook his role as a chair. A number told us that the role was overly executive. One senior manager told us, *“In some ways, Alan [Kennedy] acted more like an executive, and Amit [Bhargava] acted more like a Chair”*.

7.37 ██████ commented that Mr Kennedy *“seems very hands on for a chair”*.

7.38 ██████ told us:

*“In our model, what hasn’t quite worked is that he [Mr Kennedy] was a chief executive before and now that we’re in financial deficit and Amit hasn’t, probably, been as effective as Accountable Officer, Alan has almost tried to step into his shoes.”*

7.39 A manager at the CCG told us:

*“Alan would be in the Crawley Exec meetings and I genuinely didn’t understand his role as fully as lay chair.”*

7.40 Another CCG manager told us:

*“My concern about it was about just the balance of what his role as chair should be and morphing a little bit into executive powers, which I was concerned about, because it got too muddily. I am absolutely happy that the chair, with some*

knowledge, should be saying “Your CCG are not doing enough on this, what are you doing? Go and make it happen”. I got slightly anxious when it started to feel like he was running the programme.”

7.41 [REDACTED] HR manager, described Mr Kennedy as “more of an exec than a chair”.

7.42 We asked one of the clinical directors, [REDACTED] whether Mr Kennedy’s role was becoming more executive. He told us:

*“I think, in hindsight, those things have blurred, yes, and I think that’s because probably he didn’t see that Amit was leading us in a clear direction so he was doing more of that. And probably more than he wanted to do as well, if I’m honest.”*

*“It’s just an impression that Alan seemed to lead the meetings more than he probably needed to because he probably felt that someone needed to lead the meetings.”*

7.43 Another senior manager told us:

*“So he has become overly involved - and not in a way amongst lay chairs or whatever would have been appropriate. He has done it, unfortunately, in an inappropriate way.”*

7.44 We asked the chair of Coastal West Sussex CCG whether he felt that there was a tension in his role about his level of executive involvement. He told us:

*“I don’t feel it is a tension because I am perfectly happy to understand that I have no executive function here; I am very happy that I have no executive function here,”*

*Comment*

***In any organisation, there should be a clear line between the non-executive role of a chair and the role of executives.***

*The purpose of this distinction is that it means that the chair of the organisation can stand aside from day to day issues, give a more strategic view and also focus on the way decisions are being made rather than their details. If the chair does not take this role there is a major gap in the organisations governance. Part of the chair's role is to act as referee - it is not possible to do this if they are playing in the game.*

*Mr Kennedy does not appear to have been aware of this line. We believe that as a result he did not fulfil his responsibilities as chair of the CCG appropriately.*

### **Fusion's relationship with Redwood**

**7.45** We asked Mr Kennedy how the relationship between Fusion, his company, and Redwood came about. He told us that it stemmed from the time that he was working for Airwave in 2008 or 2009. Redwood were one of Airwave's technology partners and Airwave suggested Redwood as a possible partner for Airwave's health work. Mr Kennedy told us that just before he was appointed chair of the CCG, Redwood approached him to look at local authority telecare services. He told us:

*"At that stage, they had no footprint in the health services and had no plan to. They asked me to do a market review of telecare services, which I did for them. In essence, you ask me what my role is with Redwood - it is a marriage broker role and nearly all of it is marriage brokering with other private sector bodies. Organisations that are private sector-led deliver telecare services, I introduced Redwood to them. They would have meetings to work out whether they were a possible partner in that adventure."*

**7.46** Mr Kennedy told us that Redwood is currently the only client of Fusion and that the company's turnover is around £35,000 per year. Mr Kennedy told us:

*"They pay me on a cost per half day or day, so if I attend a meeting on their behalf, or in the early days when I did the market analysis, when I did the review of the telecare services, I would be paid for a number of days. There would be no link with sales, no link with profit."*

**7.47** Some people we spoke to in the CCG had gained the impression that Mr Kennedy is on the board of Redwood. Mr Kennedy told us that is not the case. He told us:

*“I am a paid adviser, they ask for ad hoc advice, I am not a permanent member of the team, I don’t attend any of their management meetings. They ask me to do a piece of work around telecare and if I can, I will, if I can’t I say so.”*

#### **Mr Kennedy’s understanding of Crawley CCG’s relationship with Redwood**

**7.48** We asked Mr Kennedy about contracts between Crawley CCG and Redwood. He told us that he was not aware that there was a contract:

*“No. I know that there was a contract between Sussex Community Foundation Trust and Redwood, which they let; I had no role in their let, and that is about their One Call services. I have not been involved in that and I would say I would be surprised if there is a contract between Crawley and Redwood.”*

**7.49** We showed Mr Kennedy the related party transaction in Crawley CCG’s accounts for 2016/17. He replied:

*“Sorry, that is news to me.”*

**7.50** Mr Kennedy said that he had read the accounts when they were produced but did not recall this entry.

**7.51** We asked Mr Kennedy if there was a contractual relationship between the CCG and Redwood. He responded:

*“No. The opposite was true. I believed there wasn’t between Crawley and Redwood. Even with Horsham & Mid Sussex.”*

**7.52** He subsequently wrote to us to say:

*“I have confirmed with Redwood that they do not hold a contract with Crawley CCG for any goods or services.”*



7.53 Mr Kennedy also wrote to us to say:

*“Regarding my sighting the CCG accounts for 16-17 at the time I agreed to work from home after submitting my resignation, @ 24th May, I don't believe that the full accounts had been prepared by then. If so, then this would explain why I don't remember seeing them.”*

7.54 The CCG's Annual Reports and Accounts for 2016/17 include an introduction from Mr Kennedy as chair. They were formally signed off by the governing body on 25 May, the day after Mr Kennedy resigned.

#### *Comment*

*As noted in section 6 (above) Mr Kennedy was present at an executive meeting when a contract extension with Redwood was recorded. The arrangement was also referred to in the CCG's annual accounts. Mr Kennedy was chair of the organisation throughout the financial year and also the period up to the day before the accounts were formally signed-off. It is surprising that he has no recollection of Redwood being mentioned or of reading reference to them in the draft accounts.*

#### **The conflict of interest declaration**

7.55 The CCG's Register of Interests includes a column headed *“Declared Interest - (Name of the organisation and nature of business)”*. Mr Kennedy's entry reads as follows (the full entry in the conflict of interest register is included as appendix E):

<i>Director of Fusion Healthcare Consultancy Ltd.</i>
<i>Fusion Healthcare Consultancy Ltd</i>
<i>Member of various health related boards including: the local West Sussex Health and Wellbeing Board, NHSE Digital Urgent and Emergency Care Board, NHSE Electronic Referral Service Programme and Advisory Boards.</i>
<i>Redwood Technology Limited</i>
<i>Relationship with Conduit (ended September 9th 2015)</i>

**7.56** The interest as director of Fusion, Redwood Technologies Limited and Conduit are marked as being '*Financial interests*'. Against each of the interests the words '*Management plan in place in line with CCG policy*'.

**7.57** A column refers to '*nature of business*', although this information is not recorded. The register does not record the nature of the relationship that gave rise to the conflict. As we have noted, there was some confusion amongst CCG staff about the nature of Mr Kennedy's interest in Redwood.

#### *Comment*

*Although Mr Kennedy was open about his connection with Redwood and many people we spoke to knew of its existence, that is not to say that the nature or significance of the interest was clear. The register asked for information on the nature of the business giving rise to the interest being recorded, but this was not completed.*

#### **The conflict of interest management plan**

**7.58** The CCG's conflict of interest policy says:

*"Conflicts of interests should be considered prior to meetings and if a conflict is likely to arise a management plan should be put in place, with the support of the head of governance and, if required the Conflicts of Interest Guardian."*

**7.59** The head of governance told us that as the chair had a declared interest, he had a management plan in place for several years. ■■■ told us that a strengthened plan was put in place in January 2017 and that ■■■ drew it up in conjunction with, ■■■■■■■■■■ as conflicts of interest guardian. The head of governance told us:

*"■■■ had the conversations with Alan that talked him through what our thinking was. It is fair to say he had come up with his version, we went with my version in the end, because we just felt it was a bit more comprehensive in terms of really*

*trying to be clear to him what we thought was the conflict and how we felt he should manage it.”*

**7.60** The management plan is dated ‘January 2017’ and was signed by Mr Kennedy, [REDACTED] and Dr Bhargava on 12 January 2017.

**7.61** The plan begins by noting that Mr Kennedy has declared his interest in Fusion and that Fusion “*provides advice to clients about the NHS and connections to NHS opinion formers*”. It notes Mr Kennedy’s relationship with Redwood and goes on to say that he as chair of the CCG “*is a leader and opinion former and has access to decision makers across the NHS. There is the opportunity for Information about clients to be shared and promoted above other potential providers*”. It goes on to say that “*A clear management plan is therefore required for any dealings in respect of a client of Fusion.*”

**7.62** The document refers to the February 2015 plan, which is described as ‘Management Plan 1’ which says that the chair should discuss with [REDACTED] if clients of Mr Kennedy plan to bid for contracts in Crawley (the full plan is included as Appendix F). It then says, “*In the light of the updated statutory guidance on COI [conflict of interest] and the CCG implementing an update process, this management plan now needs to be updated*”.

**7.63** The ‘*Revised management plan 1*’ refers to recording conflicts on the register and says:

*“AK will undertake not to promote or champion any client with which he is working through Fusion Healthcare limited or in any other relationship. This includes referring to their services or mentioning them as potential providers in any CCG context where this information is not in the public arena. AK will declare at the earliest possible opportunity if CCG discussion includes a client of Fusion Healthcare and will be excluded from further discussion”.*

*“It should be explicitly noted that it is recognised that AK has valuable specialist skills and knowledge within the arena of digital healthcare and there may be times when colleagues wish to seek his advice, for example with regards to general service design. However AK would be excluded from all formal procurements and contract discussions were a client of Fusion Healthcare may be a potential supplier of services to the CCG or any local partners CCGs.”*

**7.64** In his interview with us, Mr Kennedy emphasised the sections in the plan that refer to the issue of information being in the public arena and in the importance of utilising his expertise. We will analyse the plan in more detail below when we consider the conflict of interest issue.

### **Mr Kennedy's promotion of Redwood**

#### *General promotion*

**7.65** We were told that it was not uncommon for Mr Kennedy to talk about Redwood. As ██████████ put it, *"he was very proud of his Redwood connection"*.

**7.66** ██████████ a former member of the governing body told us:

*"Redwood was something that was mentioned quite frequently, but it was never 'we have to put business Redwood's way', it was never 'we have to do this, and we have to do it through Redwood'. It was always 'we have to do something different, this is an option, one potential solution to deliver that option would be Redwood, why don't you have a look and see what they can do, so you know what it is that's out there'."*

**7.67** We asked ██████████ 111 programme director for Sussex if Mr Kennedy talked about Redwood in particular:

*"He did. In his conversations he talked about - and he referred to it as Patient Relationship Management - that he did see that the use of IT in a better way would help assist them as a whole. He did mention about he had active interests in Redwood, suggested that we go and see it."*

**7.68** We asked ██████████ if the technology Redwood provides is unique ██████████ responded:

*"No, there are other providers out there."*

**7.69** Another CCG manager put it in slightly different terms. They told us that the chair had a “*genuine desire to spread the good news*” about Redwood, particularly with regards to Redwood’s work in London.

**7.70** We were told that Mr Kennedy organised a number of trips for people to Redwood to see the facilities. Most interviewees felt that this was not a problem as Mr Kennedy had declared his conflict, however some did have concerns. ██████████ told us:

*“We’re visiting a company that Alan has connections with through his private business and it’s a commercial company. [The head of governance] was worried at the time that we went for that meeting. I wasn’t as concerned at the time.”*

**7.71** The CCG’s head of digital told us:

*“It always felt a bit strange and a number of people would go up to Redwood on a regular basis to see what they did and understand maybe the opportunity. It was very nice, you would go up there, have a nice cup of coffee and they would talk you through what they do and lots of people have done that trip to Redwood.*

*“It’s very hard because the vast majority of the time it was done with the intention of bringing people along and saying ‘Come on guys, wake up. Here is an example of stuff that is going on that is really good, it’s changing things, it is being innovative, it’s all of these things that we’ve talked about for years and here is a company doing it and they are doing it with this in this space’.*

**7.72** ██████████ a GP and a former member of the Crawley governing body told us:

*“He took no end of people up to Redwood, kept on mentioning that in terms of the way in which other organisations, other areas have linked into that technology, something that could really get going, but he did say, I can only go so far with this, everybody else has to take it and run with it, and do whatever with it, if that’s what they decide to do, but it’s a really good thing, I think, and certainly worth looking at.”*

**7.73** Mr Kennedy told us that he also introduced many other technology providers and initiatives to the CCG, none of which were connected to Redwood.

Comment

*Interviewees told us that Mr Kennedy brought valuable knowledge about the use of digital technology to the CCG and that he had the best of intentions in sharing that knowledge. He also made clear his relationship with Redwood.*

*However, this situation cannot be right.*

*Many companies could provide the sort of services that were being viewed. To promote a supplier in the way that he did was unfair to others.*

*This would be a problem if it was being led by anyone in the CCG. The fact that it was being led by the most senior person in the organisation made it difficult for anyone to object.*

*There are many people with expert knowledge who can give CCGs technical advice. It is not the role of a chair to provide technical knowledge to the organisation. Even if it were, the chair's relationship with a potential supplier made him entirely unfit to carry out this role.*

*December 2016 conference*

**7.74** Several interviewees told us about Mr Kennedy mentioning Redwood while speaking in meetings.

**7.75** [REDACTED] chief operating officer of Horsham CCG (who has been working across the two CCGs since spring 2016) told us about a Sussex-wide workshop held on 6 December 2016 relating to 111. [REDACTED] told us that Mr Kennedy did a presentation where he talked about digital technology. [REDACTED] said that he didn't declare an interest on that occasion.

**7.76** The CCG's head of digital told us that he was present at a number of meetings regarding 111 where Mr Kennedy was also present. We asked what sort of things Mr Kennedy would have said at those meetings. He told us that Mr Kennedy "*would be explaining what they had done elsewhere.*" We asked if he specifically spoke about what Redwood had done elsewhere. He told us:

*“Not necessarily specifically Redwood, so he would talk in some detail around what they had done in London. He is on national boards and Boards within London around the work that’s going on there and of course by default. He then will name Redwood and what they are doing, how they are working and it sometimes felt that every other word was Redwood.”*

7.77 We asked if Mr Kennedy would always have made clear his relationship with Redwood. The head of digital made a distinction between formal meetings (e.g. governing bodies) where interests would be asked for and declared, and less formal occasions such as workshops. He told us:

*“If the Chair of the meeting had asked if there were any conflicts at the start of the meeting as we should do at the start of every meeting, he would have done, absolutely would have been up-front about that. He would have said that he was a consultant and that Redwood was one of his clients if he had been given that opportunity.*

*“Now I don’t necessarily think Alan would have been given that opportunity at these meetings [workshops] because they are not always that formal ... so at a stakeholder engagement workshop people are coming together to share ideas about what the shape might look like going forward. If Alan was given the opportunity to speak at that meeting he will speak quite passionately about the work he believes is important and is leading the way in terms of that type of thing...*

*“I can’t help but think that the vast majority of the time it was done with the absolute best intentions. It’s just unfortunate that it was done and Redwood were constantly thrown in people’s faces in the way that they were.”*

7.78 [REDACTED] chief operating officer of Crawley CCG told us:

*“He was at 111 meeting, I think, where he was trying to describe the technology that was out there but was quoting Redwood as people who could do that as evidence of the fact that the technology existed. It was a 111 meeting and I was at that meeting.”*

7.79 We asked [REDACTED] if [REDACTED] was concerned by Mr Kennedy's presentation [REDACTED] told us:

*"I don't think anything he was saying was advocating a particular supplier. He was trying to help everybody understand the capability and I suppose his understanding of that was through his knowledge of Redwood."*

Comment

*It may well have been, as several interviewees suggest, that Mr Kennedy was motivated by the best intentions to share his knowledge and enthusiasm for technological initiatives that were valuable to the NHS. Nevertheless, he was doing so while being a paid consultant to a particular supplier. This was inappropriate.*

Resilience funding

7.80 We were told that in March 2017 Mr Kennedy developed a proposal for the use of £200,000 funding from NHS England for resilience. The money was *"to be spent by Primary Care in whatever way they see fit to make them more sustainable, to relieve their capacity issues."* A middle manager in the CCG (Grade 8c) told us:

*"Alan approached me, took me off to a chat room, and said he'd heard that there was funding to be spent. He'd heard that there wasn't a plan and he outlined his proposal, which he then went off and put in writing..."*

*"He had quite a long chat with me about Redwood, what they could do... at the end of the conversation he said he would go away and write a proposal and send it to me.... The conversation was made on the Thursday and he did the proposal over the weekend."*

*"He did say that he was a director of Redwood and he said he had a conflict of interest and that would need to be managed, but when he was outlining what Redwood could do, I was saying well it seems to be very 'urgent care' focussed, I don't quite understand how it helps to solve the problem of what this money is for, which is about Primary Care access. So I wasn't particularly interested in what he*



*was saying, to be honest, I just thought he was making quite an eloquent pitch for something that wasn't particularly what I had to spend the money on."*

**7.81** We asked the manager to confirm that Mr Kennedy specifically mentioned Redwood by name. They told us:

*"He definitely mentioned Redwood because I'd never heard of them and I did Google afterwards, I remember doing that."*

**7.82** [REDACTED] chief operating officer of Horsham CCG told us that the manager had told them at a 'directorate top team planning session' on 28 April that Mr Kennedy had put pressure on to use the resilience money, despite the fact that the CCG already had a process for how to use the money. [REDACTED] said that another manager raised a similar concern about Mr Kennedy's behaviour to [REDACTED] at the same meeting.

**7.83** In an email dated 6 March 2017, Mr Kennedy wrote to senior managers in the CCG including the chief officer, the director of joint commissioning [REDACTED] and the head of digital to say:

*"Dear all please find attached my 'straw man' proposal regarding improving primary care access through technology enabled system wide management of demand for same day services.*

*"This is based on NHS Londons (sic) experience of using this type of technology across their urgent care and same day services. This initiative is sponsored by NHSE's Digital Urgent and Emergency Care Board."*

**7.84** The email included a seventeen-page document entitled "A Proposal to improve Primary Care Access".

**7.85** We asked Mr Kennedy whether what he did in this case was in breach of his management plan. He said that it wasn't because he was:

*"Drawing people's attention to what is an NHS England sponsored project, and I am not proposing in this that I am involved in procuring anything."*

**7.86** We suggested to Mr Kennedy that writing a proposal goes further than “drawing attention”. He responded that he was “building a straw man for others to use to do what they wish”.

**7.87** We suggested to Mr Kennedy that the situation is different when it comes from the chair of the organisation to a more junior person. He told us that viewpoint:

*“Sort of implies that ‘my will be done’ and there aren’t occasions where people either don’t follow or choose to go other routes.*

*“I personally don’t see a problem in senior leaders talking with middle or junior grade people about opportunity to change.”*

**7.88** The head of governance raised this issue with [REDACTED]. [REDACTED] told us that [REDACTED] “spoke informally to Alan at that time. I do remember telling him that he needed to take care.” No further action was taken. Mr Kennedy denies that [REDACTED] spoke to him.

*Comment*

*There are a number of troubling aspects of this issue.*

*For the lay chair of the CCG to be drafting a proposal on his own initiative is inappropriate and indicates a lack of understanding of his role.*

*Furthermore, it is wrong for a lay chair of an organisation to approach a relatively junior member of the organisation encouraging them to take a particular course of action. Management structures within organisations (particularly those using public money) exist for a reason. This is because the difference of power between a chair and a junior manager within an organisation is so great that it is difficult for them to interact as equals. Mr Kennedy does not appear to have any awareness of this problem, but as chair, and as a former chief executive of NHS bodies, he should have known this.*

*On top of this, Mr Kennedy was acting in this way to promote a private company which stood to gain from the proposal if money was allocated to this project (if, as Mr Kennedy told the manager, Redwood has particular expertise in the area).*

*Summary comment on Mr Kennedy as chair*

*Before the Health Foundation bid became an issue in April 2017, Mr Kennedy had a consistent record of involvement in the CCG's work around urgent care and the use of technology to improve services. It was well known that he had specialist knowledge and a strong interest in the area.*

*At the same time, it was also well known that he had a relationship with Redwood, a private company that supplied these services.*

*Looking back, it is surprising that this issue did not come to a head before the Health Foundation bid. We spoke to a large number of people across the CCG who heard Mr Kennedy talking about Redwood or attended trips he organised to visit Redwood who do not see anything strange about this situation.*

*One manager told us that having reflected on events that they felt that the CCG had "normalised" some of the Chair's behaviour "... because that is what Alan was interested in, Alan always talked about the technology to support Urgent Care work differently, because of his strong connections in London he spoke about that all the time."*

*We agree with this analysis.*

*Looking back, it is hard to see how Mr Kennedy's relationship with Redwood was tolerated for so long. It can only be because the conflict had continued for a long period of time and had only gradually grown as first Horsham CCG and then Crawley CCG developed links with Redwood. This meant that the position in which the chair of an NHS body could act in ways to a benefit of a private organisation whose interests he was paid to promote had become normalised.*

## Health Foundation bid

**7.89** Mr Kennedy became aware via an email that the Health Foundation was taking bids for money that could be used by the CCG to help control emergency and urgent care costs. On 3 April 2017, he forwarded the email from the Health Foundation to [REDACTED] [REDACTED] saying:

*“Dear [REDACTED], I noticed the offer of £0.5m below from the Health Foundation to make small/proven projects that deliver better care and develop them at scale.*

*I wondered if we should build on the One Call new technology and develop it as a full blown Patient Relationship Management service beyond even London's remit?*

*What do you think?*

*Warm Regards*

*Alan”*

**7.90** Also on 3 April Mr Kennedy forwarded the same email from the Health Foundation with a similar message to [REDACTED] Sussex Community NHS Foundation Trust. He chased that email on 5 April 2017 with the message:

*“Dear [REDACTED] could you advise if you are interested in pursuing the potential development funds mentioned below please.*

*Redwood are prepared to help submit the bid but I need at least approval in principle between HMS [Horsham]/ Crawley CCG and SCFT [Sussex Community Foundation Trust].*

*Warm Regards*

*Alan”*

7.91 During his interview with us, Mr Kennedy read to us from his notes of his conversation with [REDACTED] when [REDACTED] interviewed him as part of [REDACTED] conflicts of interest investigation. This included the following:

*“I explained the approach I had taken and my involvement, that I had received a message from the Health Foundation, a non-public body and the charity offering an opportunity to bid for funds...”*

*“During this time, I raised awareness of the initiative with Redwood and referred any comments between them and [REDACTED].”*

7.92 In our interview with Mr Kennedy we confirmed with him that this meant he had spoken directly to Redwood to “raise awareness” of the Health Foundation initiative and to tell them to expect a call from [REDACTED], having asked [REDACTED] to contact them.

