

# **Managing Conflicts of Interest in the NHS: A Consultation**

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**Directorate**

Medical	Operations and Information	Specialised Commissioning
Nursing	Trans. & Corp. Ops.	<b>Commissioning Strategy</b>
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**Document Status**

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## **Managing Conflicts of Interest in the NHS: A Consultation**

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Prepared by: Conflicts of Interest Task and Finish Group Secretariat

### **Equality and Health Inequalities statement**

Promoting equality and addressing health inequalities are at the heart of NHS England's values. Throughout the development of the policies and processes cited in this document, we have:

- Given due regard to the need to eliminate discrimination, harassment and victimisation, to advance equality of opportunity, and to foster good relations between people who share a relevant protected characteristic (as cited under the Equality Act 2010) and those who do not share it; and
- Given regard to the need to reduce inequalities between patients in access to, and outcomes from healthcare services and to ensure services are provided in an integrated way where this might reduce health inequalities.

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## Introduction from Sir Malcolm Grant

The public rightly expect the highest standards of behaviour in the NHS. An important component of this is that decisions involving expenditure of NHS funds should never be influenced by expectations of private gain. This is a major issue for public confidence. The budget is enormous. The NHS in England spends over £120bn a year, most of it through the organisation that I chair, NHS England, and the remainder through the Department of Health and its other arm's length bodies.

Although the public may view the NHS as a model of a single payer and a single provider, the actual commissioning and delivery of NHS healthcare in England is undertaken through 209 clinical commissioning groups, over 200 trusts responsible for hospitals, mental and community health, over 7,800 GP practices, more than 11,000 community pharmacies, 10,000 or so dentist practices, and a significant number of other private, independent and third sector organisations. Although there is a well-developed understanding across the system of the need to manage potential conflicts of interest carefully and responsibly, there is also widespread variation in the rules adopted by employees of NHS commissioners and all those working in NHS funded services, and their operation in practice.

The time is right for a fundamental review, to consider particular pressure points and to refresh the rules and processes so as to ensure more uniformity and enhanced transparency across the NHS. It is important not only for those who work in the NHS but also those who deal with the NHS, including suppliers of medicines and devices, of equipment and services. The NHS makes up a very large market for suppliers, and needs to have proper safeguards against improper influence and inducements.

Potential conflict of interest is unavoidable in any complex system through which money flows. In the NHS it is institutionalised in some contexts, such as the clinical leadership of local commissioning arrangements for general practice. The modern NHS relies on partnership and collaboration. Clinicians who deliver care are involved in making decisions about how it is organised. We are fostering an environment of partnership between the NHS and industry to develop innovations which will deliver better care. Through our New Care Models programme we are encouraging providers to collaborate more closely with each other, and with commissioners of care.

The central issue for us is therefore the proper management of potential conflicts of interest, to ensure that they do not crystallise into situations involving an actual conflict of interest with the risk that personal interests will prevail over the interests of the NHS. That is why the national NHS organisations have come together to consider the current arrangements for managing conflicts of interest across the NHS, and to propose improvements. We have done this by establishing a Task and Finish Group, with broad representation not only from our own organisations but also from across a wide range of external interest and expertise, to ensure that we capture best practice wherever it can be found, and that we develop a common understanding with those who deal regularly with the NHS as contractors, suppliers, research sponsors or donors.

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I believe the proposals that the Task and Finish Group has developed, which are presented in this document for consultation, will help deliver the required probity and transparency. I believe that the outputs and successful implementation of this work will enable the NHS to be a world leader on managing conflicts of interest.

I am immensely grateful to all members of the Task and Finish Group for their time and contribution to the development of the proposals in this document. We look forward to receiving views on these proposals from all interested parties - organisations, individuals working in NHS funded services, patients and the wider general public – to allow us to review them further, refine them, and ultimately commend them for adoption across the health system in England.



A handwritten signature in black ink, which reads "Malcolm Grant". The signature is written in a cursive, flowing style.

**Sir Malcolm Grant CBE, Chairman, NHS England**

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**Members of the Task and Finish Group**

<b>Name</b>	<b>Role</b>	<b>Organisation</b>
Malcolm Grant (Chair)	Chair	NHS England
Harry Cayton	Chief Executive	Professional Standards Authority
John Chisholm	Chair, Medical Ethics Committee	British Medical Association
Niall Dickson	Chief Executive	General Medical Council
Ian Dodge	National Director of Commissioning Strategy	NHS England
Peter Ellingworth	Chief Executive	Association of British Healthcare Industries
Tamara Finkelstein	Chief Operating Officer	Department of Health
Fiona Godlee	Editor in Chief	British Medical Journal
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Gillian Leng	Deputy Chief Executive	National Institute for Health and Care Excellence
Arvind Madan	Director of Primary Care	NHS England
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Gerry Murphy	Chair of the Audit and Risk Committee	Department of Health
Sarah Pickup	Deputy Chief Executive	Local Government Association
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Peter Wyman	Chair	Care Quality Commission

## Background

### What is the issue we are trying to tackle?

- 1 The success and long term prospects of the NHS rely on greater collaboration and partnership working between public, private and third sector bodies. Therefore, just like any other complex system, potential conflicts of interest are often inherent in the way in which health care services are arranged and delivered.
- 2 There have long been concerns as to whether conflicts of interest are uniformly well managed across the health system, reinforced by some recent media coverage of instances of improper personal profit at NHS expense. The way that the NHS works is changing, which increases the possibility of conflicts of interest arising, for example:
  - We want clinicians to have a greater say in how care is organised and provided. A specific example is the involvement of General Practitioners in the commissioning of services as members of Clinical Commissioning Groups. We believe that this level of clinical involvement in decision making is essential for improving services – but it creates an inherent potential for conflicts of interests as those involved in buying the service also provide a service.
  - We want to create new models of care that are organised and integrated around patients. This means breaking down some of the traditional barriers between commissioners and providers of services, supporting closer collaboration between organisations.
  - We want the NHS to be at the leading edge of research and innovation – to rapidly adopt innovative practices where they can offer benefit to the patient and the taxpayer. This means fostering close partnerships with industry and academia, and collaboration through from proof of concept to bringing products to market.
- 3 These circumstances give rise to potential conflicts of interest and the proposals in this document are designed to manage these and facilitate effective partnership working.
- 4 This work will primarily support staff to manage interests appropriately, encouraging the right behaviours whilst also enabling staff and organisations to identify and manage inappropriate behaviour. We need to make clear what is and is not acceptable.

### What is the scale of the issue?

- 5 One of the problems with the ways in which the NHS currently manages conflicts of interest is that information about how this is done is not presented consistently and coherently in a publicly accessible way. As such, there is a lack of empirical evidence in this area which makes the scale of any problems difficult to quantify. However, from what we do know legitimate issues can arise.

- 6 For instance:
- We know from the Carter Review<sup>1</sup> that there are widespread concerns that NHS staff are being inappropriately lobbied by industry.
  - Information from the Association of British Pharmaceutical Industries ('ABPI') Disclosure UK database<sup>2</sup> tells us that the pharmaceutical industry made transfers of value (payments and benefits in kind) of £340.3 million in 2015 whilst working with health professionals and organisations. The majority of such payments were to fund research. Around 30% of health professionals refused consent for their names to be published as part of this voluntary initiative.
  - The National Audit Office ('NAO')<sup>3</sup> has noted that developments in the health service, in particular new arrangements for co-commissioning primary care services increases risk around conflicts of interest.
  - The national press has also reported isolated, but significant and worrying, allegations of criminal behaviour by NHS staff relating to inappropriate management of conflicts of interest.
  - NHS Protect has also investigated and prosecuted cases of fraud and corruption where conflicts of interest issues occurred.<sup>4</sup>
- 7 Given this context, a system wide response is required, which we present in this consultation for wider views.

