

**NHS COMMISSIONING BOARD AUTHORITY**

**Title:** APPROVAL OF POLICIES: DECLARATION OF INTEREST

**Clearance:** Bill McCarthy, NHS Commissioning Board - Managing Director

**Purpose of Paper:** The NHS Commissioning Board Authority (NHS CBA) must have in place principles and procedures for minimising, managing and registering potential conflicts of interests, which could be deemed or assumed to affect the decisions made by those involved in the business of the Authority. These decisions could include awarding contracts, procurement, policy, employment and other decisions.

The Authority board members covered by this policy should not allow their judgement or integrity to be compromised. They should be, and be seen to be, honest and objective in the exercise of their duties and should understand fully their terms of appointment, duties and responsibilities.

The proposed Declarations of Interest documentation combined with the relevant sections of the proposed Standing Orders (and the proposed Standards of Business Conduct, to be submitted to the next board meeting) will fully address this matter.

**Key Issues and Recommendations:** The proposed Declarations of Interest documentation aims to clearly explain the issues and the requirements on board members. Board members need to be satisfied that the documentation fulfils this requirement.

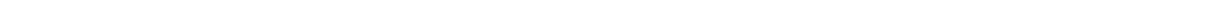
**Actions Required by Board Members:**

1. To approve the Declarations of Interest documentation.

# **The NHS Commissioning Board Authority**

## **DECLARATION OF INTEREST POLICY**

**30 November 2011**



# DECLARATION OF INTEREST POLICY FOR THE NHS COMMISSIONING BOARD AUTHORITY

## Introduction

Members of the NHS Commissioning Board Authority (the Authority) will need to be aware of the standards of conduct that are required from a publicly funded body that carries out public functions. They will have a duty to act with integrity, impartiality and honesty regarding their access to public funds and their private interests. Authority board members should follow the Seven Principles of Public Life as set out by the Committee on Standards in Public Life (the "**Nolan Principles**").

In addition to the Nolan Principles, this Declaration of Interest Policy should be seen in the context of the regulatory framework that governs the policies and operations of the Authority, including the 'Code of Conduct: Code of Accountability in the NHS (DH 2004)', the 'Code of Accountability for NHS Boards' and the 'Code of Conduct for NHS Managers' (DH 2002) and standards of good business and practice.

The Authority needs to have in place principles and procedures for minimising, managing and registering potential conflicts of interests that could be deemed or assumed to affect the decisions made by those involved in the business of the Authority. These decisions could include awarding contracts, procurement, policy, employment and other decisions.

The board members covered by this policy should not allow their judgement or integrity to be compromised. They should be, and be seen to be, honest and objective in the exercise of their duties and should understand fully their terms of appointment, duties and responsibilities.

This Disclosure of Interest Policy will be applicable to:

- Executive and Non-Executive members of the Authority and
- any advisory committees appointed by the board of the Authority, including the Audit Committee and the Remuneration and Terms of Service Committee. This also includes temporary members, and members of any sub-committees that the board may, from time to time, establish.

## Purpose of this policy

This document describes the Authority's policy in relation to the identification and management of conflicts of interest. Adherence to this Declaration of Interest Policy by Authority board members is mandatory in order to identify and manage current or potential conflicts that may arise between the interests of the Authority and the personal interests, associations and relationships of Authority board members.

Failure to adhere to this Declaration of Interest policy may constitute the criminal offence of fraud, as an individual could be gaining unfair advantages or financial rewards for himself or a family member / friend or associate. Any suspicion that a relevant Personal Interest may not have been declared should be reported to the Authority's Board Secretary.

Board members are required to declare any Personal Interests that may arise in connection with the business of the Authority in accordance with the policy terms set out below:

### 1. DEFINITIONS

1.1 For the purpose of this policy the following terms shall have the meanings set out as follows:

**"Close Association"** means someone with whom the board member is in regular contact with over a period of time with so that the person is more than an acquaintance.

