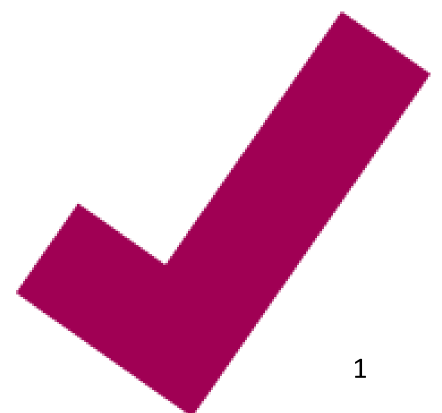
NHS England

Managing conflicts of interest: CCG case studies



Managing conflicts of interest: CCG Case Studies

Version number: 3

First published: June 2016

Prepared by: Commissioning Strategy Directorate

Classification: OFFICIAL

Contents

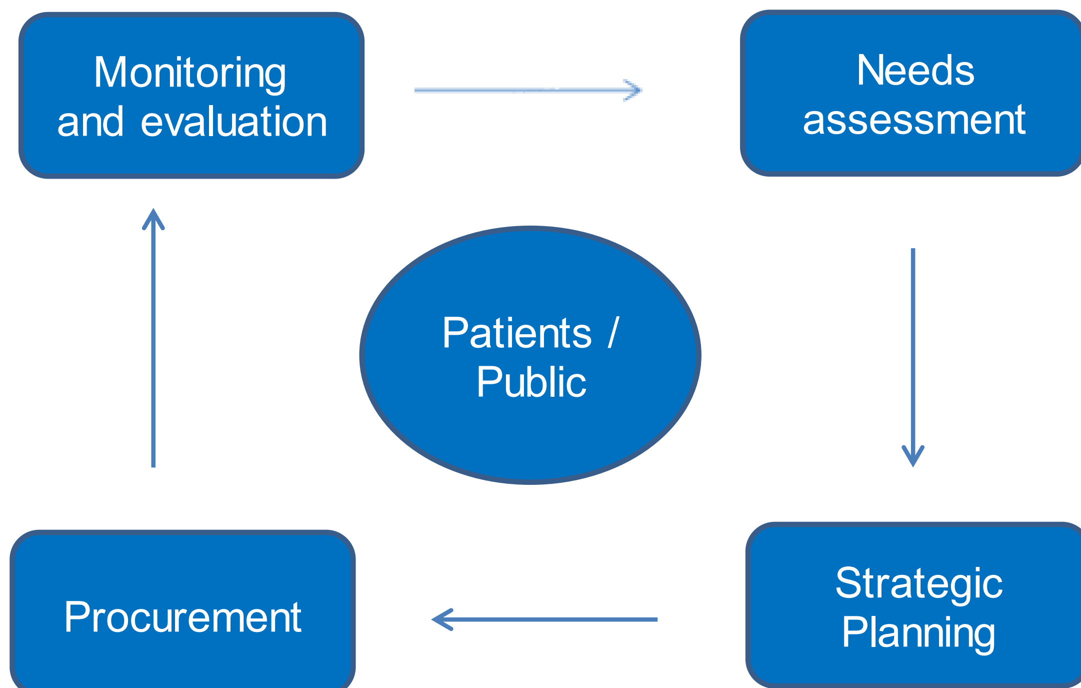
Introduction 4
A1: Assessing the need for and location of new community medical centres 6
B1: Strategic planning of primary care services 8
C1: Development of dermatology services 11
C2: Development of an alternative scheme to the Quality and Outcomes Framework (QOF) 14
D1: Re-procurement of an Alternative Provider Medical Services Contract (APMS) in a delegated CCG 16
D2: Re-procurement of out-of-hours services 18
D3: A procurement challenge 21
D4: Ensuring conflicts of interest are adequately addressed when procurement processes are managed by CSS/CSUs 23
E1: Breach of powers for financial gain 25
F1: Monitoring of voluntary sector contracts 27
G1: Recruitment of patient representatives with a conflict of interest 29
H1: Attendance at a provider funded event 31
J1: Commissioning a Multi-speciality Care Provider (MCP) 33

Managing conflicts of interest: CCG case studies

Introduction

NHS England has developed a series of case studies to accompany the *revised statutory guidance on managing conflicts of interest for CCGs*, published in June 2017. This includes an additional case study relating to the commissioning of a new care model. The case studies are intended to raise awareness of the different types of conflicts of interest that could arise in CCGs and to support CCGs to robustly and effectively identify and manage them. The case studies could also be used as a training resource for CCGs, to support them in providing advice to their employees and members on what might constitute a conflict of interest. We will also be rolling out mandatory online training on conflicts of interest management in 2017.