### Who is this work aimed at?

- 8 Our starting point is ensuring appropriate use of taxpayer's money and the responsibility of the NHS and those providing care to NHS patients to justify the use of public funds.
- 9 This work is intended to support, not replace good judgement by individuals and organisations. Whilst we make clear proposals on the principles and rules our expectation is that all people working within NHS funded services take personal responsibility for identifying, declaring and managing conflicts of interest.
- 10 Throughout this document we make regular reference to 'organisations' and 'staff'. For clarity, when we use 'organisation' we mean any formal or informal body that is commissioning or under contract to provide services which are funded by the NHS (including but not limited to NHS Trusts, General Practices, other primary care providers, and other private, independent and third sector organisations).
- 11 In the same context, 'staff' means any person who is commissioning or providing care which is funded by the NHS, regardless of whether they are directly or indirectly employed by an NHS body (including but not limited to staff employed

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<sup>1</sup> Department of Health. Review of Operational Productivity in NHS providers - independent report for the Department of Health by Lord Carter of Coles. Interim Report. June 2015. Accessible at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/434202/carter-interim-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/434202/carter-interim-report.pdf)

<sup>2</sup> [www.disclosureuk.org.uk](http://www.disclosureuk.org.uk)

<sup>3</sup> NAO. Managing conflicts of interest in NHS clinical commissioning groups. September 2015. Accessible at:

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

<sup>4</sup> See, for example, Operating theatre experts jailed for £430K+ fraud conspiracy against NHS. September 2014. Accessible at: <http://www.nhsbsa.nhs.uk/4669.aspx>

by NHS Trusts, or contractor professions such as GPs, pharmacists, optometrists and dentists).

- 12 We want to clarify and ensure the consistent application of rules and principles regarding conflicts of interest across the health system. This consultation document mainly describes the rules and principles which it is proposed would apply to NHS bodies. The Task and Finish Group recognised that where organisations deliver a mix of services to private paying clients, and conduct NHS funded work, then this potentially poses challenges in implementing these proposals. However, we believe many of the underlying principles should also be applied to non NHS providers in relation to the delivery of NHS funded services (with amendments where appropriate). We seek views on this in the 'Conclusions' section of this consultation.

### What have we already done?

- 13 The proposals set out in this consultation are part of a package of reforms across the health system to address issues around conflicts of interest.
- 14 In April 2016 a new clause was included in the NHS Standard Contract around Conflicts of Interest and Transparency on Gifts and Hospitality, requiring providers under the contract to disclose and publish more information around actual and potential conflicts<sup>5</sup>. The Standard Contract has also been supplemented by tough anti-crime obligations which apply to commissioners and providers of services under it.<sup>6</sup> Provisions in the Standard Contract will be revised in line with the outcomes of this consultation
- 15 In June 2016 NHS England published, following a public engagement exercise, significantly strengthened guidance to Clinical Commissioning Groups ('CCGs') on Management of Conflicts of Interest<sup>7</sup> designed to increase public confidence in the propriety of decision-making. The CCG guidance will be refreshed in line with the outcome of this consultation.
- 16 In June 2016 the ABPI launched its Disclosure UK database<sup>8</sup> which details benefits or payments made to NHS staff and organisations during 2015 by the pharmaceutical industry. This database is publicly available and outlines payments for services including: speaking at and chairing meetings, training services, and, participation at advisory board meetings. The majority of payments relate to research and development activity – predominantly clinical trials and at launch: £229m of the £340m of payments disclosed were for these activities. This initiative is a significant step towards greater openness and transparency.

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<sup>5</sup> NHS England. NHS Standard Contract 16/17. April 2016. Accessible at: <https://www.england.nhs.uk/nhs-standard-contract/16-17/>

<sup>6</sup> NHS Protect. Standards for commissioners 2016-17: Fraud, bribery and corruption. Accessible at: <http://www.nhsbsa.nhs.uk/4883.aspx> and NHS Protect. Standards for providers 2016-17: Fraud, bribery and corruption. Mar 2016. Accessible at: <http://www.nhsbsa.nhs.uk/4882.aspx>

<sup>7</sup> NHS England. Conflicts of interest management. Revised statutory guidance for CCGs. June 2016. Accessible at: <https://www.england.nhs.uk/commissioning/pc-co-comms/col/>

<sup>8</sup> ABPI. Disclosure UK Database. July 2016. Accessible at: <http://www.abpi.org.uk/our-work/disclosure/Pages/DocumentLibrary.aspx>

17 Under the ABPI scheme individual healthcare professionals can currently withhold permission for their details to be disclosed. However, for the reasons set out in this consultation, we would expect staff and organisations across the health system to consent to disclosures being made public. Some major pharmaceutical companies (for example GSK<sup>9</sup>) have made clear public statements that they will not work with health professionals who refuse consent for payment information to be published. We fully support this move and will consider whether similar approaches could and should be pursued in the NHS through the contractual arrangements we have in place. We return to this issue in the ‘Publication and transparency’ section of this consultation.

18 Subject to the outcomes of this consultation it is likely that information published by organisations across the health system about their activities, and those of their staff, will match or in some cases exceed that covered in Disclosure UK. This further supports the case for healthcare professionals and organisations within the scope of the ABPI scheme to act in compliance with it.

### **Who has developed the proposals in this consultation?**

19 In March 2016, in a move supported by the Five Year Forward View Board comprising the Chief Executives of the Arm’s Length Bodies<sup>10</sup>, the NHS England Board announced the mobilisation of a cross-system Task and Finish Group, to be chaired by Sir Malcolm Grant, chairman of NHS England.

20 Over the course of the summer the Task and Finish Group has been developing proposals around conflicts of interest management that would strengthen public confidence and ensure that the NHS can:

- Actively manage conflicts of interest and associated issues of gifts, hospitality, other payments and influence
- Provide the public with accessible information so that they can see what is happening and, where appropriate, ask questions
- Proactively support individuals to ensure that they know what is and is not acceptable – to prevent wrongdoing from occurring
- Take firm and decisive action when organisational or individual wrongdoing is discovered – including where appropriate; disciplinary action, legal action, and professional regulatory action

21 More information about the membership of the Task and Finish Group, and its Terms of Reference, is accessible from the NHS England website.<sup>11</sup>

### **How has the Task and Finish Group approached this work?**

22 The Task and Finish Group conducted an evidence review of current approaches to conflicts of interest management by taking a sample of NHS organisations as well as relevant policies adopted by health Arm’s Length Bodies. We also looked at wider public sector, and international practice.

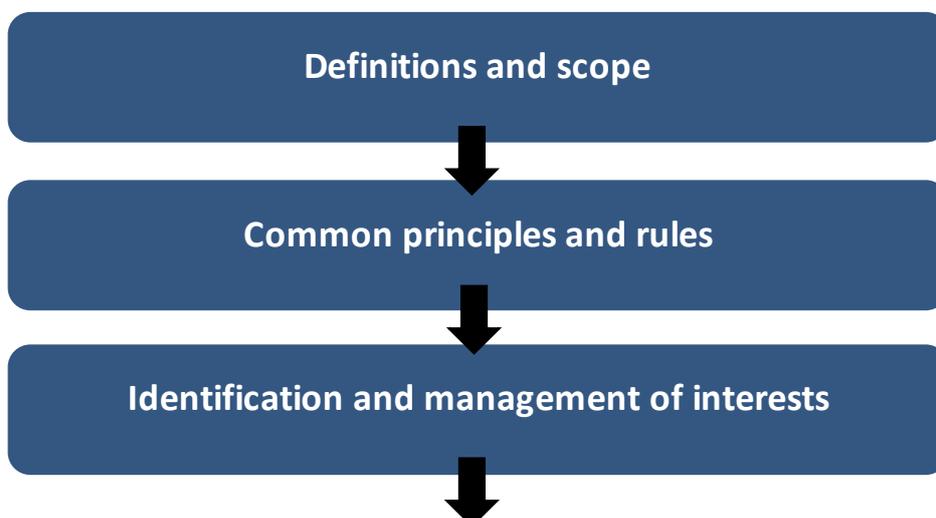
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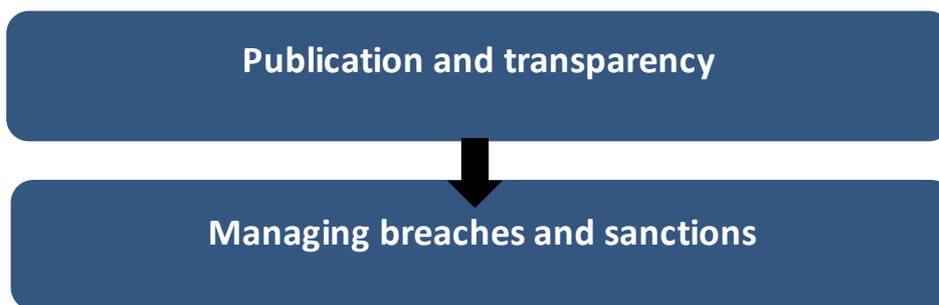
<sup>9</sup> GSK, Disclosures made to HCP in the UK. Accessible at: <http://www.gsk.com/en-gb/healthcare-professionals/disclosure-of-payments-made-to-hcps/europe/uk/>