7.93 We asked Mr Kennedy why he was getting involved in this sort of work as it did not appear to be within a lay chair’s remit. He told us:

*“Part of the chair’s role, in the constitution it is about leading and influencing to achieve clinical and organisational change. What I was doing was acting as a marriage broker. I am aware that there is context that we are overspending, and part of that reason we overspent is a lack of control in emergency care, I’m aware there is a NHS England national exemplar that might help. I am aware that there is some money available.”*

*Comment*

***Leaving aside Mr Kennedy’s conflict we do not believe that it is the role of the chair of an organisation to be getting involved in projects at this level.***

7.94 [REDACTED] confirmed that [REDACTED] was happy to support the bid. Mr Kennedy then wrote to Dr Bhargava, [REDACTED] and [REDACTED] passing on this news. His email says:

*“Whilst I can’t be involved in developing the bid, Redwood have a bid team to do the leg work”.*

**7.95** The following day Mr Kennedy wrote to the same group of people an email entitled “Next steps” in which he asked [REDACTED] to call [REDACTED], an employee of Redwood. “I suggest”, he said, “Redwoods bid team do the heavy lifting [sic]”.

**7.96** On 25 April, Mr Kennedy chased [REDACTED]:

*“Dear [REDACTED] have you managed to speak with [REDACTED] re them helping us submit/write a bid?”.*

**7.97** [REDACTED] chief officer of Horsham CCG told us:

*“Thinking back, I do remember Alan raising it as a suggestion that it was something that we should pursue, I think both myself and [REDACTED] responded by email to say, “it sounds like a good idea”. I don’t remember anything after that.*

*I think I was away when it was worked up into a proposal, and so I was on holiday when that was done, but I think looking back now, I probably should have said when that came through from Alan - the alarm bells should have gone off and said “there is a conflict here, Alan. You need to not be involved”, and I don’t think we did. I think we said, “yes, good idea”, but then assumed there would be a process around that about how it was bid for, etc.*

**7.98** Mr Kennedy continued to work on the bid, culminating in an email he sent on 2 May 2017 (10.39). It is entitled ‘The Health Foundation Bid Team: Bulletin 1’. The email begins:

*“Dear all following up on last weeks messages and phone calls, I am delighted to confirm that our partnership team to submit a bid for The Health Foundation’s Scaling Up Improvement initiative is confirmed.*

*“Our partnership comprises:*

- NHS London*
- Horsham and Mid Sussex CCG*
- Crawley CCG*

- Sussex Community Foundation Trust
- Kent, Surrey and Sussex Academic Health Science Network.
- Redwood Technology Ltd

*“Thank you all for agreeing to help.”*

**7.99** The email goes onto list the “Core Bid Team” and “Other stakeholders” and discuss details of the bid before saying:

*“This afternoon I am meeting with Redwood who have agreed to develop a draft submission for further discussion between us. We have 15 days to submit (by noon on 17<sup>th</sup> May) so enough time.*

*“I am suggesting that because I have more flexible time than most and because I have been involved with both Redwood and NHS London re PRM that I take the lead in corralling our efforts. This is likely to be by text, email, phone calls and if needed conference calls.”*

*Comment*

***It is unusual for the chair of a CCG to be involved in this sort of work, but particularly unusual for the chair to be taking the lead in this way.***

**7.100** The head of digital at Crawley CCG told us that they were surprised by the contents of

this email as he wasn’t aware that the idea of a bid had progressed so far:

*“I wasn’t clear where we were with it because I made it very, very clear from the outset to Alan that I didn’t have the resource capability or capacity in a team of just me. I didn’t have the capacity to do it so it was something where I was happy to broker a conversation with Redwood to start the ball rolling but largely I would be stepping back from there and it would be ‘Over to you guys’. Yes, this appeared out of nowhere and I thought ‘Okay, things are obviously moving on, then’. I hadn’t had any more conversations with Alan or emails at that point.”*

**7.101** The head of digital told us that [REDACTED] didn't consider the Health Foundation bid to be a core priority for the CCG:

*"We know that we are developing our plans as an STP around 111 and what that looks like and re-procuring services around that but by and large this is a nice to have, this is not something that is absolutely fundamental to the core operating of a service. This is something that would be yes, it's great, it's specialist technology and clearly there are some benefits being reported from the use of this type of technology from the 111 programme in London.*

*"It's a nice to have because currently we operate a 111 service without it and if we didn't have this people wouldn't stop being seen through 111, people would still continue to be seen out of hours, all of those types of things and would still continue if we didn't do this.*

*"It could make it more efficient, it could mean that people are put through to the right person in a quicker timescale, it could mean that we are picking up things.*

**7.102** The head of digital also felt that the proposal had not been through the right governance process, such as consideration by the CCG's executive or governing body or inclusion in the CCG's plan for the year. [REDACTED] told us:

*"I certainly saw no evidence of that due process followed around it. It was very quick 'Bid, get it out there, here's the team, off we go'. Again, in my view it was not necessarily aligned to anything that we said at the beginning of the year as a CCG 'This is what we are going to be doing this year guys, here's our plan'. It didn't feel aligned with it but again, that is quite typical of the way the CCGs seem to work, yes. It's quite ad hoc."*

**7.103** Interviewees also pointed out to us that the bid was being raised at a sensitive time for the CCG. It was happening right at the end of the financial year and at a time when the CCG was under severe financial pressure with staff being told to focus on financial recovery plans. [REDACTED] told us that the Health Foundation bid was "not a priority". [REDACTED] referred to:



*“the absolute financial mire of financial recovery plans, the dire straits we are in, the messages out to staff that literally everything stops that isn't a priority. We have to focus on delivering our - there have been so many messages out.”*

7.104 [REDACTED] chair of the audit committee at Horsham CCG commented to us:

*“First of all, we have our standing instructions, our delegated authorities, various other things, which determine who can commit the CCG. None of those apply to Alan, yet Alan had committed both CCGs to do work, to be involved with other companies, without their knowledge, agreement or sanction... He should have spoken to the relevant people and said this is what I'm proposing, this is the plan, will you support it and will you sign it off. That did not happen. They were presented with a fait accompli which said I am leading on this, this is what we're doing, and nobody knew anything about it.*

7.105 Work on the bid ceased following the email exchanges described above, in the wake of the conflict of interest investigation.

#### **Mr Kennedy's interpretation of his management plan**

7.106 Mr Kennedy's management plan says:

*“AK will undertake not to promote or champion any client with which he is working through Fusion Healthcare limited or in any other relationship.*

*“This includes referring to their services or mentioning them as potential providers in any CCG context where this information is not in the public arena.*

*“It should be explicitly noted that it is recognised that AK has valuable specialist skills and knowledge within the arena of digital healthcare and there may be times when colleagues wish to seek his advice, for example with regards to general service design.*

*“However, AK would be excluded from all formal procurements and contract discussions where a client of Fusion Healthcare may be a potential supplier of services to the CCG or any local partner CCGs.*

**7.107** Both at interview, and in an email to us after the interview, Mr Kennedy gave us his interpretation of what the management plan meant. He made a number of arguments:

- He was able to be involved because the information about the Health Foundation process is in the public domain
- Mr Kennedy’s ability to provide specialist knowledge meant that it was acceptable for him to be involved in the bid
- Health Foundation money is not ‘public money’ and therefore no conflict of interest exists
- The only limitation he was placed under related to involvement in formal procurements.

#### *Public domain*

**7.108** Mr Kennedy told us that he believes that plan means that he should not share information which is not in the public domain, but that he was able to share information when it was publicly available. He told us that he believes that the second sentence quoted above “‘qualifies’ the first” sentence so that the reference to not promoting clients only relates to confidential information. He argued that if the reference to information being in the public domain was not supposed to qualify the reference to promoting or championing there would be no reason to include it. He told us:

*“Specifically mentioning the fact that ‘This includes referring to their services or mentioning them as potential providers in any CCG context where this information is not in the public arena’ is open to the interpretation that it therefore excludes information which is in the public arena.*

*“I accept that the wording is ambiguous which is unhelpful.”*

**7.109** Mr Kennedy argues that he did not breach the management plan because the information that he circulated was in the public domain. He told us:

*“None of the information that I shared to attempt to generate some interest in putting in the bid for the Health Foundation was sensitive; it was all in the public arena.*

*“Just to explain that, Redwood provide some of the technology services for what NHS London call their “Patient Relationship Management Service”, which is a national exemplar sponsored by NHS England. That was the result of London going to OJEU and procuring the technology at Redwood, and I wasn’t part of that procurement at all. That is well-rehearsed, it has won awards everywhere in the Health Service. Public information available all over the place there.*

7.110 He told us:

*“My interpretation at the time of the Health Foundation process was that my COI [conflict of interest] plan allowed me discuss the development of digital health care using information which is in the public arena.”*

7.111 We asked Mr Kennedy if it is his view that it was acceptable for to promote or champion a client as long as the information is in the public domain. He responded:

*“No, I am not saying that. I am making sure that people understand the information that is in the public arena, is known to them, and excluding myself from taking part in any process that will help shape to the bid, shape the service, do the design.”*

Comment

***The words “this includes...” at the beginning of the second sentence indicates that what follows is an example. We do not believe that any reasonable person could interpret this to be a limitation on the first sentence.***

***We find the wording neither ambiguous, nor unclear. The plan states that Mr Kennedy should not promote a client.***

## *Specialist knowledge*

7.112 Mr Kennedy drew attention to a later section in the management plan that refers to his specialist knowledge:

*“It should be explicitly noted that it is recognised that AK has valuable specialist skills and knowledge within the arena of digital healthcare and there may be times when colleagues wish to seek his advice, for example with regards to general service design.”*

7.113 Mr Kennedy told us that without the “*qualification*” relating to information being in the public domain the management plan would have been unduly restrictive because of the specialist knowledge that he had. He told us:

*“I remember at the time I was discussing the development of a COI [conflict of interest] plan with ██████████ that I mentioned without this qualification I would be unable to draw my CCG’s attention to any aspect of the National Digital Urgent and Emergency Care programme or demonstrator projects without breaching or potentially breaching my plan....even where other health communities or statutory public sector bodies has selected a supplier who was or is one of my clients through their own independent competitive tender process.”*

7.114 Mr Kennedy views his conflict of interest management plan in the context of the conflict of interest requirements for of GPs. He told us:

*“They knew what was coming down from the centre was an acceptance that, for example, excluding people who have conflicts would not be the default position. Using this example, it was important to keep GPs in the frame, as they had to use their expertise in terms of general shaping of clinical services, but after this particular point in time you need to exclude them, when a procurement decision needs to be made. That is why the PCCCs were set up - the Primary Care Commissioning Committees - to allow that separation, so it was alright as a principle for GP clinicians to be involved, even if they do have a conflict, in shaping general service design, needs, benefits, whatever”*

7.115 We asked Mr Kennedy if he saw his position as analogous to that of a GP. He told us:

*“No. I wanted mine to be more onerous than that. I wanted it recognised that I have general skills and expertise, and I wanted it to be mirrored with the GP advice that I should be excluded from formal procurements. In essence, even though that is what that says, there is a mirror across to how we handle GPs there. In essence, I just avoided getting involved in the conversations about general service design related to emergency and urgent care; I didn’t take part in any of those, either in the CCG or indeed across Sussex. Albeit it I could have, based on this, I chose not to...*

*“If you take, therefore, the principle that NHS England, as part of the co-commissioning Primary Care, had adopted, it is alright for clinicians to get involved and help to shape people’s thinking, but they can’t get involved in procurement. We were a million miles away from that. The fact that this action plan does talk about using my specialist skills.”*

*“I couldn’t be involved in the developing, but even though I knew that nationally it is alright for GPs to get involved in shaping clinical services.”*

**7.116** Mr Kennedy took the view that excluding himself from procurements at an early stage the management of his conflict was *“more onerous than your average GP would be”*. He told us:

*“That was my perception about what I was doing, believing, as I still believe, that I took a more onerous position on myself by excluding myself from the service design stage.”*

#### **Comment**

**Mr Kennedy described his position in the same terms as a GP - with the exception that he felt that his management plan was more restrictive than the position experienced by GPs.**

**It is true that the dual role of GPs as providers of health services and as commissioners creates particular problems of the management of conflicts of interest within the NHS.**

*This conflict is a matter of statute and was extensively debated when CCGs were created. Parliament ultimately took the view that GP leadership was a desirable objective, notwithstanding their interests as providers. Because of this, special processes have been put in place to reconcile the conflict of interest that GP's have.*

*Mr Kennedy saw his special knowledge in the field of technology as justifying his conflict in being paid by technology provider in the same light.*

*However, we see no equivalence between the position of GPs and that of Mr Kennedy. While Parliament has decided that GPs can have a dual role, there is no equivalent for people who just happen to have specialist knowledge. The fact that special provision was made for the position of GPs between their two roles within the NHS does not weaken the conflict requirements with regards to non-GPs and private companies.*

*Health Foundation money not public money*

7.117 Mr Kennedy notes that in the conflict of interest report by [REDACTED] quotes the definition of a conflict of interest as being “in the context of delivering, commissioning or assuring taxpayer funded health and social care services”. He commented:

*“the conflict of interest definition which [REDACTED] includes in paragraph F1 talks about taxpayer funded health and social care services. Health Foundation is not taxpayer funded health and care services. One could argue it was inappropriate to apply conflict of interest and relying on that - I am just making the point.*

7.118 He told us:

*“Don’t forget the Health Foundation is a non-public sector body, so the core funding available, which is seven lots of half a million pounds each for different types of work, was non-taxpayers’ money ... it is non-NHS money”.*

Comment

*The costs of the work done on the bid came from taxpayer's money, as would further costs if the bid had proceeded further. This included the time that Mr Kennedy spent on the bid on behalf of the CCG during work time.*

*Even if all the costs involved were borne by the Health Foundation, there is no reason to apply a lower standard towards conflicts because the money was provided by a charity rather than the public purse - it is no better to direct charity money to a private company than it is to direct taxpayers' money.*

*There is no validity to Mr Kennedy's argument on this point.*

No involvement in procurement

7.119 Mr Kennedy's plan states:

*"AK would be excluded from all formal procurements and contract discussions were a client of Fusion Healthcare may be a potential supplier of services to the CCG or any local partners CCGs."*

7.120 Mr Kennedy told us that in his view this means that he can be involved in discussions which are not related to formal procurement or contracts. He told us:

*"My interpretation of this is that I can discuss digital health care up to and including service design. Specifically, it also excludes my involvement in procurement and contract discussions."*

Comment

*While it is clear that Mr Kennedy was excluded from formal contract discussions, making that requirement does not give him a blank cheque to be involved in the earlier stages of development of a project where he has a conflict. We see no basis for Mr Kennedy's assertion that it was acceptable for him to be involved in initial*

*conversations leading up to service design. It is wrong for an interested party to be involved in any stage of the process.*

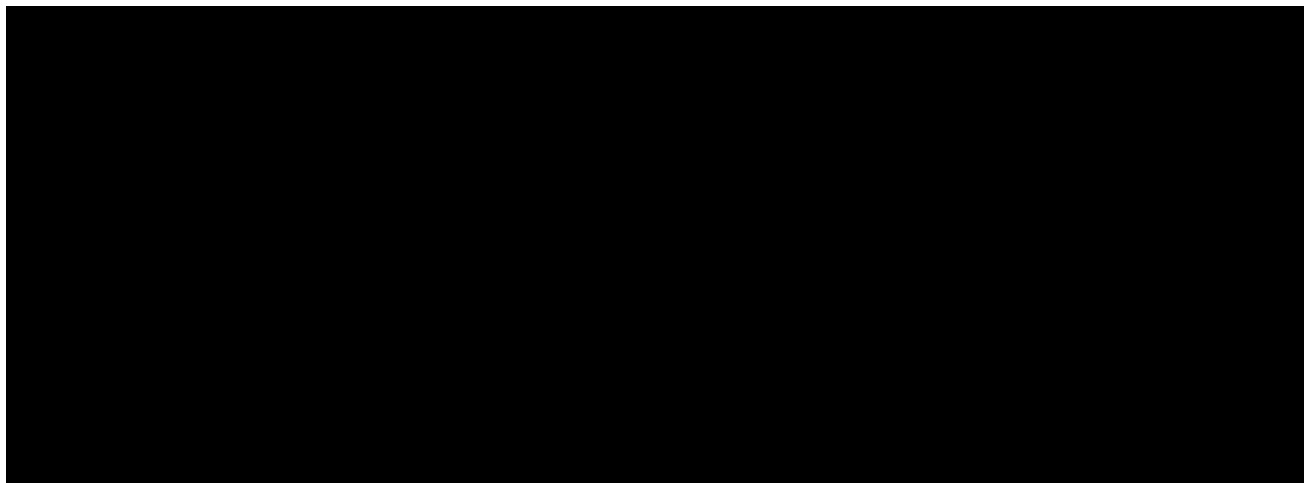
#### *Personal gain*

**7.121** In his email (4 June 2017) to senior members of the governing body and NHS England Dr Bhargava sets out his understanding of Mr Kennedy's concerns about the investigation which includes the comment that:

*"He said he was using his knowledge, connections and experience to improve the health of the people of Crawley and HMS (Horsham) with no personal gain".*

**7.122** We asked Mr Kennedy about the basis on which he was paid by Redwood. He told us:

*"I would be paid for a number of days. There would be no link with sales, no link with profit."*



#### *General comment*

*Mr Kennedy disagrees about the wording of his plan. For the reasons set out above, we do not accept the points that he makes.*



*While looking closely at the wording of the plan that Mr Kennedy signed up to, we should not miss the bigger picture. As someone holding a senior post in a public body it was Mr Kennedy's responsibility to give impartial advice. However, Mr Kennedy was not in a position to give impartial advice to the CCG. His reported enthusiasm for Redwood suggests that he didn't make a particular effort to do so. His contention that his conflicts were justified by his ability to give impartial advice are therefore irrelevant.*

## Standards against which to evaluate Mr Kennedy's behaviour

7.123 We propose to evaluate Mr Kennedy against the following standards:

- The management plan which he had signed up to
- The Nolan principles

████████████████████

### *The management plan*

7.124 ██████████ audit chair of Horsham CCG described Mr Kennedy's actions in relation to the Health Foundation as "a very obvious breach" of his management plan. That conclusion was also reached by ██████████ in ██████ report. For the reasons we have set out above, we agree with that conclusion.

### *The Nolan principles*

7.125 We have considered Mr Kennedy's actions in the context of the Nolan principles (the full principles are set out in full in Appendix G):

#### *"Principle 1 - Selflessness*

*Holders of public office should act solely in terms of the public interest."*

Comment

***Given that Mr Kennedy was being paid by Redwood and promoted projects from which Redwood stood to benefit, he is not able to demonstrate his compliance with this principle.***

***“Principle 2 - Integrity***

***Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.”***

Comment

***Mr Kennedy placed himself under an obligation to an organisation that might have sought to influence his work and gain financial advantage from this relationship. Although he declared his interest he did not manage it appropriately.***

***“Principle 3 - Objectivity***

***Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.”***

Comment

***The payments by Redwood to Mr Kennedy meant that he could not act without bias.***

*“Principle 7 - Leadership*

*Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.”*

*Comment*

*The issues we have identified relating to Mr Kennedy’s actions would be serious for anyone. The fact that Mr Kennedy was the most senior person in the organisation and should have been exhibiting behaviours for others in the organisation to follow, make them all the more serious.*

[Redacted]

[Redacted]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Mr Kennedy’s actions after the internal investigation**

7.132 Mr Kennedy’s involvement in the investigation and his response to it are covered in section 9 (below). After completion of the report Mr Kennedy resigned on 24 May. He was subsequently persuaded to withdraw his resignation but finally resigned in July 2017.

## 8. The chief officer

### Dr Bhargava's approach to the role

8.1 Dr Amit Bhargava has been a GP in Crawley since 1991. He works at the Southgate Medical Practice. He went through a national recruitment process to be appointed as chief officer of the CCG. He was the only applicant for the position.

8.2 On appointment, Dr Bhargava was supported in the role by [REDACTED]. [REDACTED] was chief operating officer for Crawley CCG while also acting as the accountable officer of Horsham & Mid Sussex CCG. This ensured that Dr Bhargava was supported in his new post as an NHS chief officer.

8.3 Dr Bhargava worked two days per week as a GP and three days per week as chief officer.

8.4 We heard evidence from senior staff about Dr Bhargava's suitability in the role of chief officer. Senior staff thought he was committed and passionate about the development of health and health services to local people. In other respects, they thought he found it difficult to adjust to the demands of being chief officer. They told us that he had no command of or interest in governance, that his grasp of financial management was limited and that he was a poor administrator.