Conflicts of interest are inevitable in commissioning and it is how we manage them that matters. They can affect anyone working in commissioning and can arise at any stage of the commissioning cycle:



This document includes a series of case studies from across the commissioning cycle and examples which involve different commissioning roles.

Each case study describes a scenario that includes one or more conflicts of interest, the associated risks and actions to consider. The actions to consider are based upon the safeguards set out in the *revised statutory guidance on managing conflicts of interest for CCGs*. They are not an exhaustive list of actions and CCGs should consider what further actions would be appropriate in line with their own conflicts of interest policy. These scenarios are focused on issues arising from conflicts of interest and consequently do not purport to cover other issues which may also be relevant, for example, CCGs' statutory duty to consult with service users and potential service users. Further, the case

studies should not be relied on as an alternative to seeking expert advice where this is needed.

Please note, whilst the case studies are based upon the types of conflicts of interest scenarios that could arise in CCGs, they are not real life examples. The names of individuals and organisations used in these case studies are fictional and not a reference to any organisation or person, living or deceased.

This document includes the following case studies:

Case study	Stage of the commissioning cycle	Page
A1: Assessing the need for, and location of, new community medical centres	Needs assessment	6
B1: Strategic planning of primary care services	Strategic planning	8
C1: Development of dermatology services	Service planning and design	11
C2: Development of an alternative scheme to the Quality and Outcomes Framework (QOF)		14
D1: Re-procurement of an Alternative Provider Medical Services Contract (APMS) in a delegated CCG	Procurement	16
D2: Re-procurement of out-of-hours services		18
D3: A procurement challenge		21
D4: Ensuring conflicts of interest are adequately addressed when procurement processes are managed by CSS/CSUs		23
E1: Breach of powers for financial gain	Demand management	23
F1: Monitoring of voluntary sector contracts	Contract management	25
G1: Recruitment of patient representatives with a conflict of interest	All stages	27
H1: Attendance at a provider funded event	All stages: gifts and hospitality	29
J1: Commissioning a Multi-Speciality Community Provider	Planning and procuring a new care model	31

Managing conflicts of interest: Needs Assessment Case Study

A1: Assessing the need for and location of new community medical centres

Context	• As part of North County CCG's strategy to provide more accessible primary care services, the CCG plans to open community medical centres in each of its localities. The medical centres will provide a range of out-of-hospital services. • The CCG's Primary Care Commissioning Committee (PCCC) sets up a working group to undertake a needs assessment and to develop a business case, recommending the range of services to be offered and the location of each medical centre. • At a public meeting of the PCCC, the business case and needs assessment is presented by the Chair of the working group. • In one locality, the recommendation is to open the medical centre in buildings owned by Dr Adam Brown, a GP governing body and PCCC member. This is because the building's rent would be cheaper than the rent of alternative sites. • The proposed site is next to Dr Brown's GP practice, which is a prescribing practice. Therefore, there is a high probability that the medical centre would increase business at Dr Brown's pharmacy. • Dr Brown has previously declared that he owned a prescribing practice and the property in question. This is on the CCG's register of interest. • Dr Brown left the PCCC meeting when this matter was discussed.
Risks	• Dr Brown has a *direct financial interest* in the medical centre being located on his premises. • There could be a perception that the CCG has favoured a PCCC member when selecting the location of the medical centre. • There is a risk of loss of public confidence and trust in the CCG, as well as legal challenge from the owners of other potential sites, if the conflicts of interest are not managed appropriately. • There is also a risk that the personal reputation of Dr Brown will be damaged if his interests are not appropriately declared and managed.

Actions to consider	• All proposals should clearly state whether any conflicts of interest have been identified during the development of the proposal and if so, how they were managed.
	
	• In this case, the appropriate management of the conflicts of interest should include ensuring that:
	
	  ◦ Dr Brown's interests (both his ownership of the prescribing practice and neighbouring property) have been recorded in the CCG's register of interests and in the minutes of every meeting where this topic was discussed.
	  ◦ Dr Brown was not part of the working group, and this was recorded in the relevant minutes.
	  ◦ There are clear and objectively justifiable reasons for selecting the preferred locations for the medical centres, which are included within the working group's report and referenced in the PCCC's minutes. The cheaper rent may be one such reason, but it may not be a sufficient reason in itself for selecting one site over another.
	  ◦ The proposals have been subject to appropriate scrutiny, public and stakeholder engagement, and are in accordance with procurement rules.
	