<sup>10</sup> NHS England. Five Year Forward View. Accessible at: <https://www.england.nhs.uk/ourwork/futurenhs/>

<sup>11</sup> NHS England. Conflicts of interest cross system Task and Finish Group. Accessible at: <https://www.england.nhs.uk/about/board-meetings/committees/coi/>

- 23 The evidence review suggested that, whilst there is much good practice in existence across the NHS in terms of management of interests, there is significant variation too. Organisations across the system mostly have existing policies and processes in place to manage interests – but these vary in terms of content and scope, and there is no clear rationale for why such variation is warranted.
- 24 The Task and Finish Group want to bring about a ‘levelling up’ so that all parties manage conflicts of interest consistently in line with recognised good practice. Some of the proposals in this document will not be new to everyone working in NHS funded services, but should facilitate a more consistent adoption of strong practice. However, as the Task and Finish Group has drawn upon a number of sources to inform its work some of the proposals will be new, or different, from what is in place now (for instance, statutory guidance issued by NHS England to Clinical Commissioning Groups).
- 25 Throughout its work the Task and Finish Group recognised that approaches need to be sensitive to the range of organisations and professionals working in and for the NHS. Whilst the need to manage conflicts of interest appropriately is universal across the NHS we recognise that the systems to do so may vary in different contexts. For example, a GP surgery is very different in scale to a large teaching hospital. We believe that our proposed approach is applicable across the system and allows for necessary variation in implementation.
- 26 The Task and Finish Group secretariat have engaged with a wide range of stakeholders during this process including patient and public voice representatives.
- 27 The Task and Finish Group were also mindful that, in some areas, organisations might wish to go further than the proposals it has made. That is a legitimate decision for organisations to take, according to their own circumstances, but it was clear that it did not want to see less stringent provisions than those it has set out being implemented.
- 28 The Task and Finish Group broke down the task into 5 core stages:





### Structure of this consultation and how to respond

29 In this consultation we will ask you questions regarding the proposals the Task and Finish Group has made in relation to the 5 stages described above. Please submit your views and comments by 31 October 2016 via our [online template](#). It is our intention to use the outputs of this consultation to develop guidance on management of conflicts of interest, which has statutory and contractual force, and would apply across the health system.

### Confidentiality

30 It is our intention to publish comments received. We will publish a summary of the responses we receive to this consultation on the NHS England website in due course. You can request to keep your name and/or organisation confidential and excluded from the published summary of responses. If you would like any part of the content of your response (instead of or as well as your identity) to be kept confidential, please let us know and make it obvious by marking in your response which parts we should keep confidential.

31 We will do our best to meet your request, and will process your personal data in accordance with the Data Protection Act. In most circumstances this will mean that your personal data will not be disclosed to third parties. However, because we are a public body subject to Freedom of Information legislation we cannot guarantee that we will not be obliged to release your response even if you say it is confidential.

## Definitions and Scope

### Case for change

- 32 There is no consistently used definition of a conflict of interest across the health system. Most definitions in current use cover similar ground, but there is variation in terms of the breadth of definitions and range of circumstances in which interests and potential conflicts play out.
- 33 Why does this matter? In the NHS individual staff and organisations collaborate to deliver care. Having different definitions used by different people who work and collaborate together risks creating confusion on how to manage issues around conflicts.

### Our proposals

- 34 The Task and Finish Group concluded that having a clear and comprehensive definition, consistently used across the health system, would contribute to a shared understanding of conflicts and approaches to managing them. After reviewing a variety of definitions across health, industry and wider public sector organisations we have formulated the definition that we feel should be adopted across the health system:

**“A conflict of interest can occur when there is the possibility that a person’s judgement regarding their primary duty to NHS patients may be influenced by a secondary interest they hold. Such a conflict may be:**

- **Potential – i.e. there is the possibility of a conflict between the two interests in the future**
- **Actual - i.e. there is a relevant and material conflict between the two interests now**
- **Perceived – i.e. an observer could reasonably suspect there to be a conflict of interest regardless of whether there is one or not.**

**Conflicts can occur with interests held by the individual or their close family members,\* close friends and associates, and business partners (dependent on the circumstances and the nature of such relationships)”**

\*Family member’ refers to a spouse, civil partner, or partner living in the same residence as the individual, as well as siblings, grandparents, children and adults (who may or may not be living in the same residence) for whom the individual is legally responsible, (for example, an adult whose full power of attorney is held by the individual)

- 35 The Task and Finish Group favours this definition as it:
- Emphasises management of interests as important when delivering public services
  - Recognises that interests can be potential, actual and perceived, and that different responses might be required in each such scenario

- Captures the important issue of a “trigger point” – the point when a potential conflict of interest risks becoming an actual conflict, necessitating appropriate management
- Is plain English

36 Underneath this core definition the Task and Finish Group believe that it would be helpful to create some sub-classifications of interests as this is the level of detail required to develop principles and rules.

37 There are a multitude of different interests which could lead to a conflict in a complex system like the NHS. Developing some basic sub-categories is helpful in terms of assisting staff and organisations to consider whether an interest risks becoming a conflict, and opens the door for more consistent management responses.

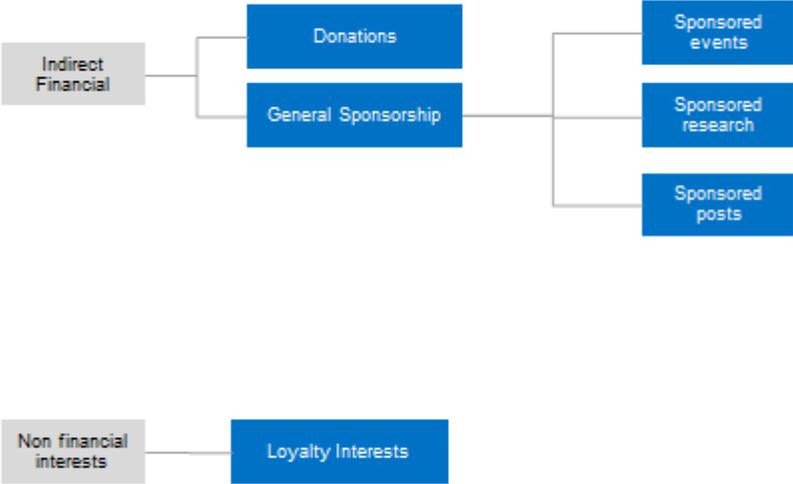
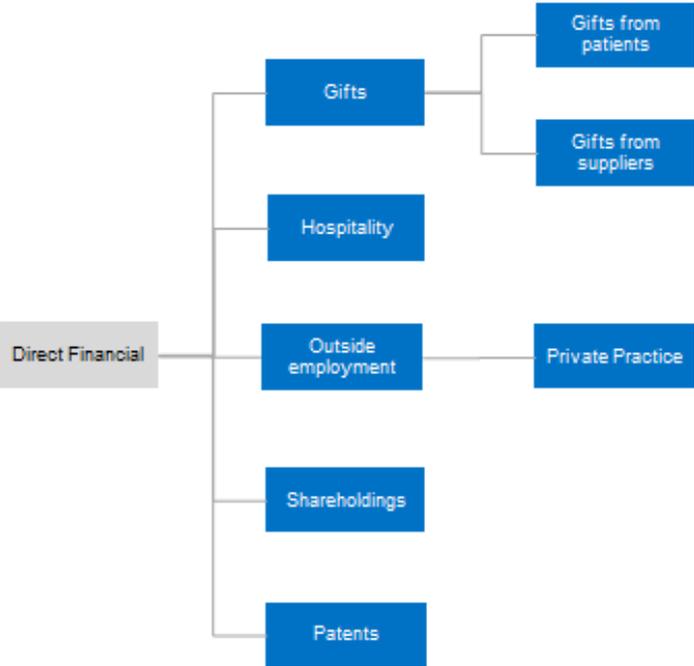
38 The Task and Finish Group has based these sub-classifications on a model developed by the NAO<sup>12</sup> and adapted them for the English health service context. These sub-classifications are:

Type	Description
<b>Direct (or personal) financial interest</b>	A direct financial interest is one where there is or appears to be opportunity for personal financial gain or financial gain to close family members, close friends and associates, and business partners (dependent on the circumstances and the nature of such relationships)
<b>Indirect (or non-personal) financial interest</b>	An indirect financial interest involves payment or other benefit to a department or organisation in which the individual is employed or otherwise engaged but which is not received personally.
<b>Non-financial interests</b>	A non-financial interest is one where there is or appears to be an opportunity for non-financial gain (e.g. status), or where an individual’s decision making is or could be compromised for example due to a conflict of loyalty.

39 Using these sub-classifications the Task and Finish Group has mapped out the range of circumstances in which conflicts of interest can commonly occur and appropriate principles and rules on their management. We recognise that circumstances can be complex and that interests will not always fall into neatly defined individual categories. The important issue is not which category or classification certain interests fall under but that interests are recognised and appropriate action is taken.

<sup>12</sup> NAO. Conflicts of Interest. January 2015. Accessible at: <https://www.nao.org.uk/report/conflicts-interest-2/>

**Sub-classifications of interests**



## Your views

**Q1: Do you agree with our definition of conflict of interest? Yes / No**

If NO, please explain why

Please outline alternative views if you have any

**Q2: Do you agree with our sub-classifications of interests? Yes / No**

If NO, please explain why

Please outline alternative views if you have any

**Q3: Are the circumstances we have identified sufficient to capture all instances? Yes / No**

If NO, please explain why

Please outline alternative views if you have any

## Common principles and rules

### Case for change

- 40 Inconsistency in defining conflicts of interests creates a risk of inconsistent approaches to managing them. Our evidence review has shown that there are wide variations in the practices adopted in relation to interests. Provisions around gifts and hospitality are a good example. Different organisations prescribe different financial thresholds for when receipt of gifts may be acceptable and from whom. Financial limits vary anything from up to £5 to up to £100; a twenty fold difference.
- 41 This variation does not make sense, and having such differences in place makes it harder for staff across the system to understand the rules and to comply with them.

### Our proposals

- 42 We have mapped out the circumstances in which potential conflicts can occur, and have proposed principles and rules which should be adopted across the system to promote greater consistency.
- 43 In applying our proposed principles and rules we recognise that the risks of conflicts arising are more acute for staff in senior roles, who have decision making responsibilities. Therefore, to avoid applying disproportionate burdens on all groups of staff, we have made a distinction between 'all staff' and 'senior staff'. We believe it is for individual organisations to determine who their senior staff are, but we would expect this to include the following groups:
- Executive and non-executive directors
  - Medical Staff
  - Budget holders
  - Those at Agenda for Change band seven or above
  - Those involved in purchasing or formulary decisions
  - Members of advisory groups
  - Foundation Trust Governors
  - NHS contractor professions e.g. pharmacists, dentists, optometrists etc

### Your views

**Q4: Do you agree with the proposed definition of senior staff? Yes / No**

If NO, please explain why

Please outline alternative views if you have any

- 44 Our proposed principles and rules are set out in the following sections.

**Gifts**

45 By gifts we mean any item of cash or goods, or any service, which is provided for personal benefit, free of charge or at less than its commercial value. We do not want to prohibit the receipt of small gifts of thanks from patients, but we want to avoid situations where any individual or organisation is construed as being able to influence a decision or cast doubt on the integrity of a decision.

Principles and rules regarding gifts	Applicable staff group
<ul style="list-style-type: none"> <li>• Staff should not ask for or accept gifts or rewards that may affect, or be seen to affect, their professional judgement</li> <li>• Gifts of cash or cash equivalent should always be declined</li> </ul> <p><u>Gifts from patients</u></p> <ul style="list-style-type: none"> <li>• It is appropriate to accept gifts from patients as a legitimate expression of gratitude</li> <li>• Gifts up to the value of £50 may be accepted and need not be declared</li> <li>• Gifts over the value of £50 should be declined</li> <li>• Multiple gifts, received over a twelve month period from the same patient should not ultimately exceed more than £50 in total</li> <li>• Where it would cause offence to decline the gift it can alternatively be donated to charity</li> </ul> <p><u>Gifts from actual or potential suppliers</u></p> <ul style="list-style-type: none"> <li>• Gifts connected with procurement and/or service supply should be declined</li> <li>• However where low cost branded promotional aids are offered these may be accepted where they are under the value of £6<sup>13</sup> in total. In these circumstances they need not be declared</li> </ul> <p><u>Gifts from foreign dignitaries</u></p> <ul style="list-style-type: none"> <li>• Gifts up to the value of £50 may be accepted and need not be declared</li> <li>• Multiple gifts, received over a twelve month period from the same individual should not ultimately exceed more than £50 in total</li> <li>• Gifts over the value of £50 should be declined</li> <li>• Where it would cause offence to decline the gift it can alternatively be donated to charity</li> </ul>	<p>All staff</p>

<sup>13</sup> In line with industry guidance in the ABPI code of practice, available at: <http://www.pmcpa.org.uk/thecode/InteractiveCode2016/Pages/default.aspx>

**Your views**

**Q5: Do you agree with our proposals regarding gifts? Yes / No**

If NO, please explain why

Please outline alternative views if you have any

## Hospitality

- 46 By hospitality we mean meals, refreshments, travel and accommodation offers. We recognise that NHS staff and organisations need to work with a wide range of partners including industry and academia and therefore it is likely they will sometimes appropriately receive hospitality.
- 47 Industry codes are helpful in this respect. For example, the ABPI sets out guidance for its members that they should not spend more than £75 per head. We believe that transparency should be balanced against the need to ensure there is not a disproportionate reporting burden on staff. Therefore we are proposing a de minimis limit below which staff need not declare hospitality they have accepted.

Principles and rules regarding hospitality	Applicable staff group
<ul style="list-style-type: none"> <li>• Hospitality includes offers of transport, refreshments, meals, accommodation, etc</li> <li>• Hospitality should only be accepted where it is secondary to a business event i.e. there is a legitimate business reason</li> <li>• Hospitality must be appropriate and not out of proportion to the occasion i.e. subsistence only</li> <li>• Hospitality up to the value of £25 may be accepted and need not be declared</li> <li>• Where hospitality over the value of £25 is received the acceptance of this hospitality should be declared, although there is no requirement to declare the actual or estimated value</li> </ul>	All staff

## Your views

**Q6: Do you agree with our proposals regarding hospitality? Yes / No**

If NO, please explain why

Please outline alternative views if you have any

## Outside Employment

48 This is an over-arching term, meant to include employment and other engagements, outside of formal employment arrangements, including directorships, non-executive roles, self-employment, consultancy work, paid advisory positions and paid honorariums which relate to organisations likely to do business with the NHS. We recognise that many people across the NHS have multiple roles, but we want to ensure that the existence of these is well known so that conflicts can be either managed or avoided.