8.5 Interviewees - both lay members and senior managers - thought that [REDACTED] and then [REDACTED] (who took on the role when [REDACTED] left) provided a good deal of support to Dr Bhargava to ensure that the CCG was properly managed.

8.6 One senior member of staff commenting about his performance as accountable officer said:

*"I don't think Amit understands the job that he is in. I don't think he understands what being an accountable officer is... he is a clinical lead and he brings that because he feels, quite rightly, bringing that to a CCG is phenomenally important, but it doesn't replace understanding the business of running an organisation and being responsible for the governance and the accountability that comes with that. I don't think Amit understands that at all."*

8.7 ██████ told us:

*“He is so passionate about the patients and about Crawley and his heart is really in it for the patients but, when it comes to governance and what actually being an Accountable Officer means and being accountable for that budget, he’s probably not as up to speed as you would want him to be.”*

8.8 ██████ also told us:

*“We’ve really seen a deterioration in Amit’s performance generally over the last six months. He does not understand the numbers and his ability to address the financial deficits I don’t think is there. He did a terrible presentation to a public governing body meeting a few months ago ... he just didn’t have the knowledge to back it up.*

Q. *Did he come unstuck in public?*

A. *Yes, and we all wanted the floor to swallow us up; it was just really embarrassing.*

Q. *No one has talked to him about that?*

A. *No, because he just doesn’t understand numbers. Alan knows that.”*

8.9 We were also told by interviewees that Dr Bhargava did not always respond to emails sent to him. A senior colleague commenting about this said ██████ experience was that Dr Bhargava paid fleeting attention to his messages. We asked why Dr Bhargava hadn’t picked up the issue of Mr Kennedy’s conflict as he was copied into the relevant emails. ██████ said:

*“One, he would have had to read the email first, being absolutely honest. He might have scantily read it. Amit doesn’t read emails, my understanding is there are 5,000 unanswered emails in his inbox at the moment, which I think is a risk to the organisation.”*

8.10 We asked Dr Bhargava about this:

*“A. No, I read emails. As you said, there were hundreds of emails and if I wasn’t actively involved with that project and I was copied into it, I may choose not to read all of it. Nowadays people copy you into everything to cover the fact that they’ve told you. I have very good colleagues, the people who were involved in that list, who are very responsible people. At some point, you have to trust your colleagues to do the right thing, including [REDACTED] and if there was something I was worried about, I could talk to them openly and say ‘why did you do this?’, and we would get the right sort of response. That’s why.”*

*Q. But conceivably, someone could have sent you an email about a concern and you might not have seen it?*

*A. If they said to me we are really concerned about Alan, of course I would, but nobody raised that. I can go back and look at my emails and see, but you could spend five days a week going through them every day and not do any work. As I said, my passion is transformation and population health and making sure we do the right things by the people who are most dispossessed. That takes a different type of conversation, and emails, important as they are, are not the most productive in that respect.”*

**8.11** Interviewees commented positively about Dr Bhargava’s enthusiasm for improving health services and his networking. A number thought he would have been better suited to role of clinical chair.

#### *Comment*

*Dr Bhargava was selected to be the chief officer of Crawley CCG in the first wave of appointments when there was an enthusiasm and pressure to appoint GPs. Many people told us he was unsuited to the role. Some interviewees commented about his poor grasp of governance, his limited understanding of finance and his lack of administrative grip.*

## Chief officer's remuneration

8.12 Dr Bhargava was paid at a rate of between £130,000 and £134,000 pa. for his work as chief officer, by the CCG. He was paid to work four days per week for the CCG, as well as two days as a GP. By his own admission, Dr Bhargava only worked three days in the office for the CCG. We were told during the investigation that NHS England had raised concerns about this matter on several occasions and previously written to Mr Kennedy asking that he renegotiate the arrangement with Dr Bhargava.

8.13 One of Dr Bhargava's senior colleagues discussed their view of the matter at interview:

*"I think the other thing that is also worth mentioning is Amit is paid for working four days a week, does two clinical days and that is part of his contract. I know NHS England would advise Alan to address that when his contract was renewed, and it still hasn't been. Not only is it a bit galling that you do a lot of the work for both CCGs, you know that he is being paid for a level of input, more than he could possibly do, he needs to be working six days a week to do an AO [accountable officer] four, and a clinical office two. I am sure that's breaking the European working time directive, I don't have a lot of emails from him over the weekend, and so in terms of public money, that's not right either."*

8.14 Another colleague said:

*"A. But again, going back, I don't know whether that issue about Amit working four days a week was ever solved. My presumption was that Amit had been taking money for supposedly working every Sunday. If that was the culture about the pay rates not being level, and therefore do a bit more -*

*Q. Because he was working in his practice two days - ?*

*A. ... in order to maintain his GMC registration, because his record keeping was found to be so wanting, he had to do two days a week in his practice. Therefore, he could only possibly do three days for the CCG - it was as clear as that. If he was being paid an extra day a week for four or five years, that sets the boundaries for what is permissible."*



**8.15** We asked Dr Bhargava about his remuneration:

*“Three days a week was in the office, the fourth day was to cover evenings, mornings, all the rest of it.”*

**8.16** Dr Bhargava subsequently told us that his remuneration was approved by the Sussex cluster board in July 2012 and was reviewed annually by the CCG’s Remuneration Committee. He said that this involved being paid for three days in the office and one day flexible time to cover work undertaken early in the morning, on an evening and at weekends. He said that this arrangement is not unusual and was followed with two other members of the governing body.

**8.17** We asked Mr Kennedy whether NHS England pressed him to reduce Dr Bhargava’s working days. He said that they did but that he did not make any changes to Dr Bhargava’s contracted working time. Mr Kennedy told us:

*“Essentially members of the Governing Body took the view that we couldn’t afford to have an even more part-time AO [accountable officer]. Hindsight is a great thing, isn’t it, but if I was there at the very genesis of the CCG, knowing what I know now, I don’t think I would have readily come to the conclusion that having a clinical AO was the right thing to do. The majority of CCGs clearly took that idea, that a full-time, lay Accountable Officer provides more resilience, more capacity, than having a part-time clinical AO. We were heavily reliant initially on ██████████ filling a gap and that was one of the reasons we appointed ██████████ s our COO, recognising that we were entering into territory that was going to be harder, and therefore, not having a full-time AO was a challenge.*

*“... Amit was clear that he only ever wanted to serve two terms. I said this to ██████████ ██████████ NHS England, that within a year, Amit will step down, and therefore that is the time to reorganise.”*

*Comment*

***Dr Bhargava was paid for four days as chief officer. A number of his colleagues told us he could not and did not meet this time commitment. This fostered resentment***

*among other senior staff who worked as hard but were not paid for any additional time. This did not set a good example to the organisation and as chair, Mr Kennedy should have tackled the matter, either directly or through the Remuneration Committee.*

## The executive

**8.18** The Crawley CCG executive group is responsible for implementing the intentions of the governing body. It meets monthly and its role is described in the following terms in its terms of reference:

*“The Crawley CCG Governing Body is responsible for ensuring that the Executive Group referred to in 1.1 is effectively planning, delivering on, and monitoring services set against the agreed strategic plan for the commissioning of health and health care services within their geographical area.*

*The duties, functions and responsibilities delegated to the Executive Group focus on implementing and delivering on, together with the clinical delivery groups, the Commissioning Intentions, National Operating Framework, QJPP plans and annual business plan.”*

**8.19** The membership of the Executive group is also set in the constitution and is as follows:

*“The Accountable Officer*

*The Chief Operating Officer*

*The Clinical Reference Group Chair*

*3 Clinical Directors*

*Chief Finance Officer*

*Practice Manager*

*Head of Quality / Chief Nurse*

*Lay Member of the Governing Body for PPE (non-voting). This role may be deputised by any lay or independent member drawn from the governing body*

*1 further lay members not on the Governing Body (voting)*

*1 representative of the CPRG (on a rotational basis) non-voting*

*Such other officers (non-voting) as deemed appropriate for effective and efficient working”*

**8.20** While conducting our work, we were told that the chief officer encouraged other non-executive members of the governing body to attend the executive, including the chair. The executive attendance records show that the chair attended eight out of twelve executive team meetings in the year 2016/17, including all seven meetings between September 2016 and March 2017 (the chair’s attendance is discussed in more detail in the previous section).

**8.21** We asked Dr Bhargava about whether lay members went to the executive meetings. He told us:

*“A. And lay members went, so lay chair, sometimes [REDACTED] attended, sometimes they were two people.*

*Q. Why did the lay members go?*

*A. What we agreed as part of our CCG was that no decisions would be made about the people of Crawley without them being there - ‘Nothing about me without me’, and so we took that and the lay members were always present.”*

**8.22** Dr Bhargava told us that the attendance of non-executives at the executive meetings had to be approved by the chief operating officer who chaired the meetings.

**8.23** Mr Kennedy, the lay chair attended the executive six times between October 2016 and March 2017.

**8.24** One lay member who didn’t routinely attend executive group meetings said that they thought the practise of doing so encouraged lay members to ‘go native’ i.e. to lose the objectivity and distance that they should have as lay members.

## Comment

*Dr Bhargava's says that his motivation for involving lay members was to be inclusive. Nonetheless, this aspiration was based on a misunderstanding of the governance of the organisation. The executives needed to be responsible for management and implementation and the lay members free to provide oversight and scrutiny. Combining both in the executive undermined this critical relationship.*

*The involvement of lay members in the executive made it much more difficult for them to hold the executive to account at governing body meetings. It reduced the opportunity for proper challenge and scrutiny.*

**8.25** When the legislation setting up CCGs was passed the importance of making decisions relating to NHS resources in public was agreed. The Health & Social Care Act 2012 sets out the following about this matter:

*“8(1) The constitution must specify the procedure to be followed by the governing body in making decisions.*

*(2) The constitution must also specify the arrangements made by the clinical commissioning group for securing that there is transparency about the decisions of the governing body and the manner in which they are made.*

*(3) The provision made under sub-paragraph (2) must include provision for meetings of governing bodies to be open to the public, except where the clinical commissioning group considers that it would not be in the public interest to permit members of the public to attend a meeting or part of a meeting.”*

**8.26** Crawley CCG's governing body meets in public, in line with the legislation. However, the CCG's executive meets in private.

## Comment

*It is important to maintain a distinction between the governing body and the executive not only because their roles are different, but because one is a public meeting and the other private. The practice of inviting lay members to the Crawley executive meant that the executive and governing body meetings were merging. The challenge to executive action by lay members that should have happened in public would not occur.*

*As a consequence of this, governing body meetings were effectively taking place in private. This is exactly the opposite of the dictum that Dr Bhargava quotes “nothing about me, without me” - the residents of Crawley were having decisions taken about them without their knowledge.*

## The relationship between the chief officer and the chair

**8.27** People we spoke to told us that there was a close working relationship between Dr Bhargava and Mr Kennedy. As we have noted, Mr Kennedy became involved in a number of executive areas while the chief officer was less engaged in some areas than he might have been. This led interviewees to suggest that there was in effect a swap over as to who was the executive and who was the lay person.

**8.28** The chair of the audit committee in Horsham CCG told us:

*“Yes, I accept Alan was in the office an awful lot, yes, Amit was in the office very infrequently... I suspect, and I cannot say definitively, that Amit was quite happy to let Alan do some of the things on a day-to-day basis that perhaps were outside the remit of a lay Chair.”*

**8.29** A governing body member in Crawley told us:

*“I think he has a very close relationship with Alan Kennedy. I think for a variety of reasons Amit has needed a lot of support from Alan in his interpretation of the office role, I suspect if Alan were to be found guilty and no longer worked for the CCG, Amit would be very vulnerable.”*

*“I believe covertly, Amit has become the Chairman and Alan has become the Chief Officer.”*

**8.30** A senior manager told us:

*“Alan, who was there a lot more than Amit, said, “what can I do?” I think the relationship between them was really odd about who managed who. It was almost like Amit managed the Chair, rather than the other way round.*

*“He [Dr Bhargava] feels very personally supported by Alan. Rightly, or wrongly. Alan is also a really nice man, but he didn’t understand the line that he was crossing all the time.”*

**8.31** Another manager commented with regards to the chair and chief officer that *“there wasn’t a clear definition between the two roles”*.

**8.32** We were also told that there was a lack of challenge between the chair and chief officer. A governing body member told us:

*“As a Chair you need to have a close relationship with your Accountable Officer, but I don’t think he’s pulled him up enough. Alan’s a lovely man, but I don’t think he’s been hard enough on Amit.”*

**8.33** Another manager told us:

*“I think they probably just got too matey, too cosy, and missed the point. There needs to be a separation between it: you are not there together, and it is not you two as execs working alongside.”*

*Comment*

*A number of interviewees identified the benefits of the chief officer and chair working closely together. However, we were also told about concern that the relationship had become too close. This meant that there was a lack of distance between the two which*

*meant that the challenge which is necessary in a chair/chief officer relationship was missing.*

#### **Knowledge of the chair's relationship with Redwood**

**8.34** We asked Dr Bhargava about his understanding of Mr Kennedy's relationship with Redwood Technology. In response, he told us that he thought Mr Kennedy was "*a consultant to them. I don't know*". He also described Mr Kennedy as taking "*a lot of people to Redwood to see what they do*". Dr Bhargava said that he knew that Mr Kennedy had declared Redwood as an interest on the CCG register.

**8.35** We asked Dr Bhargava whether he had discussed Mr Kennedy's relationship with Redwood with him. He said:

*"No. I know he consults with them, but I have never asked him how much he is paid, what he is doing."*

**8.36** We asked why he had not discussed the matter with Mr Kennedy. Dr Bhargava told us:

*"Because I wasn't involved with any projects where Redwood was involved."*

**8.37** Dr Bhargava made the point that while he had not discussed Mr Kennedy's business relationship with Redwood, the two of them had discussed how Redwood might help the CCG. He also said that he had been on the visit to Redwood at Mr Kennedy's suggestion.

**8.38** Dr Bhargava told us that as Mr Kennedy had declared his interest in Redwood to the CCG that the necessary governance processes would come into play to help manage the matter.

**8.39** We asked Dr Bhargava if he recalled Mr Kennedy's management plan, as revised in January 2017. Initially, Dr Bhargava did not remember the document or having signed it. After reading the management plan in the interview, he confirmed that he had not discussed the plan with either Mr Kennedy or ██████████, but that he had signed it.

**8.40** Dr Bhargava told us that he had not heard about the concerns CCG and other NHS staff felt about Mr Kennedy's connection with Redwood. We asked him why he thought he hadn't been told and he said:

*"It's strange, but that's true. I had no idea. If you go to our CCGs, any CCG, they are very busy places where lots of things are happening. If people didn't feel material to what we were doing, or I needed to know, they didn't because my CCG office was always open, people came and talked all the time."*

*Comment*

*Dr Bhargava had limited knowledge of Mr Kennedy's conflict. He had not discussed Mr Kennedy's relationship with Redwood with him though he had accepted - and allowed others to accept - Mr Kennedy's invitations to visit Redwood. He had never asked about Mr Kennedy's financial dealings with Redwood. He did not recall Mr Kennedy's management plan until we showed it to him at interview.*

*Dr Bhargava ought to have paid more attention to the conflict of his senior non-executive.*

**Response to [REDACTED]'s report**

**8.41** Dr Bhargava, [REDACTED] received an email from [REDACTED] during the evening of 4 May 2017 alerting them to the outcome of [REDACTED]'s investigation carried out in [REDACTED] capacity as conflict of interest guardian. The email was copied to [REDACTED]. [REDACTED] did not attach a copy of [REDACTED] report to the email.

**8.42** [REDACTED] said in [REDACTED] message:

*"I have fully investigated these concerns and it is my recommendation that Redwood should be stepped down from the bid partnership with immediate effect. You will know that Redwood is a client of Alan's and that this process so far has been led by Alan. Conflicts of interest are a recognised part of our work but good management of them and robust governance in this area is also vital."*



8.43 ██████ explained that the Health Foundation bid ‘*may be an excellent project for CCGs*’ but that ██████ job was to consider whether there had been a breach of CCG policy. ██████ email did not make any recommendation about action relating to Mr Kennedy. ██████ asked for the matter to be kept confidential.

8.44 ██████ replied to the email that evening. ██████ and Dr Bhargava responded the following morning. All appeared to accept the recommendation. In ██████ reply, ██████ made suggestions about how the matter should be handled with Redwood. Dr Bhargava also accepted ██████’s recommendation, he wrote the following:

*“Thanks ██████ I agree with ██████ I too will accept your recommendation. This recommendation will have an impact on improving patient care through innovation, reputation damage with partners and impact on our relationship with Redwood as a provider of digital innovation (they have been very accommodating and patient with our other projects).”*

8.45 He went on to write:

*“It would be good to see where the policy has been breached, the rationale and discussion notes that support your recommendation including Alan’s point of view with an audit trail. Alan is a very open, honest and correct person, I would be very surprised if this was intensional (sic), there was personal gain and he had not made all attempts to follow our policies and make aware his relationship with Redwood. I know his open intension (sic) has been to help both CCGs with his vast knowledge and contact with showing us where opportunities were and how we could improve care for our patients.*

*“We have many projects that are led by GPs for investment in general practices with full declaration of interests and openness, we take best knowledge as a strength in service developments. There are many examples for this.*

*“I would value a fuller email please at the earliest before we put this recommendation into action, in fairness to the project and Alan.”*

**8.46** The head of governance at Crawley CCG had been copied in to the replies sent to [REDACTED]. Early on 5 May [REDACTED] replied to all recipients of the original email and said that [REDACTED] was concerned that the bid had not been through any kind of approval or governance process and that it should be withdrawn ([REDACTED] was under the impression that the bid had been submitted, although this was not the case). [REDACTED] email set out the next steps.

**8.47** Dr Bhargava replied to this email as follows:

*“Thanks [REDACTED] for the next steps. I am still not clear what the breach is?*

*Did Alan not declare his relationship with Redwood?*

*Was there a financial arrangement that we do not know about?*

*Was there real or perceived gain?*

*Who are the other partners and their contributions to the bid?*

*Did Alan wish to lead on this bid or was he asked?*

*Is there any written documentation that shows that people were not aware or were aware and raised issues with the bid?*

*Is it a grant or tender?*

*What is the harm to CCGs?*

*I completely understand governance processes have to be followed consistently, openly and fairly. So we do need to have the transparency on this, it is always difficult to apply rules retrospectively.”*

**8.48** [REDACTED] responded to this message immediately and suggested a meeting with Dr Bhargava the following Monday 8 May.

**8.49** Dr Bhargava responded to [REDACTED]'s email:

*“Thanks [REDACTED] much appreciated. Monday morning is good for me. I am sure we would appreciate an objective rather than a subjective discussion on this. So a complete clarity of breach and process and documentation of it would be most helpful for the discussion. Also has Alan had sight of this and an opportunity to respond or correct.”*

## Comment

*Dr Bhargava's first email response on 5 May was contradictory. He accepted [REDACTED]'s recommendation early in the message but by the end of it had asked for further information before any further action was taken. By the next morning his email to the head of governance seemed to suggest that he was looking after Mr Kennedy's interests.*

*Dr Bhargava's email to [REDACTED] during the morning of 5 May suggested that [REDACTED] had not been objective and appeared to presage the tone and substance of the meeting on 8 May.*

## 8 May meeting

8.50 Dr Bhargava and [REDACTED] met to discuss the report on the morning of 8 May. [REDACTED] invited [REDACTED] to attend too as [REDACTED] anticipated it was going to be a difficult meeting. [REDACTED] is the independent nurse on the Crawley CCG governing body. [REDACTED] made a contemporaneous written note of the discussion and gave us a copy at [REDACTED] interview. Dr Bhargava had asked [REDACTED] at the meeting to keep these confidential.

8.51 Dr Bhargava said the purpose of the meeting was to discuss the questions he had raised in his email of 5 May. He described the discussion in the following terms:

*"It was robust.....It was tough, both ways. [REDACTED] had made up [REDACTED] mind, and [REDACTED] was saying I've made up my mind, this is it', and I was saying 'hang on, are there are other things that you need to do'".*

8.52 [REDACTED]'s told us their recollection of the meeting.

*"I obviously met Amit on the Monday and that was a very difficult meeting because I didn't feel that he (Dr Bhagava) understood that this was not about Alan's character."*

8.53 Dr Bhargava had not had the opportunity to read [REDACTED]'s report. [REDACTED] told us:

*"No, he didn't read my report. The circulation of my report was restricted to [REDACTED], [REDACTED], as the head of governance, [REDACTED] and [REDACTED]. I kept it limited to that because [REDACTED] was worried that if Amit had to be involved in any HR process, he needed to be independent but then he wouldn't have been."*

8.54 [REDACTED] said that [REDACTED] assessment of Dr Bhargava at the meeting was:

*"His manner was quite off. He was quite thrown by my presence, quite thrown by minutes and I have some sympathy with that. He said he wanted to pursue three issues, the process of the inquiry, who the discussion had been with, and what was the balance of [REDACTED] judgement, how [REDACTED] had made [REDACTED] judgement. He started by saying 'anyone can have a conflict, as chief executive it's my job to talk to Alan'".*

*"I felt he was prickly, hostile, very serious when usually he just plays a lot of bonhomie. You haven't talked to me, I got your email after a decision, my role and responsibility to make the judgement, I have to be clear about the judgement, I have to judge on the impact, I make the decision on the breach. He was saying that he didn't that it was in existence and that it was happening. He was continually asking who had [REDACTED] instructed Alan to undertake this work - "*

*"Amit repeatedly tried to say that it was someone else's fault, alleging that conflict of interest was not as important as the benefits to patients and the patients are going to suffer because of this. That was the message, that patients were going to suffer because of [REDACTED] report. That was my sense.*

*"I felt very threatened by his behaviour. I thought it was fairly offensive in a menacing way..."*

Q. You say 'fairly offensive' -

A. Alright, offensive. I thought he was hostile and angry. He was asking [REDACTED] to see the report, and [REDACTED] was saying 'you can't see it, he's your line manager'.