	• The PCCC should also consider whether there are any other relevant conflicts of interest. For example:
	
	  ◦ *Were any of Dr Brown's partners at the neighbouring practice part of the working group or members of the PCCC?*
	  ◦ *Would any members of the working group be affected by the relocation of some existing services to the medical centre (i.e., have they got an indirect financial interest)?*
	
	Any additional interests identified should be declared and managed appropriately during the process.
	
	• Provided Dr Brown's interests (and any other relevant interests) were declared and managed as above, it seems likely that he has acted appropriately and that the CCG will have an audit trail which evidences this.
	
	• However, if the PCCC (led by the Chair) is not satisfied that conflicts of interest have been appropriately managed during the process, then it should defer a decision on this item and specify what remedial steps are required in order to ensure that a fair and transparent decision is taken and can be evidenced.

Managing conflicts of interest: Strategic Planning Case Study

B1: Strategic planning of primary care services

Context	• East City CCG has recently implemented delegated commissioning of primary medical services. The CCG establishes a Primary Care Commissioning Committee (PCCC), which holds its first meeting to discuss the future development of local primary care services. • Three PCCC members are GPs who have business interests in a private company, Sunflower Health Ltd., which provides some primary medical care services. • At the start of the meeting, the GPs declare their interests in Sunflower Health Ltd., and the PCCC considers whether it is appropriate for the GPs to be present for all agenda items. • One GP states that as the focus of the meeting is on the future direction of primary care services and the PCCC will not be making any procurement decisions, the GPs should be allowed to contribute to the discussion and should not have to leave the meeting. After discussion, the Chair agrees to proceed on this basis. • During the discussion about the future direction of primary care services, the PCCC starts to discuss developing local enhanced services. The services discussed are ones that Sunflower Health Ltd. might have an interest in providing.
Risks	• By being present at the meeting, particularly during the discussions about enhanced services, there is a risk (whether actual or perceived) that the proceedings may be influenced by the *financial interests* of the three GPs, given their involvement with an organisation which may wish to bid to provide those services. • If the GPs have access to information about a future procurement before other potential providers, this could give them an unfair advantage. This may particularly be the case if the item was not discussed in the public session and/or it was not made clear in the papers published prior to the meeting that the PCCC would be discussing the development of enhanced services. This could lead to a costly legal challenge later on by other potential providers. • There is a risk of loss of public confidence and trust in the CCG if the conflicts are not managed appropriately.

	• There is a risk of harm to the GPs' own personal reputations, and to the reputation of East City CCG, if their interests in Sunflower Health Ltd. are not appropriately managed. • If the GPs gain access to any commercially sensitive information, or are involved in any decision which leads to a procurement in relation to the enhanced services, it is likely that Sunflower Health Ltd. would be unable to participate in any subsequent procurement for those services.

Actions to consider	• Details of the three GPs' interests in Sunflower Health Ltd. should be recorded in the minutes of the PCCC meeting and in the CCG's register of interests.
	
	• As it seems likely that Sunflower Health Ltd. might want to bid in a future procurement exercise, the three GPs should not be involved in any decision or deliberations leading up to a procurement decision regarding the development of primary care services.
	
	• The initial decision to allow the GPs to remain in the meeting was reasonable, because:
	  ◦ The GPs are experts in the field of primary care and their input would be valuable to these discussions;
	  ◦ It appeared at this point that no decision-making on procurement issues, or deliberations leading up to a procurement decision, were going to take place at the meeting.
	
	• However, the Chair should keep this decision under constant review during the meeting, and should ask the GPs to leave if at any point it becomes appropriate to do so. If this occurs, the time at which they left (and returned to) the meeting should be recorded in the minutes.
	
	• The meeting should be held in public unless commercially sensitive information is being discussed or there is some other reason why it would be prejudicial to the public interest to do so. The agenda should clearly state the purpose of the meeting and nature of the expected discussion and the CCG should ensure it is made available to the public (so any potential providers have the opportunity to attend the meeting).
	