**"Declaration of Interests Form"** has the meaning given to it at paragraph 2.4 below;

<b>"Authority board member"</b>	means any member of the Authority board;
<b>"Authority Business"</b>	means any subject of discussion or debate relating to the duties and roles of the Authority including its preparatory work relating to Clinical Commissioning Groups or direct commissioning and any contract entered into by the Authority for goods or services either existing or potential;
<b>"Non-Conflicted Members"</b>	means those Authority board members who have no conflicting interests, either directly or indirectly, in the matters of Authority Business which are subject to discussion and/or decision by the Authority in accordance with this policy;
<b>"Personal Interest"</b>	has the meaning given to it at paragraph 2.3 below;
<b>"Prejudicial Interest"</b>	means an interest that a member of the public, who knew the relevant facts, would reasonably consider to be so significant that it is likely to prejudice the Authority board member's judgement of what is in the public interest and as may be further described in Appendix B; and
<b>"Register of Interests"</b>	has the meaning given to it at paragraph 2.6 below;
<b>"Relevant Person"</b>	means a member of the Authority board or their representative family, including: <ul style="list-style-type: none"> <li>• a partner (someone who is married to, a civil partner or someone with whom the Authority board member lives with in a similar capacity);</li> <li>• a parent or parent in law;</li> <li>• a son or daughter or stepson or step daughter;</li> <li>• the child of a partner;</li> <li>• a brother or sister;</li> <li>• a brother or sister of the member's partner;</li> <li>• a grandparent and/ or a grand child;</li> <li>• an uncle or aunt;</li> <li>• a nephew or niece; and</li> <li>• the partners of the above.</li> </ul>

## 2. DISCLOSURE OF INTEREST

- 2.1 Authority board members will take all reasonable steps to identify conflicts of interest (including without limitation, any conflict which may arise by virtue of an Authority board member also holding a role within any other NHS Body) that arises or may arise in the course of the Authority providing any services or the delivery of the Authority Business. Authority board members are not required to declare all interests they may have outside of the Authority, but rather those interests that relate to or could impact upon the Authority Business. Authority board members should register all relevant interests in accordance with paragraph 2.4 below and should also declare any Personal Interest when dealing with or discussing a matter to which it is pertinent.
- 2.2 Authority board members are required to declare any Personal Interest in any matter of Authority Business that may directly or indirectly give rise to a conflict or a potential for conflict of interest or duty. Additionally all Authority board members and committee members of the Authority are required to comply with its Standing Orders (SOs) and Standing Financial Instructions (SFIs). Together with the Schedule of Reservation of Powers and Delegation of Powers the SOs and SFIs provide the regulatory and

business framework under which the Authority operates and conducts business. The SOs give the requirement to adhere to the Authority Standards of Business Conduct Policy, to declare interests and to keep a register of interests. Compliance with SOs and SFIs is mandatory.