Q. How was [REDACTED] response?

A. [REDACTED] was just calm, measured. [REDACTED] response is here, it's not here in full detail because they were talking quite quickly and I was just trying to get the nub of this down."

8.55 [REDACTED]'s written notes made at the time, record the following. These bullet points are extracted from photocopied, hand-written notes.

*Dr Bhargava's point of view*

- He was concerned as to what the extent of the breach was
- He wanted to know whether [REDACTED] had carried out an impact assessment
- He hadn't been consulted
- If Mr Kennedy wasn't involved would the bid be happening?
- Mr Kennedy was identifying the opportunity to bid in his capacity as chair of the CCG
- Would Mr Kennedy benefit in any way from the bid?
- Who asked Mr Kennedy to lead? Was he asked to lead?
- Mr Kennedy had declared his interest in Redwood
- Why hadn't [REDACTED] talked to anyone else?
- Mr Kennedy was a good chairman - he would take this personally
- He (Dr Bhargava) needs to be sure Mr Kennedy has been given a fair hearing
- No one has been harmed - a process has been breached
- Are we abandoning the (Health Foundation) project?

[REDACTED]'s point of view

- Dr Bhargava had been copied into emails from Mr Kennedy about the Health Foundation bid
- It was [REDACTED] role and responsibility as conflict of interest guardian to reach a judgement about the breach
- [REDACTED] had talked to Mr Kennedy
- [REDACTED] wasn't considering the impact of [REDACTED] decision but whether or not Mr Kennedy was in breach of CCG policy
- Mr Kennedy was involved in the bid
- Redwood would benefit from the bid
- Mr Kennedy's relationship with Redwood might be improved by the bid
- The relationship carried risk and difficult public perceptions for the CCG
- Mr Kennedy was lead for governance, as was Dr Bhargava
- He was the most senior person in the CCG and a non-executive director.

- Redwood should withdraw
- Dr Bhargava shouldn't see the report as Mr Kennedy was his line manager

- Mr Kennedy was acting with good intention
- He shouldn't be leading
- ■■■ had taken advice from external advisers and the head of governance
- ■■■ had told Mr Kennedy of ■■■ opinion but he wasn't allowed to see the report
- The learning is that non-executive directors should never be involved operationally

#### Comment

*The meeting on 8 May was clearly difficult. Dr Bhargava seemed more intent on questioning ■■■ about the process and conclusions of ■■■ investigation than discussing the behaviour of Mr Kennedy and how best to respond. We will deal with the specific allegation that Dr Bhargava's behaviour amounted to bullying in section 9 (below).*

*As we have noted, when we interviewed him, Dr Bhargava had only a sketchy idea of Mr Kennedy's conflict, even though it had existed for a long time and its importance had been brought to his attention when he was asked to sign Mr Kennedy's conflict of interest management plan. If Dr Bhargava had paid attention to the conflict previously, as was his responsibility as chief officer, the problem that arose from the Health Foundation bid would have been immediately obvious to him, whether or not he had sight of ■■■'s report.*

*Dr Bhargava went from questioning the robustness of ■■■'s investigation to trying to shift the blame for Mr Kennedy's actions to other people. As chief officer, he should have been altogether more detached and objective in his approach and helped the organisation find its way through this difficulty.*

*By contrast, ■■■ appears from the notes to set out ■■■ concerns cogently. However, ■■■ could have made more of the fact that Mr Kennedy's behaviour with respect to Redwood had come to ■■■ attention on other occasions in the previous six months. By this time, a clear pattern had emerged concerning Mr Kennedy and Redwood.*

## 16 May meeting

8.56 Dr Bhargava and ██████ met again on 16 May. Unlike the meeting on 8 May, there was no one else present.

8.57 ██████ said the meeting was difficult.

*“I met with Amit straight after that and that’s when he told me we must cut corners sometimes, it’s all in the interests of patient care and, of course, he knows that I’m doing this job because I care about patients. It felt really that was quite brutal to be saying that, when my role was as the conflicts of interest guardian to assess in my view whether there had there been a breach or not.”*

*“I was very upset because he [Dr Bhargava] made me feel really bad and that it was my fault that Alan had resigned, and Alan was a good chair and so forth. That he had done a lot for patient care.”*

8.58 Dr Bhargava’s recollection of the meeting is that he informed ██████ that Mr Kennedy had resigned because he believed that the investigative process had been deficient due to it not being transparent and because he had not been given a proper opportunity to put his case forward. Dr Bhargava said that he was clear with ██████ that it was not about fault but about considering whether a proper process had been followed. He said that there was no conversation about cutting corners or patient care.

### *Comment*

*It is of concern that ██████ felt that Dr Bhargava continued to put pressure on about the findings of ██████ investigation.*

## The withdrawal from the bid process

8.59 ██████’s email of 4 May to Dr Bhargava and colleagues recommended that the CCGs should withdraw Redwood from the proposed bid partnership as a matter of urgency.



**8.60** In [REDACTED] email to Dr Bhargava and colleagues on 5 May, the Crawley CCG head of governance proposed the withdrawal from the Health Foundation bid process as one of four actions to be taken. [REDACTED] suggested that agreement was needed as to who would take responsibility for this and other matters.

**8.61** Dr Bhargava's response to this email was to pose more questions for [REDACTED] to answer. This resulted in the meeting on 8 May. He did not offer any guidance to the head of governance about withdrawal from the bid process or communication with Redwood.

**8.62** On 9 May, the head of governance wrote again asking whether [REDACTED]'s recommendation had been acted on. [REDACTED] added at the end of [REDACTED] email that *"I do believe it is important to show swift and decisive action in response to concerns raised"*. [REDACTED] responded to Dr Bhargava saying that *"as this is a Crawley led initiative I would expect you to lead on the response to this"*. Dr Bhargava appeared not to respond to either of these messages.

**8.63** The head of governance wrote again to Dr Bhargava on 17 May asking whether not the Health Foundation bid had been stopped and what had been communicated to the team about this. Dr Bhargava replied briefly the following day and said *"[REDACTED] is [REDACTED] lead for the bid, it would be worth asking [REDACTED]. [REDACTED] nical director of Horsham CCG."*

**8.64** However, it came to light during the investigation that Mr Kennedy wrote to two colleagues ([REDACTED]) in the CCGs on 12 May to stop the bid process, at least within the CCGs. This followed on from an email he had sent on 5 May saying that he proposed to hand over the matter to one of the Horsham clinical directors [REDACTED]. In his message on 12 May, he said:

*"Dear all, thank you for agreeing to contribute to the bid for the Health Foundation fund recently. Unfortunately, we have only a few days left and I believe we have not enough time left to ensure an effective handover to [REDACTED] as the team lead and complete the bid, and to secure sign off from the main partners. Whilst very disappointing, I thank you for offering to help."*

**8.65** It is not clear to us whether Redwood Technology was ever told that the bid process had been stopped.

*Comment*

*Dr Bhargava was warned by ██████████ on 4 May that Mr Kennedy was, in ██████ view, in breach of the CCG conflict of interest guidance and that his pursuit of the Health Foundation bid had put the CCG's reputation at risk. Dr Bhargava was asked for guidance about the bid by the head of governance on three occasions. In his response to ██████ third enquiry on 17 May he simply batted the matter away and referred ██████ to a Horsham & Mid Sussex CCG clinical director although Crawley CCG's involvement in the bid was a matter for him.*

*As the chief officer he made no enquiries to find out the state of the bid, how far it had progressed, whether it had, in fact, been submitted and to whom. He failed to provide any guidance whatsoever to the head of governance or deal with the matter at all. Ultimately it was Mr Kennedy, acting in an executive role, who stood people down.*

## 9. Response of the CCG to issues raised with them

9.1 The allegation relating to the chair's potential conflict of interest was made formally in May 2017. This section considers the response that the CCG made to that allegation.

9.2 The summary timeline for ██████'s investigation is as follows. We will discuss each of these events in more detail below:

- 2 May 2017 - ██████ is notified of the issue
- 4 May - Meeting with Mr Kennedy; draft report completed
- 5 May - ██████ says ██████ informed Mr Kennedy of the outcome of ██████ investigation (Mr Kennedy denies this)
- 8 May - ██████ accompanied by ██████ meets Dr Bhargava to discuss next steps.

### ██████'s investigation process

9.3 The CCG has a conflict of interest policy: *'Conflicts of Interest, Gifts, Fees and Hospitality, and Sponsorship and Joint Working Policy and Procedures'*. It was approved in December 2016. The policy states:

*"A breach should be reported to the Conflict of Interest Guardians. Any investigation will be undertaken with the support of the Head of Governance. Advice will be sought as required from human resources and in line with the whistleblowing policy, and fraud and bribery policy. The Conflict of Interest Guardian will be responsible for informing NHS England once a full investigation has been undertaken to confirm there has been a breach. Ideally within 10 working days of the breach being reported and substantiated.*

9.4 The conflict of interest guardian for Crawley CCG is the chair of the audit committee, ██████. ██████ was notified on 2 May 2017 of concerns relating to Mr Kennedy's involvement with the Health Foundation bid by the head of governance.

9.5 ██████'s first step was to speak to the CCG's counter fraud supplier to check that the issue did not fall within their remit. The counter fraud team agreed that as the

conflict had been declared, this was an issue for the CCG rather than them. [REDACTED] told us that [REDACTED] also discussed the issue with the chief finance officer, [REDACTED] who told [REDACTED] that this was not a matter that needed to be investigated by internal audit.

9.6 [REDACTED] then spoke to Horsham CCG's audit chair, [REDACTED]. [REDACTED] did so both because the issue had a connection to Horsham CCG and because, as [REDACTED] had a similar role to [REDACTED], [REDACTED] was a good person to take advice from on how to proceed. [REDACTED] also told us that [REDACTED] felt that [REDACTED] was more experience as an audit chair and [REDACTED] respected [REDACTED] opinion. Following this, [REDACTED] spoke to [REDACTED] the HR business partner, employed by South Central Commissioning Support Unit, as the most senior HR advisor available to the CCG.

9.7 [REDACTED] told us that [REDACTED] was anxious to complete [REDACTED] investigation within ten days. This was because the CCG's policy says that NHS England should be informed within 10 days, but also because [REDACTED] had been involved in investigating a previous issue relating to a senior member of staff at the CCG which had dragged on for a long period of time and that [REDACTED] felt this was undesirable.

#### Meeting between [REDACTED] and Mr Kennedy

9.8 Having reviewed the evidence, [REDACTED] decided to meet Mr Kennedy. [REDACTED] told us that [REDACTED] was in a meeting on 3 May and so was not able to meet him then. [REDACTED] therefore raised the issue with Mr Kennedy on the following day. [REDACTED] told us:

*"On the Thursday morning, 4 May, we had our NHS England assurance meeting with the Area Team. I caught up with Alan [Kennedy] then to try and arrange a time. I was hoping to give him some notice. That was not ideal because the first time I got to talk to him about it I hadn't been able to say 'it's about this' because he was then going off to Ireland. So we had to meet that lunchtime and we talked about it then, almost straight after the NHS England meeting."*

9.9 The conversation took place in one of the chat rooms at the CCG offices at noon. We asked [REDACTED] how long the conversation had gone on. [REDACTED] told us that the conversation was between 30 and 45 minutes.

9.10 We asked Mr Kennedy for his account of the meeting. He told us:

*“The process was [REDACTED] laptop, me, 10 minutes informal conversation. [REDACTED] made some notes of that, and so I left that meeting.”*

9.11 We put to [REDACTED] that the conversation might have been shorter. [REDACTED] told us:

*“No, it wasn’t. It wasn’t ten minutes, it was longer than that. We were in the chat room for a while.”*

9.12 We asked Mr Kennedy whether he had been able to submit evidence to [REDACTED] in advance of [REDACTED] writing [REDACTED] report. He confirmed that this was the case:

*“Yes. As soon as I walked out of the meeting I got together a range of emails, which obviously went in the report, the ones that I could quickly get a hold of.”*

9.13 Mr Kennedy wrote to [REDACTED] at 4.15pm the same day as the interview (4 May), “following on from our conversation today” with further information. The full email is three and a half sides long. It includes nine bullet points setting out the basis of Mr Kennedy’s response and two pages of emails relating to the Health Foundation bid.

9.14 [REDACTED] circulated draft copies of [REDACTED] report to [REDACTED] and the head of governance around 9pm on 4 May.

#### Mr Kennedy’s view of [REDACTED]’s process

9.15 Mr Kennedy told us that he had a number of concerns about [REDACTED]’s process. These included that:

- He wasn’t given an opportunity to put his case;
- He felt that [REDACTED] did not listen to the representations he made; and
- That the report should have been shared with his “line manager” rather than being sent to NHS England.

9.16 Mr Kennedy told us he felt that he hadn't been given an opportunity to state his case. He told us:

*"██████ never asked me for any evidence; the information that eventually appeared in ██████ report was something that I gave ██████ actively.*

*"The last conversation I had with ██████ was that 10-minute conversation, so that is the first I heard about it. I had 10 minutes, no chance to prepare, and the next minute a report had gone into NHS England that, in my view, reaffirmed the opinion I got in the 10-minute process. ██████ had already made up ██████ mind before ██████ started asking questions. In essence, that left me in a quandary.*

*"I was agitating for a process, I felt really wronged. Whatever the conclusion of ██████'s report, natural justice would at least have given me a process, and there appeared to be no process available to me at all to represent my evidence of the case. Essentially, ██████ acted as judge and jury, it felt to me. Whether ██████ did or didn't is beside the point, and a report went externally.*

*"As Chairman of the CCG, challenging or raising the matters of fact that ██████ raised, and because of the way I have been handled, in essence, and I can remember saying this to ██████ in the 10-minute session that "If you are essentially saying to me that I can't even arrange a meeting for colleagues to have a conversation and an opportunity to resolve one of its key challenges, then it is time for me to go".*

9.17 We asked Mr Kennedy whether there was particular evidence that he believe that ██████ had left out of ██████ report. He told us that, rather than evidence being missing, it was more a question of the balance that ██████ gave to the evidence. He told us:

*"It is the weight of things. I am absolutely of the view that ██████ had sorted ██████ mind out before I even walked into that meeting room. It was clear from the fact that ██████ wasn't listening. It is difficult to listen as well as take things down. It is the weight of things."*

9.18 A number of interviewees we spoke to had gained the impression that in writing ██████ report ██████ had not spoken to Mr Kennedy at all. For example, in Dr Bhargava's email after ██████'s report had been completed (4 June 2017) he asked for a "fresh look" to

be taken at the evidence. He described Mr Kennedy's concerns about the investigation and said that "he had not been interviewed". We asked Dr Bhargava what Mr Kennedy had told him. He replied:

*"That he had not been interviewed and that he hadn't shared anything. When you look at the documentation from conflict of interest, it says 'All people involved in this should be interviewed before a decision is made'.*

*"What he said to me '█ hasn't talked to me and told me -. I haven't shown █ the documentation I have'."*

9.19 █ made a similar point. They told us:

*"the issue was that while they had done investigation the CCG hadn't actually spoken to Alan to hear his side of the story, officially. So when you have an allegation you might do your own independent investigation, but you would also want to hear from the person that the allegation has been made against"*

9.20 We told Mr Kennedy that some people had said to us that their understanding was that █ hadn't had a conversation with him in compiling █ report. He responded:

*"It was close on that. There was a conversation. We had just finished - let me think, I was at an internal meeting, and █ approached me, █ had 10 minutes until the next meeting. █ said that █ had a report that I had not followed my conflict of interest management plan, and █ wanted to ask me for my view on that. I said, "We have 10 minutes now", thinking that we will start the conversation and we will pick up some other time - that clearly didn't happen. We went into one of the quiet rooms, just me and █ █ asked if it was alright to make notes on █ laptop which, in hindsight, I wish I had said "No" to because █ wasn't listening.*

*"In that 10 minutes then, █ was busy taking down notes - I reached the view of believing █ wasn't listening and had already concluded what the outcome was, so raised that as a challenge. █ said █ couldn't discuss that, so I thought at the end of that process that there would be an opportunity for me to present the evidence."*

## Comment

*In hindsight, Mr Kennedy could have been given more warning and opportunity to prepare for his interview. However, the ultimate test of whether Mr Kennedy was given adequate opportunity to provide input to the report of and whether [REDACTED] was listening to the points that he made is the quality of the report that [REDACTED] produced. We comment on that later in this section.*

*It is also clear from the evidence that [REDACTED] did speak to Mr Kennedy in preparing [REDACTED] report, that he was given the opportunity to submit evidence, and that he did so. Nevertheless, Mr Kennedy deliberately misrepresented the situation to give people the opposite impression. This was damaging for the CCG's subsequent response to [REDACTED]'s report.*

**9.21** Mr Kennedy was concerned that the outcome of the report should have been reported to his “line manager”. He told us:

*“That is why I was caught off guard when I was told that NHS England had a report within days, because the CCG constitution says that in terms of managing the conflict of interest that it would be reported first and foremost to the line manager. In my case, that is difficult, because the line manager is the membership, but still, that part of the process wasn't followed. By the time I found out about that I had no opportunity to provide further evidence on [REDACTED] interpretation.*

*“I recognise that it is not easy in terms of the Chairman's line management, but formally my line management is the membership. You have [REDACTED], who is Chair of the membership forum, that would have been an obvious place to have gone, and you have Amit as the accountable officer. I imagined that would be what would happen. The next I found out was a report had gone to NHS England, so I had no opportunity to present my side of the story to my peers.”*

**9.22** The CCG's approach to the issue Mr Kennedy refers to is set out in its conflict of interest policy rather than the constitution. The policy says that non-compliance with the policy should be reported to the line manager and may lead to disciplinary action, although



this is only the case for “employed staff”. The policy is silent on who breaches relating to “Individuals undertaking a governing body role” should be reported to. It refers to removal from office being a possible remedy.

#### *Comment*

*The CCG conflict of interest policy says that NHS England should be informed once a breach has been confirmed. ██████████ did this. There can be no criticism of ██████ for doing so.*

*As Mr Kennedy concedes, there is no obvious path after a conflict of interest investigation when the person involved is the chair of the organisation.*

*We believe that the implication of the CCG’s policy is that, once a breach has been upheld following the specified process, it is then an HR issue to resolve. In the absence of a specific policy, ██████████ took HR advice from the most senior source available and reported the issue to NHS England. This appears to us to be an appropriate response in the circumstances.*

*Mr Kennedy assumes that once the report had gone to NHS England that he would have no further opportunity to “present my side of the story”. However, ██████████’s report made no specific recommendation relating to Mr Kennedy and it was always intended that he would have had further opportunity to put his case before any action against him was taken.*

#### *██████████’s report*

**9.23** We have been given a copy of the report written by ██████████, which is entitled “Report from investigation with Alan Kennedy (AK) re: Redwood” and which is dated 8 May 2017. We have included the full report in Appendix H.

**9.24** The first section of the report sets out the formal definition of a conflict of interest. Section 2 describes the relevant part of the CCG’s conflict policy. Section 3 sets out details of the chair’s conflict of interest management plan. ██████████’s report goes on to describe

the Health Foundation project that Mr Kennedy was involved with (section 4). ■ refers to the discussion that ■ had with Mr Kennedy on 4 May 2017 and explains in detail Mr Kennedy's description of what he had done and why. Amongst other things section 4 describes why Redwood were the appropriate organisation to partner with on this bid and explains Mr Kennedy's reasoning for why he didn't contact the head of governance or a lay member to discuss the bid. An appendix to the report contains details of the evidence on which ■ report is based, including email correspondence between those involved.

9.25 ■'s report sets out ■ conclusions and recommendations based on the evidence that ■ has seen (section 5). ■ notes that while Mr Kennedy's intentions "appear sound", the evidence shows that "the substance of the conflict of interest management plan ... has not been followed".