Principles and rules regarding outside employment	Applicable staff group
<ul style="list-style-type: none"> <li>• Senior staff (excluding non-executive directors) must seek the prior approval of their employer before taking up outside employment which relates to organisations that do or are likely to do business with the NHS</li> <li>• Where an individual has existing outside employment this must be declared on appointment</li> <li>• Outside employment where there is any potential for a conflict of interest to arise must be declared and recorded in the register of interests</li> <li>• Where a potential conflict of interest is identified a judgement must be made as to appropriate action; this can include:               <ol style="list-style-type: none"> <li>1. Declining permission to take up outside employment</li> <li>2. Amending an employee's duties to remove the risk of conflict of interest</li> <li>3. Putting in place additional safeguards to mitigate the risk of conflict of interest e.g. absenting the employee from any decisions relating to their outside employer or competitor organisations</li> </ol> </li> <li>• Where no conflict of interest is identified staff should be free to take up outside employment where this is in line with their terms and conditions of employment</li> </ul>	Senior staff

### Your views

**Q7: Do you agree with our proposals regarding outside employment? Yes / No**

If NO, please explain why

Please outline alternative views if you have any

**Private Practice**

- 49 By this term we mean private medical practice that is undertaken by clinicians outside of the terms and conditions of their employment with an NHS employer, and for personal gain. We recognise that the vast majority of clinical staff balance NHS and private duties appropriately, but our proposals are designed to ensure that the existence of private duties is well known - in keeping with wider moves towards transparency, and so that conflicts can be either managed or avoided.
- 50 The Task and Finish Group discussed whether it was appropriate to require declaration of earnings related to private practice. A variety of views were heard and the consensus reached was to include the proposal within this consultation and ask a specific question in regard to its appropriateness, which is below.

Principles and rules regarding private practice	Applicable staff group
<ul style="list-style-type: none"> <li>• Clinical staff should declare all private practice including:                             <ul style="list-style-type: none"> <li>• Where they practice (name of private facility)</li> <li>• When they practice (identified sessions)</li> <li>• What they practice (speciality, major procedures)</li> <li>• Their earnings from private practice (Gross earnings in the previous 12 months on the basis of less than £50K, less than £100K, more than £100K)</li> </ul> </li> <li>• The above information should be included on the employing organisation’s register of interests</li> <li>• Programmed NHS commitments should always take precedence over private work<sup>14</sup></li> <li>• Clinical staff should not initiate conversations about private work with patients during the course of their NHS sessions</li> <li>• Clinical staff should not accept direct or indirect financial incentives from private providers other than those allowed by Competition and Markets Authority guidelines<sup>15</sup></li> </ul>	<p>All clinical staff engaged in private practice</p>

**Your views**

**Q8: Do you agree with our proposals regarding private practice? Yes / No**

If NO, please explain why

Please outline alternative views if you have any

<sup>14</sup> This is already a requirement in the Consultant Contract. NHS Employers. Terms and Conditions – Consultants (England) 2003. Accessible at: [http://www.nhsemployers.org/~media/Employers/Documents/Pay%20and%20reward/Consultant\\_Contract\\_V9\\_Revised\\_Terms\\_and\\_Conditions\\_300813\\_bt.pdf](http://www.nhsemployers.org/~media/Employers/Documents/Pay%20and%20reward/Consultant_Contract_V9_Revised_Terms_and_Conditions_300813_bt.pdf)

<sup>15</sup> Competition and Markets Authority. Private Healthcare Market Investigation Order 2014. Accessible at: [https://assets.publishing.service.gov.uk/media/542c1543e5274a1314000c56/Non-Divestment\\_Order\\_amended.pdf](https://assets.publishing.service.gov.uk/media/542c1543e5274a1314000c56/Non-Divestment_Order_amended.pdf)

**Q9: In particular, do you agree with the proposal regarding declarations of information about private practice, including information about earnings?  
Yes / No**

If NO, please explain why

Please outline alternative views if you have any

## General Sponsorship

51 By this we mean sponsorship offered to individuals and organisations by external parties who may prospectively seek to contract with that individual and organisation in relation to the commissioning or provision of NHS services. Support for NHS activities from external partners is valued and welcomed, as it can supplement NHS funding streams, but we want to introduce greater transparency around this and ensure that there are safeguards in place to guard against conflicts.

Principles and rules regarding general sponsorship	Applicable staff group
<ul style="list-style-type: none"> <li>• Commercial sponsorship agreements should always be declared</li> <li>• Before entering into a commercial sponsorship agreement written approval should be sought from the appropriate individual as defined by the organisation</li> <li>• Commercial sponsorship arrangements should only be approved where there is a clear benefit for the organisation including organisation benefit derived from individual sponsorship arrangements</li> <li>• No information should be supplied to a company for their commercial gain unless there is a clear benefit to the NHS. As a general rule, information which is not in the public domain should not normally be supplied</li> <li>• The commercial sponsor of an event, post or research etc. should always be clearly identified in the interest of transparency</li> <li>• The senior individual responsible for arranging the commercial sponsorship is responsible for declaring it</li> </ul>	<p>All staff</p>

### Your views

**Q10: Do you agree with our proposals regarding general sponsorship? Yes / No**

If NO, please explain why

Please outline alternative views if you have any

## Sponsored Events

52 By this we mean events that are organised by individuals or organisations, and where sources external to the NHS seek to offer to meet some or part of the costs of running the event. Again, this support is valued, allowing events to take place that might not ordinarily happen if reliant solely on NHS funding sources. However, we want to introduce greater transparency around this and ensure that there are safeguards in place to guard against conflicts.

Principles and rules regarding sponsored events	Applicable staff group
<ul style="list-style-type: none"> <li>• Sponsors should not have any influence over the content of an event, meeting, seminar, publication or training event</li> <li>• Attendance of the sponsor is at the discretion of the event organiser</li> <li>• The fact of sponsorship does not equate to endorsement of a company or its products</li> <li>• During dealings with sponsors there must be no breach of patient or individual confidentiality or data protection legislation</li> <li>• Sponsorship of events should be declared</li> </ul>	All staff

## Your views

**Q11: Do you agree with our proposals regarding sponsored events? Yes / No**

If NO, please explain why

Please outline alternative views if you have any

**Sponsored Research**

53 By this we mean research carried out by individuals or organisations and where sources external to the NHS seek to offer to meet some or part of the costs of running this research. Partnerships between the NHS and external parties in research are vitally important in ensuring that innovation can deliver better care, but again we want to provide greater transparency and ensure that conflicts can be managed.

Principles and rules regarding sponsored research	Applicable staff group
<ul style="list-style-type: none"> <li>• Commercial funding for research purposes must be transparent</li> <li>• Any proposed research must go through the appropriate Health Research Authority approvals process</li> <li>• There must be a written protocol and written contract between the health professional(s) and/or the institutes at which the study will take place and the sponsoring organisation, which specify the nature of the services to be provided and the payment for those services</li> <li>• The study must not constitute an inducement to prescribe, supply, administer, recommend, buy or sell any medicine</li> <li>• Sponsorship of such research should be declared</li> </ul>	<p>All staff</p>

**Your views**

**Q12: Do you agree with our proposals regarding sponsored research? Yes / No**

If NO, please explain why

Please outline alternative views if you have any

**Sponsored Posts**

54 By sponsored posts we mean positions in organisations funded in whole or in part by organisations external to the NHS. Sponsored posts can deliver real benefits to the delivery of care, providing extra capacity and capability that might not otherwise exist. However, we want to introduce greater transparency around this and ensure that there are safeguards in place to guard against conflicts.

Principles and rules regarding sponsored posts	Applicable staff group
<ul style="list-style-type: none"> <li>• Prior to entering into an agreement regarding the commercial sponsorship of a post approval should be sought from the appropriate individual as identified by the organisation</li> <li>• Arrangements regarding the commercial sponsorship of a post should only be entered where there is written confirmation that the arrangements will have no effect on purchasing decisions</li> <li>• Sponsored health professionals should not be involved in the promotion of specific products</li> <li>• Sponsors should not have any influence over the duties of the post or have any preferential access to any services, materials or intellectual property relating to or developed in connection with the sponsored role</li> <li>• Sponsored posts should be declared</li> </ul>	<p>All staff</p>

**Your views**

<p><b>Q13: Do you agree with our proposals regarding sponsored posts? Yes / No</b></p> <p>If NO, please explain why</p> <p>Please outline alternative views if you have any</p>
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## Shareholdings

55 By this we mean shareholdings and other ownership interests held by an individual which might give rise to a conflict of interest with regards to their primary duty to the NHS (e.g. shareholdings in companies likely to, or possibly, seeking to do business with the NHS). We believe that greater transparency in this area is desirable to enable conflicts of loyalty to be identified and managed.