- 2.3 An Authority board member is considered to have a Personal Interest in a matter of Authority Business where that Authority board member or any Relevant Person and/or Close Association to the Authority board member:
- 2.3.1 is a director (including non-executive directorships), shareholder, partner or employee or otherwise has a position of ownership (all or part), control or management of a Private Company or PLC, including a business which holds a contract with the Authority or has the potential to enter into contracts with the Authority;
  - 2.3.2 holds a position of authority within a charity or voluntary organisation in the health and social care field;
  - 2.3.3 is likely to make a financial gain, or avoid a financial loss, through the matter;
  - 2.3.4 has an interest in the outcome of a matter that is distinct from the Authority's interest;
  - 2.3.5 has a financial or other incentive to favour the interest of another party or group over the interests of the Authority; or
  - 2.3.6 has an interest external to the Authority in the delivery or commissioning of any of the following areas of health activity: Clinical Commissioning; Local Authority interaction with the health sector (including without limitation Health & Wellbeing Boards); Primary and/or Community Care; Secondary Care; Mental Health; Specialised Commissioning; or association with any part of a consortium or partnership engaged in the delivery of healthcare.
- 2.4 Any declaration of interest made pursuant to this policy should be made by completing the form attached at Appendix A to this policy (the "**Declaration of Interests Form**") and sending this to the Board Secretary on behalf of the Authority board. The relevant Authority board member should carefully consider whether they feel they could participate in a meeting to discuss the relevant matter in which they have a Personal Interest without being influenced by their other interest to the detriment of patients, the taxpayer, or the Authority.
- If any Authority board member is unsure as to whether an interest should be declared then he or she should seek guidance from the Authority's Board Secretary or if relevant from the committee or sub-committee chairperson.
- 2.5 Following receipt of the Declaration of Interests Form, the Authority board shall consider the nature, scale or complexity of the interest declared and the risk that the conflict of interest may adversely influence the interests of patients, taxpayers or the Authority, in order to determine whether the interest is:
- 2.5.1 non-prejudicial to the public interest so as to allow the Authority board member to remain a member of the Authority and to continue to be involved in discussions regarding that element of the Authority Business in which the Authority board member has an interest;
  - 2.5.2 a Prejudicial Interest, however the Authority board are willing to authorise the Authority board member to remain involved in the Authority Business on a conditional basis as set out in paragraph 3 below;

- 2.5.3 so significant so as to be deemed as a Prejudicial Interest and to require the Authority board member to be prohibited from all discussions related to the issue of Authority Business that gave rise to the conflict; or
  - 2.5.4 a Prejudicial Interest such that the Authority considers that the only option available to resolve the conflict is that the Authority board member should be removed from the Authority board.
- 2.6 When first appointed to the Authority board, Authority board members will be asked to read and comply with this policy and complete and sign a Declaration of Interests Form if relevant. A register will be held by the Authority to record disclosures (the "**Register of Interests**"). Authority board members who appear on the register will be required to ensure that entries relating to them in the Register of Interests are accurate, complete and up to date. Authority board members will declare interests where appropriate during the course of their duties and must notify the Authority board immediately or at the earliest opportunity of all changes to the information disclosed. Following any changes in circumstances Authority board members will be asked to complete and sign a new Declaration of Interests Form if relevant.
- 2.7 The Register of Interests will be kept at the Authority and will set out:
- 2.7.1 names of individuals and details of the interest which were declared on appointment, as the interest first arises or through an annual declaration update; and
  - 2.7.2 names of individuals who have declared interests at meetings giving dates, details of the interest declared and whether the Authority board member took part in the relevant part of the meeting.
- 2.8 The Register of Interests will be kept up to date by the Authority Board Secretary and reviewed by the Authority board yearly. The Register of Interests will be available to the public and will be published on the Authority's public website.
- 2.9 When a declared interest ceases to be relevant, the respective Authority board member will inform the Authority Board Secretary so that it can be removed from the Register of Interests.

### 3. **AUTHORISATION OF AN AUTHORITY BOARD MEMBER WITH A PREJUDICIAL INTEREST**

- 3.1 The Authority board may, by way of a majority vote of the Non-Conflicted Members (provided that they constitute a quorum), authorise an Authority board member who has a Prejudicial Interest in an aspect of Authority Business to continue to be involved in that matter of Authority Business subject to the terms of this paragraph 3.
- 3.2 Where the Authority board grants authorisation pursuant to paragraph 3.1 above the Non-Conflicted Members may impose conditions upon the relevant Authority board member's attendance and involvement at any meetings at which the Authority Business in which they have a Prejudicial Interest may be discussed, which may include the following:
- 3.2.1 that they shall be entitled to make representations, answer questions and give evidence, however, they will be expected to leave the room as soon as they have finished making representations, giving evidence or answering questions and before any debate starts; and/or
  - 3.2.2 they shall not be entitled to cast a vote on that item of Authority Business in which they have an interest; and/or
  - 3.2.3 that they will sign a confidentiality agreement with the Authority to confirm that they will not discuss any issues regarding that matter of Authority Business with any Close Association or Relevant Person; and/or

- 3.2.4 such other terms for the purposes of dealing with the conflict as the Non-Conflicted Members think fit.
- 3.3 The Authority board member who is the subject of the conflict shall be obliged to conduct themselves in accordance with any terms and conditions imposed by the Non-Conflicted Members in respect of the conflict.
- 3.4 The Non-Conflicted Members may revoke or vary the authorisation granted under paragraph 3.1 above at any time.