9.26 We asked Mr Kennedy comment generally on the report. He told us that his concerns about the report relate to the weight that ■ gave to the evidence. He told us:

*"It doesn't say it really, so absolutely ■ is right that I spoke to a number of people; it was iterative in terms of creating the partnership and I raised this with Amit [Dr Bhargava], ■ chair of Horsham CCG] and ■ who expressed an interest in what Redwood were doing and agreed it was worth looking at, but it was their decision to participate. I didn't force them - these are senior people in their own right. ■ doesn't explicitly draw out that ■ had been nominated as programme lead, so by implication it looks like I am leading throughout the whole process, and had intended to lead the project all the way through.*

*"When ■ talked about in terms of process, the process has so far been about "corralling people", which I remember ■ saying, if you look at the 2017 refresh for conflict of interest guidance across the NHS, guidance should not be interpreted in a way which stifles innovation, and the default shouldn't always be to exclude members as they could have a detrimental impact on the quality of decisions. There wasn't any risk assessment of the conflict at all that I could see. It is ■'s report, maybe ■ did a risk assessment in terms of what the risk for the conflict is.*

*"A lot of the conversations when I was involved in the national meetings were about delegating the co-commission in Primary Care and creating a new, refreshed conflict*

*of interest framework for CCGs was an acknowledgement that conflicts in themselves are not always bad, they need to be declared and they need to be managed, and you can't manage conflicts down to zero particularly, as they were thinking about clinical input from GPs.*

*“█ talks about “the substance of the conflict of interest management plan has therefore not been followed”, and that felt like judge and jury to me. I had no opportunity to rebut that. Whatever the outcome of my opportunity to rebut the fact, the fact that I wasn't given that chance - I had a 10-minute, informal conversation where █ made notes on █ laptop; that was the last I heard and that just felt really wrong.”*

#### *Comment*

***We have examined █'s report. Our analysis is as follows:***

- The report clearly and accurately sets out the context in which it is written, appropriately referencing national and local policy.***
- Mr Kennedy was given the opportunity to submit evidence for consideration and he did so. There are no substantial pieces of evidence missing.***
- The report is evidence based and sets out the evidence on which it is relying. Mr Kennedy's evidence was considered.***
- The report clearly describes Mr Kennedy's point of view and his response to the allegations made.***
- We are satisfied that █ has understood and considered Mr Kennedy's response to the allegations.***
- The report comes to a reasonable conclusion on the basis of the evidence.***
- The report makes sensible and appropriate recommendations.***

***Taking these points together, we believe that █ has produced a report of a high standard and has carried out █ responsibilities fully and well.***

***We note that Mr Kennedy's comments on the report itself relate to the weight that █ gave different pieces of evidence. Ultimately that was a matter for █ to make a judgement on. █ exercised that judgement appropriately.***

## Completion of ██████'s report

9.27 Following ██████ conversation with Mr Kennedy, ██████ completed ██████ report. ██████ sent it to the head of governance and to ██████. ██████ says that ██████ also send a copy to ██████ Horsham CCG (although ██████ is not certain of that). ██████ told us:

*"I also knew at that stage from ██████ advice, that what happened to it after that was out of my hands. It wasn't for me to be involved in any HR process at all. My role was to form my view."*

9.28 ██████ emailed Dr Bhargava, ██████ about the outcome of the investigation. ██████ received a response from Dr Bhargava with a number of questions (see section 8 - 'Response to ██████'s report).

9.29 ██████ then told us:

*"I phoned Alan on the Friday morning [5 May] and said to Alan thank you for his interview and so forth and explained that I felt it was a breach. At the time we had no one else internally to do this. The HR lady wouldn't have been the one to speak to him and it wouldn't have been fair for [the head of governance] to do so.*

*"I have had a very good relationship with Alan over the years and felt I'd rather tell him myself that I felt it was a breach. He got very angry on the phone to me and said, 'I'll fight you on this', and at that point I was very upset.*

*Yes, that wasn't good, and I phoned another of the Board members, ██████ who is the Independent Nurse, and that's why I got ██████ to come and meet me with Amit. On the one hand I have Alan telling me 'I'll fight you on this', and I said, 'Alan this is my judgement, not something to fight against'. He might feel differently about it but he can't fight my judgement because that's my opinion and I'm perfectly willing to believe that my judgement has to stand up to scrutiny, or whatever but that was my judgement."*

9.30 ██████ told us about speaking to ██████ after ██████ conversation with Mr Kennedy (we deal with the issues relating to bullying at the end of the is section):

*"I was down in Wales with my business partner going to visit a claimant together, ██████ rang me on the phone in floods of tears, said that ██████ had done this investigation and it was absolutely dreadful - this is completely paraphrasing. The nub was that ██████ was being attacked because of the role ██████ took in the investigation and that ██████ felt ██████ was being bullied. ██████ was absolutely sobbing and that's not the person I know.*

*"Q. Bullied by?*

*"A. Amit. That the reaction was over the top, also that Alan had been very angry with ██████ and had told ██████ that he would, 'fight it', not to the death, but something like that, to vindicate himself. I just said to ██████ 'my business partner's in the car, you're on a speaker, so I'll call you later', which I did. ██████ was meeting Amit to try and resolve his concerns and asked me if I would go as an observer to the meeting."*

9.31 HR ██████ told us that ██████ had told ██████ that:

*"█████ had called him to update him, to let him know it was going there and his attitude had changed. He got quite defensive and then said that he would fight ██████"*

9.32 Mr Kennedy, however, denies that he spoke to ██████ after ██████ had completed ██████ report.

9.33 Mr Kennedy told us that he did not hear about the conclusions of ██████'s investigation from ██████ directly. When we suggested to him that ██████ had called to tell him the outcome he replied, "No, ██████ didn't.". He told us:

*"That was part of the reason I got really cross with ██████ One minute we are having a 10-minute, informal chat, where I thought ██████ had already made up ██████ mind, and the next minute a report that I had not seen, not had an opportunity to comment on its accuracy, nor indeed report any other challenges, nor had I an opportunity to present my case in front of my peers - all of that trodden on."*

## Actions taking after completion of the report

9.34 ██████'s report included a number of recommendations. The first was to approach the chief officer, Dr Bhargava to withdraw Crawley CCG from the Health Foundation bid. ██████ did this on 4 May. The second was to brief Dr Bhargava with regards to ██████ decision. ██████ did this in a meeting with him and ██████ on 8 May.

9.35 The third of ██████'s recommendations was to contact the NHS England area to notify them of the breach and discuss next steps. ██████ did this on 8 May. NHS England responded on 11 May.

9.36 The fourth recommendation was that, in line with the policy, an anonymous announcement should be placed on the website. The statement was drafted by the head of governance and ultimately published at the end of May.

9.37 The final recommendation was for the HR advisor to ascertain next steps.

9.38 We spoke to ██████, the CCG's HR advisor. ██████ confirmed that ██████ had sought ██████ advice on the investigation and how to proceed after its completion and that ██████ had acted on that advice. ██████ told us that this was a complicated case because Mr Kennedy as chair was an office holder rather than an employee. The cases ██████ is involved with generally relate to employees. ██████ told us:

*"I had a good idea of what needed to happen had it been an employee, but I just know that if it's something slightly different, there are subtle nuances that you need to be aware of, that might have a huge impact if you don't pick them up right at the beginning. I was desperate to get contact in NHSE [NHS England] HR."*

9.39 The head of governance confirmed that there was uncertainty as to how to proceed because the person involved was the chair of the organisation. ██████ told us:

*"We had a fair amount of head scratching ... because it is the chair, and we could see in our policy on conflicts of interest, it said you would report to NHS England, that ██████ should submit ██████ report to ██████ [a director of NHS England Southeast] and stating that "because it is the chair of the CCG, we do need advice and support."*

9.40 The report was not circulated widely. ██████ told us that ██████ thought the appropriate thing was to send the report to NHS England “*who would decide what do we do now*”. ██████ told us that ██████ sought advice from a number of people, including ██████ line manager and the NHS England governance team, but that there was no clear advice on how to proceed. ██████ told us that there was also a delay while NHS England consulted their central legal team:

*“I wanted to get the governance right and for that I wanted to share what I proposed to do with someone higher than me in NHSE, to make sure that we’d got it right. The first step of getting it wrong is when it completely unravels and it’s difficult to pull it back to do it right.”*

9.41 The CCG had a meeting of the remuneration committee set for 11am on 24 May. On the following day there was to be a joint meeting of the Crawley and Horsham CCG governing bodies (an informal, private meeting, known as a ‘Governing Body Briefing’). In the run up to these meetings advice from NHS England was still awaited. ██████ told us that there were concerns that the process was taking a long time. ██████ told us:

*“I can understand why tensions were building about timeliness because time was lapsing and to put myself in Alan’s position or anybody like that, you’d want to know what was going on rather than just hovering. We were paddling, desperately trying to get information, to know how to deal with it and quickly.*

*“We all had a very good idea of what needed to happen in terms of natural justice and people being able to respond, but we needed some guidance about, in this particular context is there anything else we needed to do? Who were the right people to share the report with? Who would make a decision? What would happen? It didn’t help that it was delayed and for some time actually. We think it started on the 8<sup>th</sup> [May] and we are now on the 23<sup>rd</sup>. It was a long time.”*

9.42 We discuss the meetings on 24 and 25 May below.

9.43 At this time ██████’s report had not been seen by any of the other governing body members. We asked the head of governance about sharing the report with the governing body:

*“The argument we have been following, rightly or wrongly, is that, because we are trying to use the principles of our disciplinary policy, that you keep things confidential. I also am slightly mindful, if we have to run a panel at any point, to take formal action, do we want people who have been tainted by having heard too much of the ‘he said/she said’ along the way? You want them to be able to review it fresh.”*

**9.44** The CCG’s conflict of interest policy stresses the importance of confidentiality in these circumstances:

*“Conflict of interest guardians will treat any notifications of breaches or potential breaches with the 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”.*

*Comment*

*Following the completion of the report circulation was kept limited. Mr Kennedy only saw the report in advance of our interview with him in August and at our suggestion. Dr Bhargava and [REDACTED] had not seen it when we interviewed them.*

*We understand why circulation was kept limited and that this was done based on advice received in the interests of “protecting confidentiality”. We also accept that the situation where an organisation is dealing with allegations relating to the most senior person in the organisation is challenging.*

*However, given that the report contained no confidential information it is difficult to see what confidentiality was being protected. We believe that it would have been better for the CCG if the report had been circulated more widely as this would have acted to dispel rumours about what it contained.*



*Ultimately the decision on the circulation was one for ██████████ and the head of governance to take. The approach that they took was with the best of motives and based on the advice received.*

#### Response of governing body to ██████████'s report

9.45 As we have noted, following the completion of the report Mr Kennedy was concerned that it had gone to NHS England rather than being dealt with within the CCG. He felt that as the CCG's policy referred to the involvement of a "line manager" in his case this should be dealt with by the CCG membership (i.e. GP practices). Mr Kennedy told us that it was wrong for the CCG to have "lost control" of the process by sending the report to NHS England and he repeated his concerns about the process. Together these factors led him to tender his resignation at the end of the remuneration committee meeting on 24 May. He told us:

*"The constitution says it should be reported to my line management. Rules of natural justice say I should have an opportunity to present a case. I wasn't given that chance other than a 10-minute, informal conversation. That wouldn't happen in any other circumstance, in my view, to any other member of the CCG, but it happened to me.*

*"The view that I took was - 'that is just not tenable, both in terms of if you are telling me I can't even arrange a meeting to approve patient care, it is time to go' and secondly, even if I won the case, as it were, the fact is there is an allegation about me having broken the conflict of interest, which is too much to bear for me."*

9.46 ██████████ lay member for public and patient engagement, was appointed as acting chair in his place.

9.47 ██████████ said that he first heard about the issue with the conflict was from Mr Kennedy immediately before remuneration committee:

*"He said that there had been an investigation into a conflict of interest which had involved him, and he felt he had not been given a fair opportunity to state his side of the case. It was literally no more than a two-minute conversation, and then we*

*had the RemCom [remuneration committee] at which Alan was present, but he didn't say very much.*

**9.48** Mr Kennedy resigned by passing a note to [REDACTED] at the end of the remuneration committee meeting. [REDACTED] told us:

*"Towards the end of the meeting, he passed a note to [REDACTED] ... and left the room, quite pointedly, and made it clear that he was very annoyed."*

**9.49** A discussion was held at the end of the meeting on how the CCG should move forward. [REDACTED] told us:

*"At the end of the RemCom meeting, when Alan announced that he was resigning, we then had to take a decision and the reasons why he was resigning. We had to take a decision on what we should do with him in the interim period and that decision was that it would be better for him if he stayed away from the office whilst the inquiry was continuing.*

*"... the RemCom team discussed and decided that I was the person who should take over as Interim Chair. There then followed a meeting of the Governing Body the next day because we had a joint Governing Body meeting already scheduled and took the opportunity to ask the Crawley Governing Body members to stay behind at the end of that meeting because they wouldn't have been aware of any of this and so we gave them a briefing on what was going on.*

*"As I recall the Governing Body agreed to my appointment as acting chair but requested that [we] write to NHS England on behalf of the lay members to ask what guidance can you give us as to how should we take things forward".*

**9.50** On 26 May an email was sent on behalf of [REDACTED] to NHS England. The email said:

*"We are aware that our conflicts of interest guardian referred a report to [REDACTED] on 8 May 2017 with respect to our chair, which we understand has been passed to you. Since the alleged breach involved the chair as our most senior officer, the*

*CCG requested assistance from the area team in helping us to establish a suitable HR process to take this forward.*

*“We are also seeking your independent review of the case.*

*“The CCG is obviously very concerned to act appropriately and transparently in this matter. We also need to respect the principles of natural justice for the individual involved and his right to reply. Fourteen working days have now passed and we urgently need your response and any advice and guidance so that we can assure ourselves that all appropriate actions have been taken. We obviously also do not want to cut across any actions that NHS England think it is appropriate to take.*

*“Please could you advise whether NHS England will be taking any action or whether you are referring back to the CCG to consider what actions they need to take? If so, what local procedures does NHS England require us to follow to deal with the situation? We would appreciate a detailed response at your earliest convenience.”*

**9.51** [REDACTED] from NHS England responded on 30 May. [REDACTED] said that NHS England was awaiting advice from national HR and legal teams and that [REDACTED] would get back to the CCG shortly. [REDACTED] continued:

*“With regard to your request for our independent review of the case, we believe an independent review is required and due to the complexity of the issue and seniority of the individual involved NHSE [NHS England] would like to appoint an external review of the case and the surrounding process and governance. We intend to procure external support to undertake a review and be doing this in the next two weeks.”*

*“Whilst we procure this support we would suggest the COI [conflict of interest] investigation documentation be referred to your local Counter Fraud team to review before it is shared with the individual involved. This will provide both the CCG and NHSE assurance that there is no case in relation to fraud in this conflict of interest.”*

**9.52** [REDACTED] replied to NHS England on 31 May saying that [REDACTED] intended to convene a local panel to consider the case. [REDACTED] wrote:

*“As you will have been updated, Alan Kennedy has now withdrawn his resignation but is staying away from the office until matters are resolved. As a CCG employee and in accordance with the COI [conflict of interest] guidance, I have therefore decided to convene a local panel to look into the allegation. I would expect the panel to look at the circumstances of the allegation, to examine all the evidence taken, to identify any gaps, look at the processes followed and reach an independent conclusion on how matters should be resolved, including identifying any learning points on future handling. I would very much welcome an NHSE observer to be part of the process.”*

9.53 ██████ went on to say that he had asked the CCG’s secondary care clinician ██████ to chair with two assessors, ██████ independent lay member and ██████ “representing the membership”. ██████ wrote:

*“As I believe that our panel will cover all the necessary ground could I suggest that you hold fire on convening any separate enquiry. The findings will, of course, be made fully available to you. Happy to discuss further if you wish.”*

9.54 ██████ from NHS England responded on 2 June saying:

*“Thank you for your note and the conversation on Wednesday, we too are concerned about the tensions you describe and how this has influenced the CCG and any process. However, your panel appears to be suitably qualified and we welcome the invitation to be an observer”.*

9.55 The initial view following the remuneration committee was that they would defer to NHS England about next steps. However, in the interim momentum had grown within the CCG for the matter to be handled internally. We asked ██████ what had changed between the remuneration committee on 24 May and 31 May. ██████ told us:

*“In the interim period, if I recall correctly, Alan had been in contact with NHS CC [Clinical Commissioners<sup>1</sup>] ... and their advice was that it was for the CCG to carry out an investigation and for NHS England to assure that the investigation was objective and fair and all the rest of it.”*

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<sup>1</sup> NHS Clinical Commissioners is the membership organisation of clinical commissioning groups.

**9.56** On 3 June, however, ██████ wrote to ██████ to say that ██████ did not feel comfortable with the proposed process.

*“From a Governance perspective I find this process unclear. To risk adding to this in haste seems unwise. If a conclusion has been reached it is very unclear to me as to what the remit of any new panel would be, leaving aside with what jurisdiction it might execute any decisions.*

*“I thus do not feel comfortable accepting your suggestion that I Chair any new process. In my personal opinion there seems to be a deficit in the CCG Governance process and therefore formal legal advice might be helpful to clarify issues with regard to both the personal and governance challenges this process has exposed. I would support an independent review as suggested in ██████’s e mail of 30th May.”*

**9.57** At interview, ██████ told us *“Bluntly, I could see absolutely no reason to hold another inquiry if the case was already ‘proven’ that a breach had occurred.”*

**9.58** The next day, 4 June, the chief officer, Dr Bhargava, wrote to ██████ and ██████ (copying in the head of governance, ██████ and NHS England). He argued strongly for:

*“a panel of senior, credible and fair minded people to have a fresh look and make a recommendation after due rigour”.*

**9.59** Dr Bhargava said that he had received advice from the CEO of NHS Clinical Commissioners that *“this is a CCG matter and for us to resolve”*. He said that *“█████ was in agreement with Alan’s concerns that the process was flawed. ██████ raised the question whether we had followed the NHSE (NHS England) guidance for COI (conflict of interest) guidance guardian and their powers.”*

**9.60** At this point, however, NHS England decided to appoint an independent investigator. This was both because of the disagreement within the CCG as to how its panel would work, but also because by then they had received allegations of bullying against Dr Bhargava.

## Comment

*This was a difficult and, to some extent, unprecedented situation as it involved the chair of the CCG. An argument can be made that it is appropriate for a CCG to resolve its own internal HR matters wherever possible. However, this is clearly difficult when the person involved is the most senior in the organisation. In particular there was concern as to whether the CCG could be sufficiently objective to take this matter forward. Good governance principles would suggest that there be external oversight in these circumstances, but no formal process currently exists for this.*

### Discussion of response of governing body to ██████████'s report

9.61 A number of interviewees have told us of their concern that the proposals from ██████████ and Dr Bhargava to carry out a further investigation was born out of their unhappiness with the conclusion reached by the first investigation.

9.62 ██████████ was concerned that the intention was to undermine ██████████ work. ██████████ told us:

*"We then had this agonising Part 2 [governing body] meeting. There had been an email around to say there has been a breach but then there was this agonising meeting where they all decided to do an investigation into my investigation."*

9.63 ██████████ told us that ██████████ felt that a number of governing body members wanted a further investigation "because they liked Alan as the chair". ██████████ told us:

*"It was just the way they were all protecting him. That nobody seemed to mind that there'd been a breach. They just wanted to protect him; it just felt like an old boys' network really."*

9.64 ██████████ the chair of the audit committee in Horsham CCG had concerns about the motivation for the suggestion following the remuneration committee meeting which ██████████ was present at that the CCG should convene a panel. ██████████ told us:

*“Amit [Dr Bhargava] basically said I want another report done, I want a report on ██████’s report. You cannot do that, and to have to ask for it to be done by someone within the CCG makes it even worse, in my view.*

*When I found out that he’d asked one of our associate lay members to report into ██████’s report, our view was you cannot do it. You are questioning the honesty, the openness of somebody who was appointed, because those were the qualities ██████’d demonstrated adequately over five-and-a-bit years, to suddenly say I don’t like the result of ██████’ report, therefore I’m going to commission another one. It was made very clear to me that the purpose of this other report was to whitewash Alan so he could be reinstated as Chair.”*

**9.65** ██████ told us that at the remuneration committee meeting it felt as if the spotlight had been turned onto ██████ and ██████ became visibly distressed in the meeting. ██████ told us:

*“They were challenging the investigation and challenging the process and there was a fair bit of heat around. Alan is very highly valued, I think the assumption was - is Alan is guilty or not?”*

**9.66** The head of governance also commented that attention had “switched to investigating ██████ and myself by extension”, ██████ told us:

*“It felt to me like there had been a little counter movement behind the scenes, and it is wrong to characterise it like this, but it felt like the boys had got against the girls a bit. I am sure that isn’t what it was, it is just the way it felt, but certainly a number of conversations had been had and there was a kind of “We are going to talk about it”.*

*There was a certain point in this process where I felt the tide was going towards “Hold on, did ██████ do the right thing?” rather than saying “This is about Alan’s conduct”.*

**9.67** We asked another governing body member, ██████ whether it felt as if ██████ integrity was being questioned. ██████ told us:

*“Not so much the integrity, but partly questioning the process, and I think part of the problem was that the process wasn’t necessarily written down to this degree, because you would never expect the chair to be the one who is falling foul of your own policy, sort of thing, so it’s new territory for everybody... I think ██████████ at that point was promoted to acting Chair, so ██████ and Amit were saying, we have to do this, we have to do this, we have to do this, which I felt very uncomfortable myself hearing this, thinking, well, we don’t know the outcome of anything yet, so we don’t need to really rush into anything, and it would seem like it was just rallying the troops to protect Alan.”*

*“If it was my report, I would feel very, very, very undermined and undervalued.”*

*Comment*

*Following the completion of ██████████’s report, it could have been appropriate for the CCG to convene a panel to review whether ██████ investigation had followed due process or to look at implementing its findings.*

*It would not, however, be appropriate to simply re-do the investigation. It would be even more inappropriate if the motivation for this was unhappiness about the conclusion it reached.*

*We believe that it is essential to be clear about this distinction.*

**9.68** ██████████ told us both in our interview with ██████ and in a subsequent letter to us that ██████ motivation in setting up the panel was the right one and he rejected any bias in favour of Mr Kennedy. In his letter (4 September 2017) he said that his view was that there were two fundamental issues:

1. *“Whether it is for NHS E or the CCG to be responsible for considering the evidence and deciding whether or not there has been a breach of policy and thereafter deciding how to take it forward?”*



2. *Whether the findings of the COI [conflict of interest] guardian report are immutable.”*

9.69 The letter goes on to say:

*“Published guidance is not very helpful in answering either point but the Conflicts of Interests policy suggests it is for CCGs to carry out investigative and resolution functions although in cases where the policy is unclear, NHS E[ngland] can be consulted for further advice. NHS CC [Clinical Commissioners] supports the view that, as a statutory body, it is for a CCG to determine whether or not there has been a breach and then decide how any breach should be dealt with. NHS E similarly recognises that even in the most serious cases it is appropriate for CCGs to investigate and resolve any breaches although from a regulatory perspective it reserves the right to conduct any wider enquiries it considers necessary. This, I think, is why duality becomes an issue.*

*“When I became interim Chair of Crawley CCG, the situation I was faced with a situation where a local Conflicts of Interest inquiry had already been carried out and, due to the status of the subject, the Conflicts of Interest guardian had referred the matter to NHS E for guidance. Because of the nature of the allegation, the contents of ■■■ report were treated as being entirely confidential between ■■■ and NHS England. I have no issue with that but I was made aware that nearly three weeks had passed since the referral had been made and no further guidance from NHS E had been forthcoming. I was also made aware that Alan Kennedy, a well-respected and senior member of the CCG, was maintaining he had not been offered a fair opportunity to state his case, to the point where he had felt it necessary to tender his resignation. With that in mind, I felt that the CCG had a duty to ensure that Alan’s concerns were properly addressed and whilst I recognised that NHS E legitimately had its own interests to address, I considered, with the support of Governing Body members, that the best way to take matters forward was to set up an independent panel which could look at Alan’s concerns as a matter of urgency. Given NHS E’s involvement, I was happy for them to be included as an observer in what was being proposed and I put that suggestion to them. Both NHS CC and NHS E accepted the setting up of an independent inquiry as a workable solution although subsequently NHS E asked us to delay further whilst it resolved its own position.*

*Subsequently, as a result of further discussion with NHS E, Crawley CCG agreed to afford the Verita inquiry precedence although NHS E made it plain that we could, if we wished, continue with our own inquiry contiguously. Given the duality of responsibilities, this is why I was somewhat bemused by the suggestion that our panel was superfluous.*

*“In the course of cross-examination, it was also suggested to me that the purpose of setting up the local inquiry was that I wanted the case re-investigated because I had doubts that ██████ had done ██████ job thoroughly and that I did not like ██████ conclusions (transcript pages 8 and 17). It was further suggested that I wanted a different outcome (page 17) and that I was unduly biased in favour of Alan (page 21). I have to say that I find these suggestions highly offensive and that my motivation should be questioned in this way. In particular I deeply resent being accused of bias or being party to manipulating outcomes because that most certainly is not the case. What I have tried to do, in good faith, is to ensure that a suitable forum is in place to enable the CCG to be satisfied that everyone had been given a fair opportunity to state their side of the case and that due process had been followed as quickly as possible. That mechanism had the support of the Governing Body, NHS CC and NHS E. It was not in any way an attempt to subvert what had gone before or conduct a fresh inquiry de novo. Its purpose was to look at the evidence in the round to see whether everyone had had a fair opportunity to state their positions and in the light of those enquiries to decide whether any further enquiries were necessary and how matters should be resolved. Inevitably, as part of that process, it did mean that the evidence adduced by ██████ would have to be reviewed.”*

**9.70** At his interview we asked ██████ why he took on the role of interim chair. He told us that an interim chair was needed after Mr Kennedy’s resignation, “and it couldn’t be ██████ for a variety of reasons, so I was the only other person sitting in the room”.