Principles and rules regarding shareholdings	Applicable staff group
<ul style="list-style-type: none"> <li>• All shareholdings in private companies (including interests in partnerships and limited liability partnerships) where there is any potential conflict of interest must be declared</li> <li>• Shareholdings in publicly listed companies held in blind trusts need not be declared</li> <li>• Shareholdings in publicly listed companies with which the individual is aware or should be aware that the employing organisation contracts, or is considering contracting with, must be declared if the holding exceeds £5,000 market value or more than 1/100th of the nominal value of the issued share capital, whichever is less</li> <li>• In this circumstance the individual should declare the existence of the shareholding and the name of the company but need not declare the size of the interest</li> <li>• This guidance should not preclude the declaration of shareholdings of less value than the threshold described above where the owner recognises that a conflict of interest could be perceived</li> <li>• Where shareholdings have been declared and are identified as being a specific conflict in relation to someone's role management actions can include:               <ol style="list-style-type: none"> <li>1. Excluding the affected party from the discussion</li> <li>2. Requiring the employee to divest themselves of the shares in specific organisational contexts (e.g. NICE requires this)</li> </ol> </li> </ul>	<p>Senior staff</p>

## Your views

**Q14: Do you agree with our proposals regarding shareholdings? Yes / No**

If NO, please explain why

Please outline alternative views if you have any

**Patents**

56 By this we mean patents held by an individual which might give rise to a conflict of interest with regards to their primary duty to the NHS (e.g. where the patented product directly benefits the individual concerned and is purchased/likely to be purchased by NHS funded organisations). Greater transparency on this issue should enable conflicts to be identified and managed.

Principles and rules regarding patents	Applicable staff group
<ul style="list-style-type: none"> <li>• Senior Staff should declare relevant patents and other intellectual property rights as these are a direct financial interest</li> <li>• Senior Staff should seek permission from their employing organisation before entering into any agreements with commercial companies regarding product development</li> <li>• The organisation should ensure that it is able to identify, protect and exploit potential intellectual property rights as and when they arise</li> </ul>	Senior staff

**Your views**

**Q15: Do you agree with our proposals regarding patents? Yes / No**

If NO, please explain why

Please outline alternative views if you have any

**Donations**

57 By this we mean charitable financial payment given to individuals as part of their duties to the NHS, the acceptance of which might give rise to a conflict of interest with regards to their primary duty to the NHS.<sup>16</sup> Greater transparency on this issue should enable conflicts to be identified and managed.

Principles and rules regarding donations	Applicable staff group
<ul style="list-style-type: none"> <li>• Staff should not actively solicit charitable donations and should not agree to receive a charitable donation in lieu of a professional fee</li> <li>• Donations should be made to a specific charitable fund and a receipt should be issued</li> <li>• Decisions about whether a donation should be accepted are ultimately for the Trustees of a Charitable fund to make, and Trustees should be willing to turn down donations if they are not confident of their legitimacy</li> <li>• Donations received should be declared by the individual receiving the donation</li> <li>• Where donations are from a private individual their identity does not need to be disclosed should they not wish it to be, unless the Trustees believe that it would be inappropriate to receive an anonymous donation</li> <li>• Donations from suppliers should be declared including the amount, the donor and the recipient</li> </ul>	<p>All staff</p>

**Your views**

**Q16: Do you agree with our proposals regarding donations? Yes / No**

If NO, please explain why

Please outline alternative views if you have any

<sup>16</sup> Out of the scope of this guidance is charitable collections undertaken by individuals amongst immediate colleagues, for example individual sponsored events and participation in charitable events such as coffee mornings, etc

**Loyalty Interests**

58 By this term we mean the existence of interests which an individual has to two or more organisations or bodies or individuals which might give rise to a conflict of interest with regards to their primary duty to the NHS. Greater transparency on this issue should enable conflicts to be identified and managed and provide clarity regarding where loyalties lie.

Principles and rules regarding loyalty interests	Applicable staff group
<ul style="list-style-type: none"> <li>• Senior staff should declare any position of authority in a charity or voluntary organisation in the field of health and social care or contracting for NHS services</li> <li>• Senior staff should declare any familial or other relationships which could lead to perceived or actual conflicts of interest arising, eg declaring relationships with candidates during recruitment activity</li> <li>• Senior staff should declare any political affiliations where they hold an active role e.g. councillor etc</li> </ul>	Senior Staff

**Your views**

**Q17: Do you agree with our proposals regarding loyalty interests? Yes / No**

If NO, please explain why

Please outline alternative views if you have any

## Ensuring timely identification and management of interests

### Case for change

- 59 Having clear principles and rules is an important first step. It is obvious that interests can only be effectively managed if they are identified in a robust and consistent way in the first place. Our evidence review suggests that:
- The requirement for declaration of interests tends to vary by staff group across health organisations
  - The majority of policies concerning interest declarations apply to all staff but others apply to only those who are deemed to be at higher risk of conflict
  - Most but not all policies require declaration on appointment and annually
  - Most organisations record interests on registers, but the scope of their content varies significantly
  - Some registers are routinely published (for specific staff groups) while others are only made publicly available on request
  - Some policies provide specific instructions for how specific types of conflicts should be managed; others name individuals or post-holders within the organisation who should be contacted for advice
  - Some organisations provide specific training on conflicts of interest management as well as other awareness raising initiatives such as annual email reminders. However other organisations do not reference any awareness raising initiatives
- 60 If there is inconsistency about which groups of staff need to declare interests, and when, then this creates a risk that they cannot be effectively managed – leading to the potential for inappropriate conflict of interests. That is a significant problem for organisations and the staff who work with them, who could face sanctions (discussed later in this consultation) if the right courses of action are not followed.

### Our proposals

#### General Approach

- 61 The Task and Finish Group concluded that all organisations and individuals in receipt of NHS funding need to follow consistent processes that allow the identification of conflicts in a timely way, and effective processes to manage conflicts as they arise. The approach recommended is as follows:
- All staff must declare gifts, hospitality and other interests as set out by the principles and rules above as and when such interests arise (and in any event within 28 days) via a positive declaration
  - Additionally senior staff should declare interests on appointment and annually via a positive declaration or a nil return (i.e. stating they have nothing to declare)
  - Organisations should robustly manage the process for ensuring all senior staff complete returns
  - Interests should be recorded in one or more organisational registers
  - Organisations should ensure that they have mechanisms to ensure that all staff they employ are aware of conflicts of interest
  - Online training is made available to support staff in managing conflicts

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- For larger organisations the process for declarations and management of interests that the organisation has in place should be audited on a three yearly basis
- For larger organisations, the Audit Committee should have a specific responsibility for overseeing the management of Conflicts of Interest

62 In addition to these general proposals the Task and Finish Group considered some specific circumstances where conflicts of interest may be likely to occur.

**Boards and subcommittees**

63 Boards and subcommittees of boards are usually the formal decision making entity of NHS organisations. Because of the significant decisions taken in these fora the Task and Finish Group has developed specific proposals for how conflicts of interest should be managed:

- Members of the board should review and update their interests prior to the start of each meeting.
- The chair, with members, should review interests against each agenda item to determine whether they have any specific (i.e. relevant and material) interests which could potentially conflict with an agenda item.
  - An interest is specific when it refers directly to the matter under discussion
  - An interest is non-specific where it does not refer directly to the matter under discussion
- The chair should advise on the appropriate management action in cases where a conflict is identified and may wish to refer to the table below

Type of interest		Action
Direct financial	Specific	Declare and leave the meeting for the item(s) concerned. In exceptional circumstances the chair may rule that they can attend to answer specific questions
	Non-specific	Declare and participate unless, the chair rules otherwise
Indirect Financial	Specific	Declare and participate unless, the chair rules otherwise
	Non-specific	Declare and participate unless, the chair rules otherwise,
Non-financial	Specific	Declare: action is then at the discretion of the chair
	Non-specific	Declare and participate unless, the chair rules otherwise

64 For smaller organisations, which do not have formal board or subcommittee structures (but do have senior management meetings, such as GP partner meetings) we would expect that when a significant decision is required by participants during a meeting that the principles described above are followed to ensure potential conflicts relating to that decision can be identified and managed.