**Declaration of Interest**

Note: A Declaration of Interest must be submitted by an Authority board member to the Authority Board Secretary on appointment as an Authority board member, reviewed annually and also in the event that any Personal Interest or potential Personal Interest arises during the course of their involvement with the Authority.

NAME:	DESIGNATION:
<p>NATURE OF INTEREST:</p> <p>(Please write none if applicable)</p> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <p>Signature _____ Date: _____</p>	

Please identify any actual or potential Personal Interest that may arise as a consequence of your role as a board member of the Authority and how you propose that these will be dealt with.

Some examples of circumstances in which potential conflicts could arise are set out at Appendix B below.

A conflict of interest shall not arise solely by virtue of a person's employment or engagement by an NHS Trust, Primary Care Trust, Strategic Health Authority or other NHS body (although representatives with these interests are requested to disclose such relationships for information purposes only).



## Examples of Conflicts of Interest

Scenario	Declaration of Interest Required (Y/N)	Prejudicial Interest?	Authorisation by Authority board Appropriate?	Disqualification from Involvement in matter of Interest appropriate?	Removal from Authority board
<p>Authority board member (or a Relevant Person or Close Association) is a director, shareholder, employee or partner of an entity that has an interest in bidding for a contract for services that is being put out to tender by the Authority.</p>	<p>Yes – when matter or any related issues arise or are discussed.</p>	<p>Yes.</p>	<p>Yes, in part. Authority board member may be able to provide valuable insight into the development of a service specification at the outset of the process – but this could create procurement issues if the Authority board member subsequently bids against this specification.</p>	<p>Yes – depending on circumstances this should be considered.</p>	<p>No - situational conflict</p>

Scenario	Declaration of Interest Required (Y/N)	Prejudicial Interest?	Authorisation by Authority board Appropriate?	Disqualification from Involvement in matter of Interest appropriate?	Removal from Authority board
Authority is considering redundancies that may affect the Authority board member or a Relevant Person or a person with a Close Association to the Authority board member.	Yes, when the matter or related issues arise or are discussed.	Potentially, depending on the connection with the Relevant Person/Close Association.	Yes – depending on the connection with the Relevant Person/Close Association.	To be considered on a case by case basis depending on the connection with the Relevant Person /Close Association.	No - situational conflict.
Authority board member is an existing director or partner in one or more potential providers of services to the Authority or to a shadow CCG over which the NHS Commissioning Board will have oversight, subject to the passage of the Health and Social Care Bill.	Yes - on appointment.	Yes, potentially.	No.	Yes – on situation by situation basis depending on their interest and the matter being discussed. The Authority board member should be required to re-declare their interest prior to any such discussion each time the conflict arises.	Where it is likely that there is a potential for a high number of conflicts to arise in respect of a particular Authority board member which will have a detrimental impact on their involvement, the Authority should consider whether it is appropriate and in the interests of the Authority for that person to remain a member of the Authority or if there are practical steps that can be taken to manage the conflicts in a longer term basis.
Authority board member or Relevant Person or Close Association holds a contract with or is a director/shareholder/employee of a company or party to a partnership which holds a	Yes – on appointment.	Yes - situational interest in relation to matters relating to that contract.	No.	Yes	No – situational conflict.

Scenario	Declaration of Interest Required (Y/N)	Prejudicial Interest?	Authorisation by Authority board Appropriate?	Disqualification from Involvement in matter of Interest appropriate?	Removal from Authority board
contract with the Authority or with a shadow CCG over which the NHS Commissioning Board will have oversight, subject to the passage of the Health and Social Care Bill.					