**9.71** We asked why ██████ couldn’t have been interim chair. ██████ told us:

*“Because ██████ was implicated in the reason for Alan resigning”.*

9.72 He said that the reason for this was that ■■■ had carried out the investigation that led to his resignation. He told that he didn't mean "anything untoward" by using the word 'implicated', "just simply that because ■■■ was involved in the investigation it would not have been appropriate for ■■■ to become Alan's successor".

9.73 We asked why ■■■■■■■■■■ felt that this was not appropriate ■■■ told us:

*"I think that the fact that Alan [Kennedy] had made it plain that he contested the matter very strongly and he felt that he hadn't been given a fair opportunity by ■■■ to put his side of the case and, because of that, he was resigning. That meant that the Committee had to decide on who was going to take over from him. Their conclusion was that it should be me and not ■■■ That's all I meant.*

*Comment*

*At this time, an allegation of a conflict of interest against the chair had been upheld. It was therefore a sensitive time for the CCG. It was important that the right balance be struck between the interests of the CCG going forward and the rights of Mr Kennedy.*

*■■■■■ had carried out an investigation as was ■■■ responsibility and was pursuing next steps in line with the CCG's policy and advice from the commissioning support unit and NHS England. We do not agree that this should automatically exclude someone from taking on the role of chair if they were best suited to do so (although we accept that did not want the role).*

*■■■■■'s use the word "implicated" in his description of the role that ■■■■■■■■■■ played together with the weight he gives to Mr Kennedy's feelings about whether he had the opportunity to put his case (as opposed to the facts of the matter) suggest a lack of even-handedness.*

9.74 As has been noted, ■■■■■■■■■■ wrote to NHS England saying, "I have therefore decided to convene a local panel to look into the investigation". We asked ■■■ the purpose of the panel. ■■■ told us it was:

*“A no-brainer that if there was an investigated allegation and perhaps there had been a conflict of interest, then it had to be investigated; it had to be followed through but the question was how that investigation should be carried out.”*

9.75 We asked why there was a need for a panel given that ██████████ had already carried out an investigation. ██████ told us:

*“All I’m saying is that if a potential conflict of interest has been identified it ought to be investigated and dealt with. I know what you’re suggesting is that ██████’s investigation had reached the ultimate conclusion that Alan had breached the conflict of interest guidance. That wasn’t the way I had understood it. What I understood was that ██████ had decided there was a potential for a conflict of interest and referred to NHS England for advice on what to do next.”*

9.76 We asked why ██████████ had written to NHS England saying that ██████ had decided to convene a local panel to look into the allegation. ██████ told us:

*“Because the advice which I had was that it should be for the CCG to investigate.”*

9.77 We suggested to ██████████ that the CCG had already carried out an investigation through ██████████. ██████ replied:

*“No, the CCG hadn’t. ██████ as a Conflict of Interest guardian, had carried out an investigation.”*

9.78 We asked ██████████ why, if ██████████ had already contacted NHS England for advice about the implementation of ██████ report, ██████ needed to get involved. ██████ told us:

*“Because there was an issue about whether it was NHS England’s duty to carry out any subsequent investigation or whether they have an assurance role. In other words, the CCG should be the, if you want me to describe it, the sovereign body within its own area.”*

Q. To do what?

A. To deal with any issues whether they be complaints or conflicts of interest.

Q. *But the issue had been dealt with. With regards to investigation.*

A. *Alan's view was that it hadn't."*

9.79 [REDACTED] also told us:

*"I realised that in order to satisfy NHS England that the CCG was taking it seriously, we would have to put in place a panel, or committee or whatever you like to call it, to look at everything and, as [REDACTED] had said, to then give Alan the opportunity to state his side of the case...*

*"[REDACTED] as the Conflict of Interest guardian had investigated the case and [REDACTED] had reached [REDACTED] conclusion. And Alan had said that he didn't - you know perfectly well what I'm trying to say, I'm going over this time and time again. If we were to take things forward and to make sure that justice was done then we needed to make sure that there was a panel in place who knew nothing about the case, who could look at it and decide...*

Q. *Decide what?*

A. *Ultimately I think to decide whether that initial finding was correct."*

9.80 We asked [REDACTED] if he had a concern about how [REDACTED]'s investigation was carried out:

*"The only concern that I could have had is that if one of the parties had said to me that they felt it had not been carried out fairly and he had not been given an opportunity to state his case.*

Q. *So that was a concern for you?*

A. *That would be a concern, yes."*

9.81 We asked [REDACTED] if he had spoken to [REDACTED] about his concern. [REDACTED] responded:

*“I think I may well have. When ██████ spoke to me to say this is what had happened and that this is why ██████ had gone to NHS England, and I’m sure I did say to ██████ that Alan had said to me that he was not happy, he’d not been offered a fair opportunity to state his case.*

Q. And what did ██████ say?

A. ██████ said that he had.”

9.82 ██████ subsequently told us that he believed ██████’s report “to be a preliminary and honest attempt to set out the details of the alleged breach.”

#### *Comment*

*As outlined above there is a clear distinction to be made between questioning the process and questioning the conclusions that have been reached. There is also a clear distinction between setting up a group to implement the findings of an investigation or to re-do the investigation.*

*████████ does not appear to have understood these important distinctions. Ultimately ██████ told us that the purpose of setting up the panel was to “decide whether the initial finding was correct”. We believe that this was indeed was ██████ motivation and is the natural reading of the email that ██████ sent to NHS England on 31 May. This was inappropriate.*

*████████ also raised issues about the process. It is clear that ██████ had these concerns because Mr Kennedy had misleadingly told ██████ that he had not had an opportunity to put his case. ██████ continued to hold these concerns even though ██████ assured ██████ that this was not the case. ██████ told us that ██████ did this because ██████ wanted to be even handed between Mr Kennedy and ██████. Mr Kennedy was someone who had just had a formal complaint about him upheld, while ██████ was the independent person who had been tasked by the CCG to carry out an independent investigation. Mr Kennedy had a clear interest in the outcome while ██████ was an independent reviewer. To give equal weight to their two viewpoints is wrong.*

**9.83** A number of interviewees took the view that Dr Bhargava was also partisan on Mr Kennedy's side following the completion of ██████████'s report. This is evident in the meeting that he had with ██████████ on 8 May. ██████████ describes Dr Bhargava's attitude at that meeting as "hostile and angry" ██████████ describes him as "unboundaried, difficult, challenging and showed a lack of insight into the role of governance in the working life of the CCG. I thought he was very hostile to ██████████ I believed he was bullying."

**9.84** In an email to ██████████ on 26 May, Dr Bhargava describes the discussion at the governing body meeting in the following terms:

*"The CDs [clinical directors] and lay members (including ██████████) met yesterday afternoon and agreed that an independent review of the process, especially Alan having a chance to put his case forward and seeing the report, was essential at the earliest.*

*No one was clear what NHSE's role or next steps were. The learning was that we need to be clear on what we expect and have agreed with an external agency/organisation before we send documents to them. Talking to ██████████ on Monday from NHSE, he gave me the impression that they were asked for advice and next steps were with the CCG."*

**9.85** Another person present at the meeting describes this as "a complete travesty". They said that the approach taken by ██████████ was endorsed by the governing body and that it was not agreed that an independent review of the situation should be carried out but that a note should be written to NHS England with that as one option (as per the note that was sent by ██████████ and ██████████ on 26 May).

**9.86** A note of the meeting produced by the head of governance states:

*"GB [governing body] members recorded their thanks to ██████████ and noted that process followed to date was reasonable and proportionate to the situation being faced."*

**9.87** Regarding the need for a further review the note states:

*“It was discussed that to date we do not know what NHS E[ngland] have done with the referral so far. They had responded to ██████████ to say that they took it seriously and that they would be writing to AK [Alan Kennedy]. AB [Amit Bhargava] also reported that he had had a discussion with ██████████ at suggested that it was outside of NHS E[ngland]’s remit and they had only been asked for HR advice. The GB [governing body] members agreed that it would be appropriate for the independent members ██████████ with the acting Chair ██████████ should write to NHS E[ngland] and formally request an update to know what they would be doing. Without this the GB [governing body] members would just be making assumptions.*

*“Depending on the response of NHS E, the CCG may need to institute its own process and that it might be appropriate to seek legal advice at that point.”*

**9.88** Dr Bhargava’s point of view is also clear from what he said at the governing body meeting and also in his email of 4 June. In that email Dr Bhargava puts Mr Kennedy’s point of view, saying that Mr Kennedy had “*not been interviewed*” and suggesting that another panel be set up “*to have a fresh look and make a recommendation after due rigour*”.

**9.89** As we have noted other members of the governing body were under the impression that Mr Kennedy had not had the opportunity to put his side of the case or that ██████████ had not spoken to him at all. In addition, none of them had seen a copy of ██████████’s report so that they were not able to judge its quality.

*Comment*

***It is clear from Dr Bhargava’s actions that rather than being independent he acted as a partisan for Mr Kennedy.***

***The situation the governing body found itself in was also a delicate one which needed sensitive handling. Discussion of personal matters relating to Mr Kennedy was not appropriate in a large meeting such as the governing body. It is important to remember that the governing body members had not seen ██████████’s report and any discussion was therefore likely to be ill-informed, particularly as some members appear to have***



*been misled by Mr Kennedy. It would have been better if they had avoided discussion of the matter and allowed the proper processes to be followed.*

### **Allegations of bullying**

9.90 As we have noted, ██████ found ██████ interactions with Dr Bhargava and the discussion with the governing body to be stressful and unpleasant experiences. ██████ wrote to ██████ of NHS England on 22 May to express ██████ concern about Dr Bhargava's "sustained efforts" to undermine the professional judgements ██████ had made in ██████ report. In particular ██████ commented that his actions in making "continued intimidating and inappropriate remarks" demonstrated a failure to uphold principles of good governance. ██████ wrote that ██████ felt it was "unacceptable to be subjected to bullying and intimidation", particularly in the context of the investigation that ██████ had carried out. ██████ told us that the meetings on 8 and 16 May were the main events that caused ██████ these concerns.

### *Comment*

*The response of the governing body to the allegations against Mr Kennedy was to try to protect their colleague. While this was to some extent understandable, it was also inappropriate. A process was being followed and that did not include the governing body and they should have avoided intervening.*

*For the governing body to act inappropriately in this way amounted to bullying.*

*Similarly, Dr Bhargava's response to ██████'s report appears to have been motivated by a desire to protect a valued colleague. It is evident from Dr Bhargava's emails that he put emphasis on putting Mr Kennedy's case forward, repeating the incorrect assumption that Mr Kennedy had not had an opportunity to put forward his case and pressing for ██████'s investigation to be re-done.*

*In fact, Dr Bhargava should have been taking a position of strict neutrality, particularly as the second in command of the organisation which was dealing with problems relating to the most senior person. He completely failed to fulfil his responsibilities in this regard.*

*It is also clear that Dr Bhargava acted inappropriately towards [REDACTED], most particularly in their meeting of 8 May where an independent witness describes him as hostile, angry and bullying.*

*Dr Bhargava's behaviour was unacceptable and we uphold the allegation of bullying.*

## **10. Overall conclusions and recommendations / going forward**

**10.1** We were asked in the terms of reference to consider four specific questions. Our conclusions on these issues are as follows.

### **Conflicts of interest arising from the relationship between the lay chair and chief officer**

**10.2** Neither the chair or the chief officer were well suited to their roles. As a result, the chair became overly executive, while the chief officer did not have the grip on management issues that he should have. The two post holders came to rely on each other and this played a part in the problems discussed in the report.

### **Whether the business interests of the lay chair created a conflict of interest for him**

**10.3** The evidence is overwhelming that Mr Kennedy's business interests created a conflict for him and that this conflict was not handled appropriately by either the CCG or Mr Kennedy.

### **Whether the CCG's governance processes during these events were in line with good governance practice and were able to function effectively**

**10.4** Notwithstanding the issues that lead up to the events, the audit chair and head of governance handled the situation well. Others, such as the chief officer and the current acting chair did not act appropriately.

### **Bullying of the whistle-blower following the raising of these issues**

**10.5** We find the allegation of bullying by the chief officer to be upheld.

## Wider issues

**10.6** We have the following comments on the wider issues flowing from our report:

- Architecture of CCGs - it is essential to get clarity on the roles of chair and chief officer. This is particularly important in a CCG that has a GP chief officer, rather than an NHS manager.
- Appointments - it seems clear that neither the chair nor chief officer were temperamentally suited to their roles. In future it would be desirable if more emphasis was placed on the importance of chairs having distance from the day to day running of the organisation and ensuring that chief officers have the necessary skills to fulfil a management role.
- Financial control - that NHS bodies have the processes in place to ensure that payments are not made if unbudgeted or the right contractual framework is absent.
- Management of conflicts - It is noticeable that in this case the conflict in question had been declared, but also that it existed for a long period of time and evolved over time. We have identified a specific recommendation relating to recording more information on conflict of interest registers. More generally it should be understood that significant commercial interests with potential suppliers to the NHS are not compatible with senior roles in an NHS body.

**10.7** The governance failings highlighted in this report are many and varied. They make a good case study for lessons on how the governance of public bodies should be carried out and what should be avoided.

## Team biographies

### **Kieran Seale**

Kieran joined Verita in 2014. He is an experienced consultant with a passion for improving public services. Following a varied career encompassing local government, government agencies and the private sector, Kieran spent five years working in NHS commissioning. He was involved in the setting up of four central London Clinical Commissioning Groups, advising on areas such as governance, risk management and conflicts of interest. Legally qualified, he has wide experience of delivering solutions to governance issues in the NHS and outside. While at Verita he has led a review of a conflict of interest issue at a CCG for NHS England and has been involved in a number of investigations into meeting government targets for Emergency Department performance and referral to treatment times for acute trusts. He also manages Verita's work supporting the British Council and the Lottery Forum in handling complaints.

### **Ed Marsden**

Ed has a clinical background in general and psychiatric nursing and NHS management. He has worked for the National Audit Office, the Department of Health and the West Kent Health Authority where he was director of performance management. He combines his responsibilities as Verita's managing director with an active role in leading complex consultancy. He worked with Kate Lampard on a lessons learnt report for the Secretary of State for Health arising from the publication of the Jimmy Savile investigations. The Serco board invited Kate and Ed to conduct an independent investigation into concerns raised about Yarl's Wood immigration removal centre. He has advised the Jersey government about the inquiry into historical child abuse. Ed is an associate of the Prime Minister's Delivery Unit where he has carried out three assignments on immigration.

### **Chris Stephens**

Christopher Stephens CBE is a corporate governance consultant. He is an experienced chairman and non-executive director with public, private and third sector bodies. In

addition, Christopher has had worldwide business experience working for a variety of multinational companies.

Currently, he is chairman of the DHL Foundation and a non-executive director of Power to Change, a charity focused on supporting community business action. From 2011 to 2016, Christopher was chairman of the Judicial Appointments Commission. In 2016, he was awarded a CBE for services to the Judiciary. Prior to this, he was a member of the Senior Salaries Review Board and a Civil Service commissioner.

His commercial non-executive director roles have included the FTSE 250 companies WSP and Holidaybreak, where he was also chairman of the Remuneration Committees. He was also chairman of Traidcraft and non-executive director of the Client Board for ING Real Estate Investment Management (now CBRE Global Investors).

Christopher's corporate career included being group human resources director at Exel (now DHL), the international logistics company, and HR roles with General Utilities, BET, Unisys, Nestle and Unilever.

He has an MA in PPE from Oxford, and a BA in Theology.

## Terms of reference

### Independent investigation into governance concerns at Crawley CCG

#### *Commissioner*

NHS England (South East) is commissioning Verita to carry out an independent investigation into allegations relating to governance issues at Crawley CCG. The allegations are raised on information provided by a whistle-blower from within the CCG.

The investigation is commissioned by [REDACTED] NHS England South East using the powers available to NHS England to investigate whistle-blowing allegations.

#### *Scope*

The investigation will examine issues relating to:

- Potential conflicts of interest arising from the relationship between the lay chair and chief officer
- Whether the business interests of the lay chair created a conflict of interest for him
- Whether the CCG's governance processes during these events were in line with good governance practice and were able to function effectively
- Bullying of the whistle-blower following the raising of these issues
- Any other relevant issues that arise during the investigation.

Although Verita's investigation is not part of a disciplinary process, the outputs of Verita's work may be used by NHS England or the CCG as part of a disciplinary process in the future.

#### *Approach*

The investigation team will carry out its work by reviewing documents and interviewing relevant personnel. This will include the members of the CCG governing body, the heads of

HR and governance in the CCG, and the NHS England liaison officer. It is envisaged that approximately 15 - 20 interviews will be necessary.

The team will follow established good practice in conducting the work, for example by offering interviewees the opportunity to be accompanied and to comment on and make amendments to the transcripts of their interview.

Interviews will be carried out at the NHS England offices in Horley.

Any significant concerns that come to light during the work will be reported immediately to [REDACTED].

#### *Investigation team*

The investigation will be carried out by Kieran Seale and Ed Marsden supported by Nicola Salmon.

#### *Experts*

The team will consider whether external expert advice should be sought. This might include seeking advice from a neutral CCG chair or chief officer.

#### *Publication*

Evidence collected by Verita in the course of the investigation, including recordings and transcripts of interviews will be kept confidential, although the report will be written on the basis that it may ultimately be published by NHS England.