	• If the discussions cease to be at a strategic level and become deliberations leading up to a procurement decision and the Chair asks the GPs to leave, there would be nothing in these circumstances to stop the GPs from joining the audience.
	
	• However, if the published agenda did not indicate that a detailed procurement discussion would take place at the meeting, the Chair

	should instead defer the discussion to a subsequent meeting at which it is included as an agenda item, so that other potential providers would have notice and the opportunity to attend as observers. • If a subsequent meeting is held in private for reasons of commercial sensitivity, the GPs should be asked to leave the meeting for the item where they are conflicted. • The CCG should consider whether it is appropriate for the three GPs to be members of the PCCC at all, given their interests in Sunflower Health Ltd, and the nature and extent of their interests in the company.

Managing conflicts of interest: Service Planning and Design Case Study

C1: Development of dermatology services

Context	• One of South Vale CCG's priorities is to develop dermatology services. A sub-committee has been asked to prepare a proposal for the development of dermatology services, for sign off at the CCG's governing body. • The proposal is independently developed by Clare Davies, a GP partner at Newtown Surgery, which is one of the CCG's member practices. Dr Davies is not a member of South Vale CCG's governing body or in any other way directly involved in the activities of the CCG. • The sub-committee meets to discuss the proposal and agrees to submit it to the next governing body meeting for approval. • At the end of the sub-committee meeting, one of the member's points out that Newtown Surgery would stand to gain if the proposals were approved, since Dr Davies specialises in dermatology services and her practice would be likely to win any tender to provide the new services. • The sub-committee member is concerned that Dr Davies' interests were not included on the CCG's register of interests and had not been noted or discussed at the sub-committee meeting. • The sub-committee meeting was brought to a close with an action, noted in the minutes, that the Chair would discuss the proposal and concerns with the CCG's Accountable Officer (AO) and the Clinical Chair immediately after the sub-committee. • After reviewing the situation, and discussing the matter with Dr Davies, the AO and Clinical Chair conclude that she did not deliberately breach the CCG's policy on conflicts of interest, and decide that the sub-committee's proposals should be put forward for approval by the CCG's governing body as planned.
Risks	• Dr Davies has a *direct financial interest* in the proposal as a GP partner within Newtown surgery, which is a potential provider of the new dermatology services if the proposal goes ahead. • If this conflict of interest is not appropriately declared and managed, there will be a risk (whether actual or perceived) that any decision by South Vale CCG's Governing Body to approve the proposals has

	been inappropriately influenced by the interests of one of its member practices over and above the interests of other potential providers. This could lead to costly challenges later on by other potential providers. • There is a risk of loss of public confidence and trust in the CCG as a result, as well as a risk of challenge from other potential providers. • There is a risk of harm to Dr Davies' own personal reputation, and to the reputation of the CCG by not having declared her financial interest in the matter.

Actions to consider	• Although Dr Davies is not a member of South Vale CCG's governing body or otherwise directly involved in the business of the CCG, she is a GP partner at one of the member practices and she has become involved in the development of dermatology services. This means she should have declared her interests in the CCG's register of interests and at any meeting where she was present and this topic was discussed.
	
	• The CCG should consider whether it was appropriate for the AO and Clinical Chair to deal with the concerns regarding conflicts of interest. The matter should have been referred to the CCG's Head of Governance and, if necessary, the Conflicts of Interest Guardian.
	
	• The CCG's governing body should overturn the AO and Clinical Chair's decision to put the proposals forward at this stage to the governing body for approval, until assurance is received that Dr Davies' conflict of interest has been appropriately declared and managed.
	
	• As the proposal was allowed to progress to the governing body, even though the interest of Dr Davies was known, this incident would constitute a breach and the CCG should manage the breach in accordance with its conflicts of interest policy and publish anonymised details of the breach on its website. The CCG will also need to record the breach as part of its Improvement and Assessment Framework quarterly return for the probity and corporate governance indicator.
	
	• In this case, the appropriate management of the conflict of interests should include ensuring that:
	
	    • The CCG has clear and objectively justifiable reasons for wishing to develop dermatology services, based, for example, on needs assessments and appropriate patient engagement, and that these are recorded in writing.
	    • Dr Davies' *financial interest* as a partner within a GP practice is recorded in the CCG's register of interests.