### **Advisory Committees**

65 Advisory committees bring together experts from a specific field of practice including patient and public voice representatives. Often, the subject matter will be sufficiently specialist that there is a relatively small pool of expert advisors to select from. It is also likely that these advisors will have interests in the relevant subject matter – i.e. they have a previously held view or belief on the subject or an affiliation with an organisation that might be impacted by decisions taken. We propose the following arrangements in these circumstances:

- The chair should not normally have any specific direct or indirect financial or non-financial interests
- Expert advisors will be required to declare their interests on being invited to participate on the advisory committee
- Expert advisers with material conflicting outside interests may, if their interests are appropriately declared and managed, participate in advisory committees or similar but should not, as a general rule, participate in any decision making
- The chair has discretion over the appropriate action to be taken when a conflict of interest is identified with reference to the table above

### **Procurement**

66 Procurement activity (all decisions regarding purchases of goods and services using public funds) involves awarding a contract often of a significant value. Therefore the decision making of procurement evaluation panels is likely to come under significant scrutiny. Proposals for managing conflicts of interest in this context are as follows:

- Procurement exercises should be managed throughout in an open and transparent manner, compliant with procurement and other relevant law – to ensure that they do not discriminate against any provider and do not constitute anti-competitive behaviour that is against the interest of patients
- Organisations should keep full and robust records to ensure that they have a clear audit trail of information considered and decisions taken
- As part of the procurement cycle steps should be taken to identify and manage conflicts of interest to ensure that the integrity of awards is not called into question
- Staff who participate in evaluation panels should make a declaration prior to the commencement of the tender exercise
- The chair and any members of procurement evaluation panels must not have any specific direct or indirect financial or nonfinancial, loyalty interests or family interests
- Panel chairs should review member's interests prior to commencement of the tender exercise and take appropriate action (which might involve exclusion from the panel)

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- Any panel member who has, or is judged by the chair to have, interests that compromise or could be seen to compromise their objectivity should withdraw from the process
- Expert advisors can be engaged at the discretion of the panel chair – but efforts should be made to ensure that they do not have a conflict of interest

**Your views**

**Q18: Do you agree with the proposals regarding identification of interests?  
Yes / No**

If NO, please explain why

Please outline alternative views if you have any

**Q19: Do you agree with the proposals regarding Boards and sub-committees,  
advisory committees and procurement? Yes / No**

If NO, please explain why

Please outline alternative views if you have any

## Publication and transparency

### Case for Change

- 67 Transparency is an important safeguard to ensure the probity of decision making in public service. Successive governments have pursued a transparency agenda in an attempt to make available more information about how public service organisations are performing, and how they are making use of tax payers' money.
- 68 International governments have also legislated to provide for the publication of more information about the interests of health care professionals and organisations. The US, Dutch and French "Sunshine Acts" are examples of such initiatives.
- 69 Our evidence review found that publication regimes across the NHS differ. Some organisations do not publish any information on interests, and where organisations do, the information often only covers only a small subset of very senior staff, and is often old or out of date. So there is a risk that current arrangements are not effective at delivering transparency.

### Our proposals

- 70 The Task and Finish Group concluded that the public have a legitimate right to expect to be able to access information about interests of staff and organisations that make decisions which lead to the spending of public money. Information about these interests is likely to be accessible to the public via Freedom of Information legislation, but the Task and Finish Group considered that the NHS should be more proactive in publishing information it holds in this area to promote trust and probity.
- 71 The Task and Finish Group also recognised that, balanced against this, were important issues of personal privacy – the rights to such should be respected and only interfered with if proportionate and for a legitimate purpose. In addition, there may be reasonable expectations (based on current practice) that more information relating to senior employees than more junior ones could and should be published.

### Who should be in scope of a publication regime

- 72 On balance the Task and Finish Group felt that the interests of senior staff should be published by their employing organisation. As defined earlier in this document, the Task and Finish Group expect senior staff to include:
- Executive and non-executive directors
  - Medical Staff
  - Budget holders
  - Those at Agenda for Change band seven or above
  - Those involved in purchasing or formulary decisions
  - Members of advisory groups
  - Foundation Trust Governors
  - NHS contractor professions e.g. pharmacists, dentists, optometrists etc

- 73 The Task and Finish Group recognised the importance of ensuring undue red tape is not imposed on the NHS in the current challenging financial climate. However, they were also mindful that organisations already need to collect and maintain information around interests and conflict management to discharge their legal and contractual anti-crime obligations.
- 74 It recognised that larger organisations are more likely to have the infrastructure to run a publication system. Smaller organisations may not – but the number of returns they would have to manage would be significantly smaller to compensate for this. The Task and Finish Group also noted that some organisations are already publishing information on the scale it proposed<sup>17</sup> and so considered that its proposals were realistic, proportionate and would not create excess unwarranted burdens.
- 75 The Task and Finish Group were also clear that processes should be in place for staff to make representations that information on their interests should not be published. This will apply when, in exceptional circumstances where the public disclosure of information could give rise to a real risk of harm or is prohibited by law, an individual's name and/or other information may be redacted from any publicly available registers. Organisations should, therefore, be clear in advance with their staff about what information will be published, what exceptional circumstances may allow information not to be published, and have processes in place so that representations on this point can be received and considered.

### **What should be published**

- 76 The Task and Finish Group believe information should be presented in a consistent format. This will ensure that people across the country are able to access the same information presented in a similar way in relation to their local organisations.
- 77 The information required to be published will detail:
- The returnee's name and their role
  - A description of the interest
  - Relevant dates relating to the interest (e.g. when it arose)
- 78 Another benefit of adopting a more consistent format is that this opens up the potential to avoid duplicate returns. Increasingly staff are conducting multiple roles for different organisations. GPs, for instance, will typically work for a practice, a CCG, and sometimes have outside commercial interests. A number of people (for instance Non Executives) increasingly also have portfolio careers involving a mixture of different public and private interests. A consistent format opens up the potential for declarations to be recorded once by an individual, and then supplied to multiple organisations that they work with on a "do it once" basis.

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<sup>17</sup> NAO. Managing conflicts of interest in NHS clinical commissioning groups. September 2015. Accessible at: <https://www.nao.org.uk/report/managing-conflicts-of-interest-in-nhs-clinical-commissioning-groups/>  
Leeds Teaching Hospitals Declarations Public Report. Accessible at: <http://www.leedsth.nhs.uk/about-us/freedom-of-information/publication-scheme/lists-and-registers/declarations/>

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79 So what would this mean in practice? Linking back to the classes of interest described earlier in this document the type of information to be published in relation to senior staff would be:

<b>Specific Interest</b>	<b>What would be published</b>	<b>Where it would be published</b>
<b>GIFTS</b>	Recipient's name and position, date of gift, details of gift	Individual's record on Col Register, published by organisation
<b>HOSPITALITY</b>	Recipient's name and position, date and details of the hospitality, supplier's name and nature of business	Individual's record on Col Register, published by organisation
<b>OUTSIDE EMPLOYMENT</b>	Name and position, nature of outside employment	Individual's record on Col Register, published by organisation
<b>PRIVATE PRACTICE</b>	Name and position, name of organisation(s) with whom private practice conducted, sessions conducted, brief outline of duties (e.g. specialism, common procedures), gross earnings in the previous 12 months (less than £50K, less than £100K, more than £100K)	Individual's record on Col Register, published by organisation
<b>SPONSORSHIP GENERAL</b>	Date of arrangement, details of sponsorship, sponsors name and nature of business,	Individual's record on Register, or by organisation on its website
<b>SPONSORED EVENTS</b>	Date of arrangement, details of sponsorship, sponsors name and nature of business	By organisation on its website
<b>SPONSORED EDUCATION</b>	Date of arrangement, details of sponsorship, sponsors name and nature of business	By organisation on its website
<b>SPONSORED RESEARCH</b>	Date of arrangement, details of sponsorship, sponsors name and nature of business	By organisation on its website
<b>SPONSORED POSTS</b>	Date of arrangement, details of sponsorship, sponsors name and nature of business	By organisation on its website

<b>SHAREHOLDINGS</b>	Details of shareholdings or other ownership interests held	Individual's record on Col Register, published by organisation
<b>PATENTS</b>	Details of patents held	Individual's record on Col Register, published by organisation
<b>DONATIONS</b>	Date of donation, value of donation, donor's name and nature of business (if not an individual)	By organisation on its website
<b>LOYALTY INTERESTS</b>	Name and position, nature of interest	Individual's record on Col Register, published by organisation By organisation on its website: meeting minutes

80 The Task and Finish Group recommended that organisations should refresh the publication at least annually.

### **Where should information be published**

81 A key issue for the Task and Finish Group was what steps could be taken to ensure that the public was not overloaded with transparency information around interests, having to access it in different places and in different formats. The Task and Finish Group considered the issue from a patient's perspective: where would they look for information? The answer, however, could differ according to the context that a patient was considering.

