

BOARD PAPER - NHS ENGLAND

<p>Title:</p> <p>Managing conflicts of interest</p>
<p>Lead Director:</p> <p>Ian Dodge, National Director of Commissioning Strategy</p>
<p>Purpose of Paper:</p> <p>The Board is asked to consider:</p> <ul style="list-style-type: none">• Feedback received on the <i>draft revised statutory guidance on managing conflicts of interest for CCGs (Annex A)</i>• Proposed amendments to the statutory guidance
<p>The Board is invited to:</p> <ul style="list-style-type: none">• Approve the proposals set out in this paper• Delegate approval of the final version of the statutory guidance to the National Director of Finance jointly with the National Director of Commissioning Strategy

Managing conflicts of interest

PURPOSE

1. This paper provides an update on plans to strengthen conflicts of interest management in the NHS. It seeks approval of proposed changes to the *revised statutory guidance on managing conflicts of interest for CCGs*, in light of feedback received during the consultation exercise.

CONTEXT

2. On 31 March 2016, the NHS England Board approved a series of measures, aimed at strengthening conflicts of interest management across the NHS. This included:
 - Approval of **revised statutory guidance on managing conflicts of interest for CCGs** for public consultation.
 - Mobilisation of a **cross-system task and finish group**, chaired by Sir Malcolm Grant. The purpose of this group will be to work with system partners to help establish a set of rules that can be applied consistently right across the health system – across all national bodies and agencies including the arms length bodies, professional regulators, local commissioners and NHS providers, and that capture relevant behaviours by suppliers to the NHS including the pharmaceutical and devices industries, and conflicts of interest by hospitals doctors and other staff whose clinical and prescribing decisions affects NHS specialised commissioning and other NHS resources.
 - Proposals to strengthen **NHS England’s internal conflicts of interest policies**, to bring them in line with best practice.
3. We have secured agreement from key stakeholders to join the cross-system task and finish group, which will meet for the first time in June 2016. Over the summer, the group will develop proposals for system-wide management of conflicts, with a view to consulting on these in late summer.
4. We went out to consultation on the *revised statutory guidance on managing conflicts of interest for CCGs* between 1 and 29 April 2016. The key changes we engaged upon, as agreed by the Board, were:
 - Increasing lay representation on CCG governing bodies to support with the management of conflicts of interest;
 - Introducing a conflicts of interest guardian in CCGs to act as a key point of contact for any issues;
 - Requiring CCGs to include an annual audit of conflicts of interest management within their internal audit plans and to publish the audit findings within their annual end-of-year governance statement;
 - Strengthening the provisions around gifts and hospitality;
 - Strengthening provisions around decision-making when a member of the group is conflicted;
 - Requiring CCGs to have a robust conflicts of interest breach policy and to publish any breaches on their website; and
 - Requiring all CCG staff and staff of their member practices to complete mandatory conflicts of interest on-line training on an annual basis.

5. We received 64 responses to the consultation from a wide range of stakeholders, including 38 CCGs, the General Medical Council (GMC), the General Practitioners' Committee (GPC) of the British Medical Association (BMA), Healthwatch England, NHS Clinical Commissioners, NHS Improvement, NHS Protect, Royal College of General Practitioners (RCGP) and a range of other public and private sector bodies. A summary of the feedback is included at Annex A.

CONSULTATION FEEDBACK AND RECOMMENDATIONS

6. The strengthened conflicts of interest guidance was welcomed by CCGs and national partners. There was particular support for the strengthening of lay representation on CCGs' governing bodies, the appointment of a conflicts of interest guardian and the maintenance of clinical representation on the primary care commissioning committee. The main concerns related to the additional work the guidance could generate for practices and CCGs, which we have considered and reflected in the proposals we are submitting to the Board.
7. As the majority of requirements were supported in the consultation, the proposed final guidance is substantially the same as the framework approved by the Board in March 2016. The only proposed changes are:
 - **Declarations of interest:** The draft guidance currently requires that all practice staff declare interests. However, based upon respondents' feedback and in line with the commitment to ease the administrative burden on GP practices set out in the *GP Forward View*, we propose to only require practice staff with involvement in CCG decision-making processes to declare interests to the CCG. Respondents were in favour of this approach to minimise the administrative burden on practices and CCGs.
 - **Registers of interest:** The draft guidance currently requires that CCGs update their registers of interest on a quarterly basis. Individuals must by law declare interests within 28 days of them being known. We have received feedback from NHS Clinical Commissioners that quarterly updates to the registers of interest would place significant administrative burden on CCGs. In light of the feedback received, we propose to require that CCGs update their registers of interest on a six-monthly basis as a minimum.
 - **Mandatory conflicts of interest online training:** The draft guidance currently requires all practice staff to complete mandatory online training on managing conflicts of interest (as well as CCG and NHS England staff). Respondents felt this would place too much administrative burden on practices. In line with the commitments set out in the *GP Forward View*, we propose to make the online training package voluntary for practice staff who have no involvement in CCG decision-making processes. We consider online training to be important for those practice staff involved in CCG business to improve awareness of conflicts of interest and individual responsibilities.
 - **Appointment of a third lay member:** We propose to enable CCGs to "share" lay members in their Sustainability and Transformation footprints, where they experience challenges in appointing a third lay member. Respondents were

generally supportive of this approach, provided that those appointed have the requisite local knowledge.

- **Shareholdings:** The draft guidance currently requires that individuals declare shareholdings of more than 5% of the issued shares. We have received feedback from some respondents that this threshold is too high and would not capture all material interests. For simplicity, we propose to amend the guidance to state that all shareholdings in health and care organisations must be declared.

8. Further, in the final version of the guidance we propose to:

- Address a number of points of clarification as set out in the feedback report (Annex A);
- Review the language and tone of the document to ensure that it is suitably neutral;
- Publish a series of accessible, summary guides to the guidance (along the lines of “what does the guidance mean for me?”) for different professional groups, including the Conflicts of Interest Guardian, GPs, admin staff etc; and
- Publish a series of case studies alongside the guidance to support with its practical implementation.

9. There were some issues raised in the consultation that will need further consideration, since they go beyond the scope of the CCG guidance. We have shared these with the cross-system task and finish group for review.

NEXT STEPS

10. We will publish the final revised *statutory guidance on managing conflicts of interest for CCGs* in June 2016, along with a series of practical case studies and summary guides. We seek the Board’s approval to delegate approval of the final version of the guidance to the National Director of Commissioning Strategy.
11. We will deliver a series of webinars for CCGs in June and July 2016 to outline the new requirements of the guidance and address any queries commissioners have. Work will continue over the summer to develop online mandatory conflicts of interest training in collaboration with CCGs and we will scope further our wider support offer to CCGs, which will include face-to-face training.
12. In addition, we will develop supplementary guidance in the autumn of 2016/17 to specifically address further developments in care models and integrated care organisations that may cause particular challenges with regards to conflicts of interest.

CONCLUSION

13. The Board is asked to consider and agree the proposed changes to the *revised statutory guidance on managing conflicts of interest for CCGs*. The Board is asked to delegate approval of the final version of the guidance to the National Director of Finance jointly with the National Director of Commissioning Strategy.

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