- The interests of Dr Davies' fellow partners at Newtown Surgery should also be declared and appropriately managed. For example, the partners should also not be involved in any decisions to commission the dermatology service, given that their practice is a potential provider.
- Other specialists and/or potential providers of dermatology services have been involved in the development of the proposals.
- The proposals have been subject to appropriate scrutiny, public and stakeholder engagement, and that any new services are commissioned by the CCG in accordance with procurement rules.

- If Dr Davies has not already done so, she should undertake training on conflicts of interest which should include, as a minimum, the mandatory online training offered by NHS England.

Managing conflicts of interest: Service Planning and Design Case Study

C2: Development of an alternative scheme to the Quality and Outcomes Framework (QOF)

Context	• Edward Fellows, clinical lead of West Town CCG, presents a business case for an alternative scheme to the Quality and Outcomes Framework (QOF) at the CCG's Primary Care Commissioning Committee (PCCC). Dr Fellows is enthusiastic about the new scheme and believes it will significantly drive up the quality of patient care. • The business case involves maintaining payments to practices for the achievement of national QOF scheme indicators, and paying practices additional monies for meeting indicators in the new local scheme. Dr Fellows explains that he has developed the proposed new scheme by working with practice managers in GP practices from across the CCG. If the proposal goes ahead, existing providers would need to opt into the new scheme. • The business case states that engagement has taken place with member practices and that this engagement has informed the proposal. However, during the discussion at the PCCC, it becomes apparent that this engagement comprised a series of informal discussions with a select number of practice managers, whom the clinical lead knows well.
Risks	• There are various risks in this scenario beyond conflicts of interest management. These relate to procurement, the apparent lack of patient engagement and the risk of challenge if there is any suggestion that participating practices may be paid twice for meeting the same outcomes (via QOF and the new scheme). • Dr Fellows has an *indirect financial interest*. There is a risk (whether actual or perceived) that he may have favoured the financial interests of close associates over the interests of other potential providers when developing the plans. • There is a risk of loss of public confidence and trust in the CCG as a result, as well as challenge from the other potential providers if the conflicts of interest are not managed appropriately. • There is also a risk that Dr Fellows' personal reputation will be damaged if his interests are not appropriately declared and managed.

Actions to consider	- It seems unlikely there will be a reason which justifies engagement with only a limited number of potential providers, just because they are personally well known to Dr Fellows. Consequently the PCCC should not approve the business case. - The PCCC (led by the Chair) should consider what remedial steps are required in order to ensure that a fair and transparent decision is taken and can be evidenced. This may include appointing a non-conflicted individual to assist with a wider engagement process and ensuring that the proposals have been subject to appropriate scrutiny, public and stakeholder engagement and are in accordance with procurement rules (where applicable). - The minutes of the PCCC should record this decision, and minutes of subsequent meetings should make clear who was involved in the discussions, any conflicts of interest and how these were managed in the decision-making process. - If the interests of Dr Fellows have been declared and recorded on the register of interest, and the PCCC undertakes remedial steps including the suggested actions stated above, then this would not constitute a material breach as action would have been taken to manage the conflict of interest at an early stage.

Managing conflicts of interest: Procurement Case Study

D1: Re-procurement of an Alternative Provider Medical Services Contract (APMS) in a delegated CCG

Context	

	• In January 2015, NHS England began to consider options for the re-procurement of an APMS[1] contract for services currently provided by Rose Medical practice. The existing contract was due to expire in September 2016.
	
	• South Eastern CCG implemented delegated commissioning from 1 April 2015. The CCG's Primary Care Commissioning Committee (PCCC) established a sub-group to review the procurement options in respect of this contract and to recommend a way forward to the PCCC. The members of this sub-group include the locality clinical lead, Dr Yasmin Bindari. Dr Bindari is a GP in one of the CCG's member practices, Middle Castle Medical Centre.
	
	• At the first meeting of the sub-group, the following procurement options were discussed:
	  • Re-procurement of the APMS services;
	  • Dispersal of the registered patient list to other GP practices in the vicinity of Rose medical practice who currently hold the contract; and
	  • Direct award of the contract to a new provider without running a procurement process, i.e. a non-competitive "single tender waver".
	
	• At the first meeting of the sub-group, Dr Bindari declares an interest, but states that the practice she works for has no intention of bidding for these services, if it is agreed to procure them.
	
	• Dr Bindari fails to declare that she has a close friend who works as a GP at another member practice (they went to medical school together, attend the same yoga class, their husbands are friends, their children attend the same school and the two families often socialise together), who is very interested in bidding for the service should it be re-procured. Dr Bindari has never declared this friendship because she claims she was not aware that she needed to do so.