82 Taking hospital doctors as an example – the hospital they work for would, under our proposals, begin to publish relevant information about their interests. Any payments made to them by pharmaceutical companies might be published by the ABPI. Interests they have in private hospitals would be published by the private provider they engage with by virtue of recent provisions introduced by the Competition and Markets Authority, and the GMC are considering introducing the facility for doctors to voluntarily declare their interests and have these added to the online Medical Register.<sup>18</sup>

83 A way round the issue of multiple pieces of linked information being put in different places would be publishing or aggregating all of this information in one place. In the US, by virtue of its Sunshine Act, certain information around conflicts is published on one central database. This creates one route for the public to access information, but what is published in the US differs from the scale

<sup>18</sup> GMC. Developing the UK Medical Register. July 2016. Accessible at: [https://gmc.e-consultation.net/econsult/consultation\\_Dtl.aspx?consult\\_id=730&status=2&criteria=](https://gmc.e-consultation.net/econsult/consultation_Dtl.aspx?consult_id=730&status=2&criteria=)

and scope of information that the Task and Finish Group would wish to see published.

84 At present there is no obvious body in place to aggregate and publish returns across the NHS. To establish a central database is also likely to require underpinning legislative powers, and funding for set up and maintenance costs would also need to be secured. Therefore, the Task and Finish Group propose that organisations publish the information they collect individually on their websites. However, it is interested in the views as to whether consideration should be given to aggregating data, in due course. One possible way to aggregate, for instance, would be for organisational interest registers to be web linked to their record on myNHS.<sup>19</sup>

### **Compliance with existing transparency mechanisms**

85 During the course of its work the Task and Finish Group were very supportive of the ABPI's Disclosure UK initiative. At the time of its launch, a number of national organisations also publicly declared their support for this scheme, including the General Medical Council, the Academy of Medical Sciences, the Faculty of Pharmaceutical Medicine, and the Royal College of Physicians. We believe, like them, that all health professionals should be transparent and give their consent to information about payments received from pharmaceutical companies being published by the ABPI but, at present, health professionals can refuse to give this consent.

86 We would seek to pursue a variety of means in order to lead to greater compliance in this area: to make this a condition for doing business for and with the NHS, much have GSK have done in the context of working with them. Subject to the outcomes of this consultation we will consider whether, for instance, this is an issue which should take greater prominence in areas like clinical appraisals and eligibility for clinical excellence awards (unless there are exceptional circumstances – such as risk of harm – which mean it was inappropriate for information about individuals to be disclosed). These are live options which we believe we could and should pursue with our partners during implementation.

### **Your views**

**Q20: Do you agree that information on interests held by senior staff described above should be published? Yes / No**

If NO, please explain why

Please outline alternative views if you have any

<sup>19</sup> On this [website](#) information is published so that organisations, professionals and the public can compare the performance of services across health and care, over a range of measures, and on local and national levels.

**Q21: Do you agree that information on interests should be published in a consistent way across organisations, using the format described above? Yes / No**

If NO, please explain why

Please outline alternative views if you have any

**Q22: Do agree that information on interests should be published (at least annually) by organisations? Yes / No**

If NO, please explain why

Please outline alternative views if you have any

**Q23: Do you think that further consideration should be given to aggregating returns on MyNHS, or another suitable web portal? Yes / No**

If NO, please explain why

Please outline alternative views if you have any

**Q24: Do you believe that we should pursue the approaches described above to ensure greater compliance with the Disclosure UK initiative? Yes / No**

If NO, please explain why

Please outline alternative views if you have any

## Managing breaches and sanctions

### Case for change

87 The NAO<sup>20</sup> has previously recommended that conflicts of interest policies need to be underpinned by clear processes for managing breaches. Our evidence review identified that not all organisations make clear the potential consequences of breaches in their policies.

### Our proposals

88 The proposals set out in this document are grounded in criminal, civil and employment law. Due to the range of potential circumstances and contexts in which specific breaches of policy may occur it is not possible to prescribe a set of actions that should be taken in response to each specific case. Instead each case needs to be investigated and judged appropriately, with appropriate rights of appeal in place.

89 The view of the Task and Finish Group is that organisations should have effective processes in place to do this, including the specific points captured in the following proposals:

**Organisations must have established management and internal controls to detect breaches of conflict of interest policies and processes. The features of such controls must include:**

- Clear information on how breaches should be reported, recorded, and investigated (e.g. through identification of a named individual or team to lead on this)
- Details on approaches to responding to breaches, including management actions and likely sanctions (employment law, criminal, civil and professional regulatory)
- A clear statement of how staff can raise concerns around conflicts of interest, (linking to whistleblowing or other HR policies)
- Clear governance and reporting mechanisms (set out in policy, management statements, financial controls, or similar) which explain the circumstances under which concerns will be escalated to organisational boards, system and professional regulators, and other statutory bodies (e.g. NHS Protect)
- Clear oversight arrangements explaining the approach to assurance that conflicts are appropriately managed, and that there are robust arrangements for detecting breaches (such as internal or external audit and regulator checks)

**To ensure that organisations are transparent about action taken to respond to breaches, and so lessons can be learned from them, anonymised information about breaches and how they have been managed must be published in a prominent place on the organisation's website.**

**Reports on breaches and responses taken should be given to an organisation's governing body or management team at least annually.**

<sup>20</sup> NAO. Conflicts of Interest. January 2015. Accessible at: <https://www.nao.org.uk/report/conflicts-interest-2/>

**Your views**

**Q25: Do you agree with our proposals on breaches and sanctions? Yes / No**

If NO, please explain why

Please outline alternative views if you have any

## Conclusions

90 As described above, this consultation document mainly describes the principles and rules which it is proposed would apply to NHS bodies. However, we believe many of the underlying principles and rules should apply equally to non NHS providers - at least in respect of NHS funded services they provide (with amendments where appropriate).

**Q26: Do you agree that the underlying principles and rules in this consultation should (perhaps with some amendment) also apply to non NHS providers in respect of NHS funded services they provide? Yes / No**

If YES, which of the proposals in this consultation do you think should apply (or what amendments should be made)

If NO, please explain why

Please outline alternative views if you have any

91 It is our intention that the bodies which oversee the health sector (for example, the Care Quality Commission, NHS England and NHS Improvement) will collaborate to prepare guidance to apply across the system to reflect the outputs of this consultation. We will also be considering whether, in order to reflect those outputs, it would be beneficial to review and supplement the provisions within the relevant contracts under which the NHS purchases goods and services.

92 The information above describes the formal ways in which the outputs of this work could be implemented – but these steps alone will not deliver the required change. Even more important is the need for staff and organisations to take responsibility to recognise the risks of conflicts of interest and take the appropriate action. The NHS is determined to be a world leader on managing conflicts of interest which is why we believe that the proposals above are so important, and why we are confident that staff and organisations will back them.

93 It is important to ensure that we get this work right and so we look forward to receiving your views on the Task and Finish Group's proposals.