June 2017



## List of interviewees

### Crawley CCG governing body

Alan Kennedy, lay chair

Dr Amit Bhargava, clinical chief officer (Accountable officer)

██████████ chief finance officer - joint post with Horsham & Mid Sussex CCG

██████████ lay member (audit)

██████████ chief operating officer, champion for special educational needs and disability

██████████ secondary care clinician

██████████ chair of clinical reference group

██████████ clinical director (equality champion)

██████████ clinical director and vice chair

██████████ GP member

██████████ lay member (public and patient engagement) (Acting chair)

██████████ independent nurse and safeguarding champion - joint post with Horsham and Mid Sussex CCG

### Crawley CCG staff

██████████ head of governance

██████████ programme director, primary care

██████████ programme director

### Horsham and Mid-Sussex governing body

██████████ lay member (audit)

██████████ chief officer

██████████ chief operating officer

## **South, Central and West Commissioning Support Unit**

██████████ HR business partner

██████████ East Kent & SASH systems National QIPP Delivery Programme (former chief operating officer, Crawley CCG - until May 2015)

## **NHS England**

██████████ director of assurance & delivery

## **Coastal West Sussex CCG**

██████████ 111 programme director (Sussex)

██████████ clinical chief officer

██████████ lay chair

## **Document list**

NHS England conflict of interest guidance

### **Crawley CCG documents**

Constitution

Annual report 2016/2017

Conflict of interest register

Executive group sign in sheets 2016 - 2017

### **Crawley CCG Policies**

Conflicts of Interest, Gifts & Hospitality, Sponsorship & Joint Working Policy

### **Correspondence**

Email correspondence between Crawley CCG and Horsham & Mid-Sussex governing body members and staff

### **Minutes**

██████████'s handwritten notes of meeting on 8 May 2017

### **Other documents**

Fusion Healthcare registration with Companies House

## Extract from Crawley CCG conflict of interest register

CCG C/ HMS / B/	Last name	First Name	Current position (s) held - i.e. Governing Body, Member practice, Employee or other	Declared Interest- (Name of the organisation and nature of business)	GP or Business Partner?	Type of interest				Date of interest		
						1. Financial Interests	2. Non-Financial Professional Interests	3. Non-Financial Personal Interests	4. Indirect interest	From	To	Action taken to mitigate risk
C	Kennedy	Alan	GB Lay Chair	Director of Fusion Healthcare Consultancy Ltd.	No	Y	/	/	/	01/01/2006	Current	Management plan in place in line with CCG policy
				Fusion Healthcare Consultancy Ltd.		/	/	/	Y	01/01/2006	Current	Management plan in place in line with CCG policy
				Member of various health related boards including: the local West Sussex Health and Wellbeing Board, NHSE Digital Urgent and Emergency Care Board, NHSE Electronic Referral Service Programme and Advisory Boards.		/	Y	/	/	01/01/2013	Current	Management plan in place in line with CCG policy
				Redwood Technology Limited		Y	/	/	/	01/01/2006	Current	Management plan in place in line with CCG policy
				Relationship with Conduit (ended 9 September 2015)		Y	/	/	/	01/01/2010	Current	Management plan in place in line with CCG policy

## Mr Kennedy's management plan

### **AK Management Plan January 2017**

#### **Nature of the interest 1**

Alan Kennedy has declared his directorship and 25% shareholding in Fusion healthcare consultancy Ltd. His wife is also a shareholder. Fusion Healthcare provides advice to clients about the NHS and connections to NHS opinion formers.

In Feb 2015 his declaration was updated to specifically mention two clients: Redwood Technology (also known as content Guru) and Conduit Ltd. Redwood had secured a small contract through NHS London to support a proof of concept pilot relating to NHS111. This initiative is outside Crawley but if successful AK noted that Redwood may have an interest in working with other NHS111 providers including Kent, Surrey and Sussex.

Conduit Ltd provide contact centre staffing support to providers of NHS 111 services outside of our area. They may in future wish to support local NHS 111 providers or other health related contact centres within Sussex.

AK as Chair of the CCG is a leader and opinion former and has access to decision makers across the NHS. There is the opportunity for information about clients to be shared and promoted above other potential providers of service, shaping opinion and influencing CCG opinion, outside of any formal procurement process. AK also has access to privileged CCG information and there is the opportunity for information about CCG commissioning intentions to be shared with the clients over and above what is in the public domain or part of market research activity. A clear management plan is therefore required for any dealings in respect of a client of Fusion Healthcare consultancy limited.

The nature of any potential benefit would be indirect and could result in additional income to Fusion Healthcare because of the perceived benefit the consultancy has provided in gaining access.

#### **Management Plan 1**

In February 2015 the management plan was agreed as "Where either of these or any future clients of my health consultancy business wish to tender directly or be a sub contractor of services within the Crawley geography I will discuss directly with [redacted] and agree a clear plan to manage any real of perceived conflicts of interest in writing where required."

In the light of the updated statutory guidance on COI and the CCG implementing an updated process this management plan now needs to be updated.

#### **Revised management plan 1:**

A declaration has been made and where clients of Fusion Healthcare are currently active as potential (or actual) providers in the local health economy, these will be specifically listed for additional transparency.

AK will undertake not to promote or champion any client with which he is working through Fusion Healthcare limited or in any other relationship. This includes referring to their services or mentioning them as potential providers In any CCG context where this information is not in the public arena. AK will declare at the earliest opportunity if CCG discussion includes a client of Fusion Healthcare and will be excluded from further discussion.

It should be explicitly noted that it is recognised that AK has valuable specialist skills and knowledge within the arena of digital healthcare and there may be times when colleagues wish to seek his advice, for example with regards to general service design. However, AK would be excluded from all formal procurements and contract discussions where a client of Fusion Healthcare may be a potential supplier of services to the CCG or any local partner CCGs.

#### Statement of interest 2

As Chair of the CCG AK is invited to be an advisory member of a number of health related boards or advisory bodies contributing to define/assure both the strategic direction and programme delivery.

Where invited clearly in the capacity of CCG Chair and in an unremunerated role, there is unlikely to be conflict. Involvement in these committees, where

we could reasonably expect committee chairs to ask for details of any conflicts of interest at the start of the meeting, should be listed for transparency but no management plan is required.

Where AK is invited to be a member of a board in a different capacity to his role as chair (i.e. he is not explicitly there to represent the CCG) or if the role is remunerated, there may be more potential for a real or perceived conflict.

This is considered to be a relatively lower risk area as there is limited potential to influence CCG procurement/commissioning activity. Any potential benefit is indirect and relates to professional reputation and status and advancing professional career.

#### Management plan 2

Membership on all committees external to the CCG, to be listed and to include the capacity in which AK is attending and whether the role is remunerated.

Where AK identifies a potential conflict could arise, this should be stated at the earliest possible opportunity and the management plan revised.

A  Medy  
Lay Chair

Lay Member for Audit

'Dr Bhargava'  
Clinical Chief Officer

Date: 2/1/16

## The Nolan principles

### 1. Selflessness

Holders of public office should act solely in terms of the public interest.

### 2. Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

### 3. Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

### 4. Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

### 5. Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

### 6. Honesty

Holders of public office should be truthful.

### 7. Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

█'s report

## **STRICTLY PRIVATE AND CONFIDENTIAL**

**Report from investigation with Alan Kennedy (AK) re: Redwood  
8<sup>th</sup> May 2017**

### **1. Background: Conflicts of Interest**

Within the NHS, a conflict of interest is defined as 'a set of circumstances by which a reasonable person would consider that an individual's ability to apply judgement or act, in the context of delivering, commissioning or assuring taxpayer funded health and social care services is, or could be, impaired or influenced by another interest they hold'.

A conflict of interest may be actual or potential; they may be:

- Financial
- Professional (non-financial)
- Personal (non-financial)
- Indirect

Interests must be declared – they don't need to be avoided but they do need to be managed.

### **2. Policy - Section 1.10.4: Options for managing conflicts of interest**

Per Crawley CCG's policy, the management of conflicts of interest, or potential conflicts, varies according to the circumstances of the individual and the specific interest identified. A management plan is drawn up which can require an individual to:

- withdraw from a meeting for the duration of an agenda item;
- continue to take part in discussions, but not take part in decision making or voting related to that interest or agenda item;
- withdraw from or not take part in specific commissioning programmes or procurements;
- have specified activities monitored by a line manager, clinical director or other designated individual, or
- (in extremis) the course of action may require an individual to step down from a particular role and/or move to another role within the CCG.

### **3. AK's management plan**

AK updated his Declaration of Interest in February 2015 to include Redwood Technologies as a client of Fusion healthcare consultancy Ltd, where he is a director and shareholder.

In January 2017, AK's management plan was updated in line with statutory guidance as follows:



**'AK will undertake not to promote or champion any client with which he is working through Fusion Healthcare limited or in any other relationship. This includes referring to their services or mentioning them as potential providers in any CCG context where this information is not in the public arena. AK will declare at the earliest opportunity if CCG discussion includes a client of Fusion Healthcare and will be excluded from further discussion.**

**It should be explicitly noted that it is recognised that AK has valuable specialist skills and knowledge within the arena of digital healthcare and there may be times when colleagues wish to seek his advice, for example with regards to general service design. However, AK would be excluded from all formal procurements and contract discussions where a client of Fusion Healthcare may be a potential supplier of services to the CCG or any local partner CCGs'**

#### **4. The circumstances of the current project**

From discussion with AK on 4<sup>th</sup> May, the following was established:

##### **i. The project**

- AK became aware of the availability of Health Foundation funding 'about 2 weeks ago'
- The purpose of the initiative is to take a tech or care intervention, something proven to work at small scale, that organisations are now ready to do at a large scale/ to demonstrate leadership across the NHS
- Health Foundation funding is for 13 months
- It is a grant and not a tender
- It does not fund overheads

##### **ii. The process**

- AK spoke to a number of people and it was iterative after that – there were phone calls and emails (see Appendix 1). AK raised the opportunity to Amit (AB) and [REDACTED] who expressed an interest in what NHS London were doing and agreed that it was worth looking at/ bringing a proposal
- [REDACTED] and [REDACTED] were put forward or volunteered to be the two CCG leads
- SCFT indicated a willingness - AK emailed [REDACTED] who replied yes
- IC24 said yes
- There were therefore a range of partners – 111, OoH etc
- AK emailed [REDACTED] from NHS London, to nominate someone from their team to see how we might shape it
- AK contacted [REDACTED] from KSS deanery
- AK contacted Redwood, who were happy to shape the proposal

- ██████████ was party to the messages and AK asked him to take the lead ██████████ did speak to Redwood but passed it back to Alan.
- There were a raft of people interested in doing a proposal but it was too early to say who would be the lead – possibly SCFT or Secamb
- The process so far has been about corralling people together, it had not been through any governance process
- AK had been leading it in the sense of gathering people together – effectively acting as a marriage broker
- It would go through a governance process once a strawman was available
- The project is not authorised at the moment because there is no one to authorise it – AK's role was about raising awareness and AE ██████████ volunteered leads
- If Secamb do not join, there is nothing to agree and no decisions to make

### iii. Why Redwood?

- Redwood are currently doing this for NHS London
- They would be able to demonstrate that their system could operate in a non-London context
- They are the only ones doing it at the moment but there would possibly be other players
- The bid requires something to already be in place so this would be a 'lift and shift'
- Without Redwood, there is no proposal

### iv. Why AK did not contact Head of Governance/ Lay Member governance to discuss

- Not a tender/ no resource impact
- Process was about gathering people together
- Info about Redwood is in the public arena
- AK contacting people for them to decide as to whether they would participate – it was AB ██████████ choice as to whether to be involved
- AK believed his actions were within his current COI management plan

## 5. Conclusion and recommendations

Whilst AK's intentions appear sound and his underlying interest is clearly to develop system wide use of digital solutions, which is one of the CCGs intentions, the main issues with this sequence of events are as follows:

- Leadership has been provided by AK; he is in a key management role within the CCG as Chair - the most senior role in the CCG - so his ability to influence or direct people's behaviour is a fundamental part of his role
- He has championed and promoted the work of Redwood (e.g. first email to SCFT)
- AK made the first contact with Redwood about this piece of work

- Whilst he states he cannot be involved in developing the bid, he puts forward Redwood's bid team for this
- AK did not exclude himself from further discussion of it; instead, he has led the formation of an informal partnership team and has met with Redwood on the bid preparation

AK did declare his interest in his first email to CCG staff (but not, however, to SCFT), dated 6<sup>th</sup> April 2017 (see Appendix 1).

In explaining his actions, AK has sought to rely on:

- The information about Redwood is in the public arena; and
- This is not a formal procurement or contract discussion

However, AK as Chair of the CCG has led a process that involves one of his clients, with whom he initiated contact, who could benefit financially from the arrangement. The substance of the conflict of interest management plan has therefore not been followed.

It should be noted that the CCGs Urgent Care team were unaware of the bid.

Per the constitution, Section 7.4 The Chair of the Governing Body, 7.4.1(h) notes that the chair is responsible for 'overseeing governance and particularly ensuring that the governing body and the wider CCG behaves with the utmost transparency and responsiveness at all times'. It is therefore constitutionally part of AKs role to demonstrate leadership to all staff and Governing Body members on the principles of good governance, openness and transparency.

**Recommendations:**

- Approach AB and [REDACTED] with the advice to ask Redwood to withdraw from the partnership (completed 4<sup>th</sup> May)
- Brief AB with regards to the decision (completed 8<sup>th</sup> May)
- Contact NHSE area team to notify them of the breach/ discuss next steps
- Head of Governance to publish anonymous announcement on website
- HR advisor to ascertain next steps with assistance from NHSE HR contacts/ area team

**APPENDIX 1**

DATE	TIMELINE OF EMAILS, TEXTS and SOME TELECONS
3 <sup>rd</sup> April 2017	<p>On 3 Apr 2017, at 16:26, KENNEDY, Alan (NHS CRAWLEY CCG) [REDACTED] wrote:            Dear [REDACTED] thank you for mtg with me the other day.</p> <p>On a different point I noticed the offer of £0.5m below from The Health Foundation to take small/ proven projects that deliver better care and develop them at scale.</p> <p>I wondered if we should pitch your One Call new technology and develop it as a full blown Patient Relationship Managements service beyond even Londons remit?</p> <p>What do you think?</p> <p>Warm Regards</p> <p>Alan</p>
5 <sup>th</sup> April 2017	<p><b>From:</b> KENNEDY, Alan (NHS CRAWLEY CCG) <b>Sent:</b> 05 April 2017 19:45 <b>To:</b> [REDACTED] [REDACTED] (SUSSEX COMMUNITY NHS FOUNDATION TRUST) <b>Subject:</b> Re: Advice</p> <p>Dear [REDACTED] could you advise if you are interested in pursuing the potential development funds mentioned below please.</p> <p>Redwood are prepared to help submit the bid but I need at least approval in principle between HMS/Crawley CCG's and SCFT.</p> <p>Warm Regards            Alan</p> <p>Sent from my iPhone</p>
6 <sup>th</sup> April 2017	<p><b>From:</b> [REDACTED]  <b>Date:</b> 6 April 2017 at 08:35:22 BST  <b>To:</b> "KENNEDY, Alan (NHS CRAWLEY CCG)" [REDACTED]  <b>Subject:</b> RE: Advice</p> <p>Dear Alan</p> <p>Apologies for the delay, yes it would be good to put in a joint bid between SCFT and the CCGs to scale up the One Call project. I am happy to support.</p> <p>Regards            [REDACTED]</p>
6 <sup>th</sup> April 2017	<p><b>From:</b> KENNEDY, Alan (NHS CRAWLEY CCG) <b>Sent:</b> 06 April 2017 17:31 <b>To:</b> BHARGAVA, Amit (NHS CRAWLEY CCG); [REDACTED]  <b>Cc:</b> [REDACTED]  <b>Subject:</b> Fwd: Advice</p> <p>Dear all [REDACTED] has confirmed that [REDACTED] s happy to support an application to the Health Foundation for up to £0.5m to take the One Call Cloud tech and roll it out at scale in similar fashion to Londons Patient Relationship Manager</p>

	<p>Whilst I can't be involved in developing the bid, Redwood have a bid team to do the leg work.</p> <p>As we both have a challenge re coordinating avoidable A&amp;E attendances and admissions away from A&amp;E I suggest this could be an important part of our financial recovery. It would also be scalable to STP if that what STP partners wished. So bidding for free £ seems an obvious thing to do.</p> <p>Someone needs to take it from here though. Maybe [REDACTED] ?</p> <p>Warm Regards</p> <p>Alan</p> <p>Sent from my iPhone</p>
<p>6<sup>th</sup> April 2017</p>	<p><b>From:</b> [REDACTED] <b>Sent:</b> 06 April 2017 17:50  <b>To:</b> KENNEDY, Alan (NHS CRAWLEY CCG) <b>Cc:</b> BHARGAVA, Amit (NHS CRAWLEY CCG); [REDACTED]  <b>Subject:</b> Re: Advice</p> <p>Sounds worthwhile. [REDACTED] is going to be our digital clinical lead. Perhaps room to rationalise this work.</p> <p>[REDACTED]</p> <p>Chair, Horsham &amp; Mid-Sussex Clinical Commissioning Group.</p> <p>Sent from my iPhone</p>
<p>6<sup>th</sup> April 2017</p>	<p>On 6 Apr 2017, at 22:54, [REDACTED] wrote:  Fully supportive and happy to liaise as this ought to be done across the urgent care and digital programmes , I'm happy for [REDACTED] to lead. These bids are very wordy as we found with the poly pharmacy one but a may deadline is achievable.  Best wishes  [REDACTED]</p> <p>Sent from my iPad</p>
<p>7<sup>th</sup> April 2017</p>	<p><b>From:</b> KENNEDY, Alan (NHS CRAWLEY CCG) <b>Sent:</b> 07 April 2017 07:45 <b>To:</b> [REDACTED]  <b>Cc:</b> [REDACTED]  BHARGAVA, Amit (NHS CRAWLEY CCG); [REDACTED]  <b>Subject:</b> Next steps</p> <p>Dear [REDACTED] can I suggest that you give [REDACTED] a call and organise a conference call to discuss what needs to be done by whom. Involving [REDACTED] and your counterpart in SCFT. [REDACTED] agreement to join the bid is in the email trail below.</p> <p>I suggest Redwoods bid team do the heavy lifting.</p> <p>May will soon hit so time is of the essence.</p> <p>I will brief him before hand.</p> <p>Warm Regards</p>

	Alan
	Sent from my iPhone
7 <sup>th</sup> April 2017	<p><b>From:</b> KENNEDY, Alan (NHS CRAWLEY CCG) [REDACTED] <b>Sent:</b> 07 April 2017 07:58 <b>To:</b> [REDACTED] &lt;<a href="mailto:[REDACTED]@Redwoodtech.com">[REDACTED]@Redwoodtech.com</a>&gt; <b>Cc:</b> [REDACTED] &lt;<a href="mailto:[REDACTED]@Redwoodtech.com">[REDACTED]@Redwoodtech.com</a>&gt; <b>Subject:</b> Fwd: Advice</p> <p>Dear [REDACTED] please note the email trail below. Sussex Community FT, HMS and Crawley CCG's are keen to work with you to submit a bid to the Health Foundation mentioned below. Deadline 17 May.</p> <p>My suggestion is to position One Call Storm as the required health care intervention that is proven/ tested at small scale and use the bid to deliver a system wide PRM on steroids. Including Crawley Urgent Care centre and HORSHAM Walk in Centre, chat bots etc</p> <p>Seems they have up to £0.5m so will pay for nhs programme costs, using agile and yours.</p> <p>It may be possible to position a NW Sussex PRM as scaleable across the Sussex STP as phase two.... but not using these bid funds using STP digital funds.</p> <p>Assuming we succeed then we can line up IC24, Secamb.</p> <p>I know [REDACTED] is busy + with STP work and you have suggested he sets up a conference call with you. But you may want to speak with him on the phone to arrange the set up call with him, [REDACTED] mentioned in the emails below.</p> <p>Warm Regards</p> <p>Alan Sent from my iPhone</p>
7 <sup>th</sup> April 2017	<p><b>07/04/17 07:59am - Text message received from Alan Kennedy:</b> 'Hi [REDACTED] can you check your emails re Health Foundation bid with Redwood HMS, Crawley and SCt please? Regards, Alan'</p>
7 <sup>th</sup> April 2017	<p><b>07 April 17 Email from [REDACTED] to Alan Kennedy</b></p> <p>I'm on leave this week but I will pick this up next week, and am happy to lead. BW, Riz</p>
7 <sup>th</sup> April 2017	<p><b>From:</b> [REDACTED] &lt;<a href="mailto:[REDACTED]@Redwoodtech.com">[REDACTED]@Redwoodtech.com</a>&gt; <b>Sent:</b> 07 April 2017 14:36 <b>To:</b> KENNEDY, Alan (NHS CRAWLEY CCG) <b>Cc:</b> [REDACTED] <b>Subject:</b> RE: Advice</p> <p>Hi Alan,</p> <p>Sure, do you have [REDACTED]'s contact details so I can set up the call?</p> <p>Kind regards, [REDACTED]</p>
25 <sup>th</sup> April 2017	<p><b>From:</b> KENNEDY, Alan (NHS CRAWLEY CCG) <b>Sent:</b> 25 April 2017 14:35 <b>To:</b> [REDACTED] <b>Subject:</b> Fw: Advice</p> <p>Dear [REDACTED] have you managed to speak with [REDACTED] re them helping us submit/write a bid?</p> <p>Warm Regards</p> <p>Alan</p>

26 <sup>th</sup> April 2017	<p><b>26/04/17 Telephone conversation between [REDACTED] and [REDACTED] (Redwood) as requested by Alan Kennedy</b> to begin the process of constructing the bid. [REDACTED] advised [REDACTED] that a bid needed to be constructed that reflected the application of Storm (Redwood product) in London's 111 Patient Relationship Manager programme. [REDACTED] agreed to speak to his senior team to start working on a proposal and would also liaise with Alan Kennedy on the details.</p>
26 <sup>th</sup> April 2017	<p><b>26 April 17 Email from [REDACTED] to Alan Kennedy</b></p> <p>I've just spoken to [REDACTED] at Redwood and [REDACTED] will now liaise with [REDACTED] to construct the bid however I think we need a more detailed conversation with yourself, SCFT and clinicians to develop the proposal. What I have asked for is an expansion to the current OneCall platform following the same blueprint as the London PRM - repeat caller ID, routing etc. but this needs to be closely aligned to what community provision we have.</p>
2 <sup>nd</sup> May 2017	<p><b>From:</b> KENNEDY, Alan (NHS CRAWLEY CCG) <b>Sent:</b> 02 May 2017 10:39 <b>To:</b> [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] @contentaura.com:</p> <p>[REDACTED] @RedwoodTechnol: Cw</p> <p>[REDACTED]</p> <p>[REDACTED] SHARGAVA, AMIT (NHS CRAWLEY CCG)</p> <p><b>Subject:</b> The Health Foundation Bid Team: Bulletin 1</p> <p>Dear all following up on last weeks messages and phone calls, I am delighted to confirm that our partnership team to submit a bid for The Health Foundation's Scaling Up Improvement initiative is confirmed.</p> <p>Our partnership comprises:</p> <ul style="list-style-type: none"> <li>- NHS London</li> <li>- Horsham and Mid Sussex CCG</li> <li>- Crawley CCG</li> <li>- Sussex Community Foundation Trust</li> <li>- Kent, Surrey and Sussex Academic Health Science Network.</li> <li>- Redwood Technology Ltd</li> </ul> <p>Thank you all for agreeing to help.</p> <p>Core Bid Team Membership:</p> <ul style="list-style-type: none"> <li>[REDACTED] HMS CCG clinical lead</li> <li>[REDACTED] Crawley CCG clinical lead</li> <li>[REDACTED] IMS/C CCG technology lead</li> <li>[REDACTED] Sussex Community FT COO</li> <li>[REDACTED] Agile Programme lead PRM NHS London</li> <li>[REDACTED] KSS AHSN Sussex lead</li> <li>[REDACTED] KSS AHSN pricing lead</li> <li>[REDACTED] KSS AHSN evaluation lead</li> </ul> <p>Other stakeholders:</p>

SRO for PRM NHS London  
 CEO Sussex Community FT  
 Dr Amit Bhargava Chief Clinical Officer Crawley CCG  
 Clinical Chair HMS CCG  
 Accountable Officer HMS CCG  
 KSS AHSN

You should all have received the link to The Health Foundation website which is:  
<http://www.health.org.uk/programmes/scaling-improvement>

Here you will find a description of this initiative and the bid documents.

Our ambition is to bid for the maximum £0.5m.

AHSN colleagues have not yet received some background information regarding the technology solution (NHS London have called 'Patient Relationship Manager') which is the tested intervention we wish to scale and spread, from London to NW Sussex and which is designed to improve the delivery of healthcare services, at pace.

I have attached NHS Londons latest summary of this PRM initiative which they presented to NHS Englands Digital Urgent and Emergency Care Board in Feb 17.

2nd May  
2017

**Diary entry re: bid preparation at Redwood**

KENNEDY, Alan (NHS CRAWLEY CCG) - Calendar - Kennedy Alan (NHS CRAWLEY CCG) - Microsoft Outl  
 Calendar Tools Appointment  
 Show As: Default C...  
 Duration: 15 minutes  
 Private  
 High Importance  
 Low Importance  
 02 May 2017  
 Tuesday  
 08:00  
 09:00  
 10:00  
 11:00  
 12:00  
 13:00  
 14:00  
 15:00  
 16:00  
 17:00  
 18:00  
 Travel  
 MHT, MLC, ATS - Alan Kennedy (Bid Preparation)  
 Redwood, Radius Court, Bracknell



## Supplementary Report

### Crawley CCG's relationship with Redwood Technologies Ltd

1. In considering the conflict of interest allegation relating to the former chair of Crawley CCG, Mr Kennedy we thought that it was important to be clear about the contractual relationship between the CCG and Redwood. However, despite looking into this issue we remain unclear as to the exact relationship between the two organisations. Below we set out the steps we undertook to understand the relationship and the conclusions that we reached.

#### First interview with [REDACTED]

2. We raised the issue of Crawley CCG's relationship with Redwood with [REDACTED] as the CCG's chief finance officer. In advance of our first interview with him on 26 July 2017 we told [REDACTED] that we were going to ask about contracts that the CCG had with Redwood. We wrote:

*"Would it please be possible for you to come to the meeting with information about the CCG's previous and current dealings with Redwood? We gather from information provided by others we have interviewed that a contract was let to them a while ago with a financial value of £1 and that this gave them access to data. We also understand that there has been a recent contract renewal. It would help to have any paperwork relating to Redwood."*

3. When we interviewed [REDACTED] told us:

*"From March 2016 the CCG<sup>1</sup> has a contract with Redwood, which is a proof of concept contract. I think, as you said in your email, the topic was for a nominal amount of £1. That was signed off by Horsham & Mid Sussex CCG."*

4. We asked about the procurement process. [REDACTED] told us:

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<sup>1</sup> In context it is not clear whether "the CCG" being referred to is Crawley or Horsham, particularly as [REDACTED] refers to the contract being "signed off" by Horsham.

*“There wasn’t a tender because there wasn’t a financial value above which we would have triggered our SFIs [Standing Financial Instructions], or tenders, and in the contract we were very clear about ensuring that from an IG [Information Governance] point of view the contract was robust, that from an IPR [Intellectual Property Rights] point of view that we covered that. Also in terms of any future obligations that we weren’t signing up to any obligations going forward.”*

5. The £1 contract with Redwood was let in March 2016. We asked when was the next time that ██████ had heard Redwood mentioned ██████ told us:

*“There was the extension to the Redwood contract, which was in February this year [2017] ... It was an extension for a year ...*

*“The conflict of interest with Alan [Kennedy] and his role was noted by the Executive Committee in the minutes and the comments in the minutes was that Alan had not had any involvement in discussions with Redwood through that period or as part of the extension.”*

6. ██████ said that the contract extension had been signed off by Crawley CCG. We asked why this was the case if it was a contract with Horsham CCG ██████ told us:

*“It was a Horsham-led contract, but it was being across the two CCGs and Sussex Community Trust, so it was talking about the north of West Sussex in the contract extension.*

*“The original contract just referred to Horsham and Mid Sussex and was only signed off by ██████ chief officer at Horsham CCG]”*

7. It should be noted that at this time the Crawley and Horsham CCG executive meetings were joint meetings in alternate months. The meeting on 9 February 2017 to which ██████ referred and where this proposal was initially brought, was a joint meeting between the two CCGs.

8. At his interview on 26 July, ██████ also provided us with a meeting minute which referred to an *“additional item regarding the one year extension to the Storm Cloud funding to Redwood Technologies which did not get raised under AOB but which required a decision*

by 24 February”. ██████ was not able to recall the origin of this minute, but the head of governance subsequently confirmed that it was from the Crawley executive group meeting on 9 March 2017 (the minute is discussed below). ██████ also provided us with a contractual document based on the NHS standard terms and conditions which states the contract value as being £1.

#### *Comment*

*We interviewed ██████ for the first time in July 2017. Given that the chair had by this time resigned over the issue of his, and the CCG’s, relationship with Redwood, we assumed that this issue would be at the forefront of the minds of staff and that it would be easy to pinpoint Crawley CCG’s relationship with Redwood. Following our interview with ██████ on 26 July 2017 our understanding was that there was a contract for £1 between Horsham CCGs and Redwood (although we accept that the interview and documentation could be interpreted to mean that the contract was with Crawley rather than Horsham). Given the nominal sum involved, this did not appear to present major governance issues.*

#### **Crawley CCG Annual Report & Accounts 2016/17**

9. Subsequent to our first interview with ██████ we examined the Crawley CCG Annual Report & Accounts for the past financial year (2016/17). Under the “*Related Party Transactions*” section (page 12) there is a reference to “*Redwood Technology Limited*”. The sum of £39,000 appears under the heading “*Payments to Related Party*” and the same sum appears under the heading “*Amounts owed to Related Party*”.

10. We emailed ██████ on 9 August 2017 to ask if he could tell us anything about this. ██████ responded by sending a copy of an invoice from Redwood to Crawley CCG ██████ told us:

*“This is the invoice refers to the quotation that was taken to the Exec committees of the CCGs in February as per the copy of the minute I left with you.” [sic]*

11. ██████ explained the appearance of Redwood in both the “*payments*” and “*amounts owed*” columns as follows:

*“The 2 39s were because it was expenditure recognised in 16/17 but not yet paid so also reported as owing.”*

12. We responded that our understanding was that the contract was for £1 and included the sections of the transcript quoted above that refer to that sum. ■ told us:

*“The contract for proof of concept was for £1 from March 2016 to Feb 2017. This quotation and subsequent invoice was in relation to the contract extension from March 2017 taken to the Executive committees of both CCGs and recorded in the minutes in February 2017. Transcript below [ie the reference to the £1 contract] refers to this and I bought copies of the MOU, quote and minute of the meeting? Happy to discuss further or provide further information if required?”*

Comment

*As we were not clear on the relationship between the CCG and Redwood, we arranged a second interview with ■.*

Second interview with ■

13. We held a second interview with ■ on 29 August 2017. We asked for clarity on the Redwood contract.

2016/17 contract

14. ■ told us that in financial year 2016/17 Horsham CCG had a contract with Redwood for the sum of £1. This was for a “scoping piece of work” relating to out of hours services. ■ told us:

*“The contract that is in place is with Horsham & Mid Sussex and Redwood and that was a contract that was signed in 2016.”*

15. ██████ told us that the contract was signed by ██████ who was the Horsham & Mid Sussex accounting officer in March 2016 and had a value of £1. ██████ said that the contract was “extended” in February 2017. ██████ told us that:

*“Part of that renewal and extension went to Horsham & Mid Sussex CCG and Crawley CCGs Joint Executive meeting. Which was the price quote, which was for £39,000.”*

16. We asked ██████ again for clarity on Crawley’s contractual position:

*“Q. Horsham had a contract in 2016/17. Did Crawley have a contract?”*

*A. No.*

*Q. How was that an extension then? It sounds like a new contract to me?”*

*A. No, the extension was for Horsham & Sussex.”*

#### *The contract extension*

17. We asked about the procurement for the extension. ██████ told us that advice was sought from the procurement team and that three quotes were sought. ██████ told us:

*“On the back of that were the three quotes that came through and the proposal put to the Joint Exec and Delivery was to use Redwood because they, in terms of the quotes, were comparative with the other two quotations but also had had that existing scoping work that had been undertaken.”*

18. ██████ told us that it had been planned to take a paper at joint executive meeting in February 2017 under any other business, however this did not happen as the meeting was not quorate by the time the item was reached. ██████, programme director urgent care, wrote an email (21 February 2017) to ██████ saying:

*“The costs for the Redwood extension were not raised under AOB for agreement and by that time the meeting was not quorate.”*

19. Having liaised with the head of governance, ██████ went on to suggest that the decision be circulated to voting members of the executive “for sign off”. ██████

provided a covering email asking for approval for a one year extension. However the email does not include any reference to the level of cost involved.

*Comment*

*It is poor practice for a decision involving the expenditure of a substantial sum of money to be made in this way as there is no opportunity for discussion and risks the decision being ‘nodded through’.*

*While this is fairly common practice in some NHS organisations, the fact that the chair of the CCG had a financial connection to the organisation concerned should have put all involved on notice to make sure that this decision was handled with particular care.*

20. In their email with the request for email sign-off, [REDACTED] wrote that the decision required is:

- *“Agreement to fund one-year extension of the existing Redwood pilot to stabilise and offer a continuation of the current improvement in performance of One Call (procurement advice was sought and 3 quotes secured as part of this process to ensure we have been fair in assessing any extension and associated risk and details of risks of changing provider for one year is set out in the document)*
- *The contract extension would allow for a technical specification to be developed as part of the CESA urgent care transformation plan ensuring technical alignment with Coastal West Sussex and East Sussex CCGs*
- *Allow for continued development with One Call to transform into the core centre for delivery of the emerging local clinical navigation hub. This aspect is supported via contract performance and Service Development Improvement Plan with SCFT.”*

21. [REDACTED] comments in [REDACTED] email, *“This would link with Alan Kennedy’s conflict of interest and therefore should not go to him”.*

Comment

*This comment confirms that there was widespread awareness of Mr Kennedy's conflict relating to this issue.*

*Mr Kennedy was not a member of the executive. It is interesting to note that it was nevertheless assumed that he would normally be included in this sort of decision.*

22. The paperwork for decision comprised a document entitled “*OneCall Transformation & Cloud MOU Review - December 2016*”. The front page of the document has two headings. The first is “Overview” and begins “*the purpose of this paper is to inform and summarise on progress since the development of the Storm Cloud Platform in OneCall North (Crawley) and also the digital transformational progress of the OneCall Service.*”

23. The paper goes on to talk about a gap analysis and examples of digital transformation. The second heading (which is underlined) says “*The intention is to inform in more detail in the following areas*”. One of the areas bulleted is “*Recommendations and Technology options going forward*”. No mention is made of Redwood, the level of expenditure to be approved, or that any particular approval is being sought.

24. The rest of the document contains technical information. On Page 36 of the document there are eight recommendations, none of which seeks authority for expenditure.

25. The final page (37) includes a table of quotes from three companies, one of which is Redwood. The cost of Redwood's bid is for a total of £380,611.67 over two years. The other two bids are for £219,708 and £229,800. There is no narrative that compares the costs or explains why the contract should be awarded to Redwood.

26. We pointed out to ██████ that the minute did not refer to the approval of £39,000 of expenditure. We also pointed out that the paper that was approved did not make it clear that expenditure was being approved. We suggested to ██████ that it was not clear what had been approved. ██████ agreed. ██████ told us:

*“I accept that normally for these proposals there would be a front cover sheet that would have gone to the Joint Exec and Delivery and for some reason there wasn’t in this case. Normally there would be a front cover sheet and it would be very clear from that.*

*“I would accept it could be clearer but I think it is clear what was being asked for in terms of the contract extension and the price quote that was attached to it.”*

#### *Comment*

*The documentation presented to the executive committee could hardly be less clear. The paper itself gives no indication that it is seeking approval for expenditure. It does not indicate the level of expenditure being approved or what the purpose of any expenditure would be.*

*No mention is made in the paperwork that the contract cost has increased from £1 to £39,000 pa - a material change. In the context of such a big change, the use of the term “contract extension” is misleading. The reasons for the change do not appear to have been highlighted to the executive.*

#### *Documentation of decision taken*

27. The process for sign-off by email was followed. The minutes of Crawley executive group of 9 March 2017 record that Dr Bhargarva, [REDACTED] and Mr Kennedy were all present at the meeting. The minutes say:

##### *“2 Matters Arising*

##### *2.1 Virtual Voting following Joint Executive and Delivery Group meeting held 09 February*

*There was an additional item regarding the one year extension to the Storm Cloud funding to Redwood Technologies which did not get raised under AOB but which required a decision by 24 February.*



*Conflict of interest declared for this item: - AK [Alan Kennedy] - Director and 25% shareholder of Fusion Healthcare Consultancy Ltd, of which Redwood Technology is a client. His wife is also a shareholder in Fusion Healthcare. This conflict was managed as AK had no part in the decision-making process.*

*Virtual voting was also carried out by email for this. Of 10 voting members, 7 responded, all of whom agreed to sign off.*

*DECISION: The Crawley Executive Group AGREED the Equality & Diversity Policy, the Equality Report and the one year extension to Storm Cloud funding for Redwood Technologies.”*

#### *Comment*

*The documentation of this decision is poor.*

*No reference is made to the sum to which the CCG is committing or which organisation is spending the money.*

*In addition, it is not clear what the CCG has committed itself to, i.e. whether the arrangement is for 2017/18 only or applies to the full services described at the end of the document.*

28. We tried to clarify whether these contractual arrangements were with Horsham CCG or Crawley CCG. We asked ██████ this in ██████ second interview and ██████ told us that “the extension was for Horsham Mid & Sussex.”

29. We pointed out to ██████ that the invoice from Redwood that he had provided to us was entitled “storm OneCall Solution for NHS Crawley CCG”. The invoice was dated 8 March 2017 for the sum of £39,000 and was raised to Crawley CCG. ██████ told us that this was “an error”. ██████ told us:

*“One of the difficulties, and it shouldn’t happen, I’m not suggesting there is an acceptable reason that it did happen, but when you have a joint management team and they work across both CCGs and 90% of what you do is the same for both CCGs, and 10% is different. Then we have a lot of recharging arrangements between the two CCGs. In this case, clearly, that’s caused a lot of problems, which shouldn’t have arisen because it should have just been paid by Horsham & Mid Sussex.”*

30. [REDACTED] subsequently told us that the reason why the payment from Crawley CCG was authorised was because *“the budget holder was told incorrectly that the budget was split 50:50 between the CCGs [ie Horsham and Crawley].”*

*Comment*

*Crawley and Horsham CCG’s work closely together and share many executive directors, including the chief finance officer. The misallocation of this invoice between the two CCGs on its own therefore, is a relatively minor matter.*

*However, this was the fourth time we had asked the chief finance officer for clarity on whether there is a contract between Crawley CCG and Redwood (twice by email and in two interviews).*

*The distinction between Redwood having a contract with Horsham CCG and one with Crawley CCG has particular significance as emphasis had been placed, not least by the chief finance officer, on the argument that Horsham had a relationship with Redwood rather than Crawley. This is for the obvious reason that the chair of Crawley CCG had a financial interest in Redwood.*

*The executive team, and the chief finance officer in particular, should have made it a priority to ensure that the distinction was maintained. Ensuring that this was done was the responsibility of the chief finance officer and not doing so represents a failure to carry out his responsibilities.*

31. We asked [REDACTED] about the related party transaction included in the Crawley CCG accounts for 2016/17. [REDACTED] explained that it was included in the 2016/17 accounts because

Crawley CCG received the invoice in 2016/17, even though it was due for payment in the current financial year (2017/18). ■ told us that the sum of £39,000 is in the column headed 'Payments to Related Party' and also in the column 'Amounts owed to Related Party' because at the close of the 2016/17 financial year it had not been paid. We asked ■ why ■ hadn't noticed that a payment was highlighted in the accounts to an organisation with which Crawley CCG had no contractual relationship. ■ told us:

*"I can't answer that, it wasn't flagged up as being an issue by anybody. Clearly it wasn't spotted, in terms of a sale, and I do have two annual reporting accounts. We have one joint audit committee - we have things alongside each other. It should have been, particularly recognising the conflict of interest which was recorded in the Minutes, in terms of Alan's role around Redwood that it should have been flagged up and picked up. Nobody had done that and queried why that was an entry in Crawley's accounts."*

#### *Relationship between Crawley CCG and Redwood*

32. The invoice entitled "storm OneCall Solution for NHS Crawley CCG" and dated 8 March 2017 was paid in full on 4 April 2017.

#### *Comment*

***Although it had been intended that Redwood would have a contract with Horsham CCG rather than Crawley CCG, the relationship became muddled.***

33. We asked ■ if ■ was concerned about this contract in the light of the relationship between the chair and Redwood. ■ told us:

*"At the time I hadn't picked up that, and I still haven't heard that Alan was promoting Redwood in any way, shape or form, and maybe I just missed that, maybe I was being naïve, I don't know. All of this direction and momentum was from Horsham & Mid Sussex"*

### *Comment*

*Despite having been made aware of Mr Kennedy's conflict, ██████ appears to have done nothing about it. The declaration should have put the whole CCG on notice to pay attention to any future relationships with Redwood. This is true of no-one more than the chief finance officer who should have been particularly sensitive to the issues that might arise where public money is involved. In failing to notice that Crawley CCG was making an unauthorised payment to Redwood, even when this was specifically highlighted in the CCGs accounts, ██████ failed to discharge his responsibilities.*

### *Payment terms*

34. The invoice covers the period from April 2017 to February 2018. The majority of the invoice refers to "Monthly fees (April 2017 - February 2018)". We asked ██████ if it was usual to pay for services in full in advance. ██████ told us:

*"it wouldn't be unusual for us to pay, based on an MOU, or contract extension, to pay that in advance"*

### *Comment*

*The payment terms were generous to Redwood. It seems to us unusual for a CCG to pay a monthly fee spread throughout the year in one go right at the beginning of the year.*

### *Financial control*

35. The full value of the invoice was paid on the second working day of the 2017/18 financial year. The chief finance officer told us that Crawley CCG had no relationship with Redwood prior to that point.

## Comment

*The payment of the full sum by the wrong organisation within a couple of days of the start of the financial year raises a number of questions of financial control. These include:*

- *How was the payment authorised even though it was unbudgeted by Crawley CCG?*
- *What controls exist to stop the CCG making payments to other organisations which it doesn't have contractual arrangements with?*
- *How was it administratively possible for Crawley CCG to make a payment to an organisation which it had no previous dealings with so quickly?*

## Comparison between Redwood quote and invoice

36. Appended to the document is a quotation from Redwood for a “*storm OneCall Solution for NHS Horsham & Mid Sussex CCG*” dated 27 February 2017. It uses the same quotation reference RPQ09478 v4. It quotes set-up costs of £11,685 and monthly costs of £4,486.25.

37. We compared this quote with the invoice dated 8 March 2017 that was paid by Crawley CCG. This appears to represent twelve monthly payments and the set-up cost.

38. The “*recommendations*” section of the paper says that “*a short term technology solution is required*” and that “*the short term option will need to be in place from April 2017 with a 1 year contract with an additional year that would lead up to the proposed launch of the revised 111 service in April 2019*”. It goes on to provide quotes which are described as “*current high level market quotations to deliver a cloud based call queuing/routing system*”. The quotes are for provision of a service over two years:

- Redwood - £380,611,67
- Supplier B - £219, 708
- Supplier C - £229,800.

## *Comment*

*The documentation is unclear but it would appear that the quotation from Redwood is substantially more expensive than the alternatives. The paper makes no reference to this or its implications.*

*There is no other reference to quotes from competitors in the paperwork. ██████ told us that three quotes were obtained and included in the documentation. It is difficult to reconcile these with ██████'s contention that the quote from Redwood was "comparative" with the other two.*

## *Concluding comment*

*This issue demonstrates failings at a number of levels:*

- *Poor contracting practice*
- *Poor financial governance (eg documentation of expenditure approvals)*
- *Poor financial control*
- *A failure by the chief finance officer to respond appropriately to the chair's conflict of interest declaration.*

*These failings would be disappointing in any organisation. When they relate to a supplier which has a financial relationship with the chair of the CCG, they give serious cause for concern.*

*In our conversations with the chief finance officer, ██████ has not demonstrated a grip on these issues. Despite being given advance warning, ██████ has been unprepared and unable to explain the circumstances behind these issues. ██████ appeared to have given no consideration to how the issue of the wrong payment might be resolved (in cash or accounting terms), although ██████ has told us that this has now been addressed. We found ██████ explanations confused and unclear.*