[1] **Alternative Provider Medical Services (APMS) contract**: this is a contractual route for commissioning primary medical services. It allows the commissioner to contract with 'any person' e.g., private sector, voluntary and not-for-profit providers of general medical services, as well as GP practices, NHS trusts and foundation trusts.

Risks	• Dr Bindari has an *indirect financial interest* because her close friend may benefit financially depending on which procurement option is recommended by the sub group. • There is a risk of loss of public confidence and trust in the CCG as a result, as well as a risk of challenge from the other potential providers if the conflicts of interest are not managed appropriately. • There is a risk that Dr Bindari's personal reputation will be damaged if her interests are not appropriately declared and managed.
Actions to consider	• Dr Bindari should declare her *indirect financial interest* and this information should be included in the CCG's conflict of interest register and within the minutes of the sub-group's meetings. • The sub-group, led by the Chair, should decide how to manage this conflict of interest. It may be justifiable to allow Dr Bindari (having appropriately declared her interests) to remain part of the sub-group during the initial deliberations, but to require her to withdraw and play no part in the decision-making process on which option to recommend. However, the more prudent option would be to require her to withdraw from the sub-group altogether since its primary purpose is to develop a procurement options appraisal. • The decision and the rationale for the decision and (if relevant) the times at which Dr Bindari leaves/re-joins the sub-group's meeting(s), should all be clearly recorded in the minutes. • The PCCC should review the minutes of any previous sub-group meetings and consider whether Dr Bindari's *indirect financial interest*, arising due to her close friendship with one of the GPs at another surgery, may have impacted on any previous decisions so that the PCCC can consider whether any remedial action needs to be taken. • Dr Bindari should be reminded that the interests of close friends can put individuals in a position of being conflicted. If Dr Bindari has not undertaken the mandatory online training on the management of conflicts of interest, she should do so as soon as possible. • The CCG should also consider, with advice from the Head of Governance and the Conflicts of Interest Guardian, whether, under its conflicts of interest policy, disciplinary action would be appropriate.

Managing conflicts of interest: Procurement Case Study

D2: Re-procurement of out-of-hours services

<table>
<tr><td>Context</td><td>
North Western CCG has commenced a re-procurement exercise for out-of-hours (OOH) services in its area. The CCG has established a programme board which reports to the CCG governing body.
The programme board’s membership comprises an out-of-county GP with experience of delivering OOH services, a secondary care consultant, a community nurse and three senior managers from across the CCG. The out-of-county GP was invited to join the programme board to ensure there was appropriate clinical input, as all North Western CCG’s GPs were conflicted.
On appointment, two members of the programme board declared the following interests:
Mina Patel, a senior manager who works within the CCG’s engagement and inclusion team, is married to a registered paramedic who is employed by North Western Ambulance Service, which is a potential bidder;
Kate Lloyd, a manager who is the CCG’s strategy lead, declares that her mother is the clinical director for a social enterprise, Ivy Medical, which may also be a potential bidder.

The programme board plans to establish an evaluation panel that will make recommendations on the preferred bidder. A paper setting out the programme board’s preferred bidder will be submitted to the CCG’s governing body for a final decision.
</td></tr>
<tr><td>Risks</td><td>
Mina Patel has an indirect financial interest. Whilst it may be unlikely that her husband has any decision-making influence within the North Western ambulance service, there could at the very least be a perception of a conflict of interest.
Kate Lloyd also has an indirect financial interest as her mother is a senior decision maker within a potential provider, which is likely to have a financial interest in potential new work.
Because of the nature of the services, a number of the members of the CCG’s governing body are likely to have direct financial interests in the procurement of these services.
There is a risk of loss of public confidence and trust in the CCG, as well as challenge from providers, if the interests of Mrs Patel and Ms Lloyd and the members of the governing body are not appropriately declared and managed.
</td></tr>
</table>

	• There is a risk that the personal reputation of those with potential conflicting interests will be damaged if those interests are not appropriately declared and managed.

Actions to consider	**At programme board meetings:**
	
	• If Ivy Medical intends to bid for the OOH contract, Ms Lloyd should leave the programme board, as it seems unlikely she would be able to participate meaningfully in the business of the board.
	
	• If Ivy Medical does not intend to bid for the contract and confirms this in writing, then Ms Lloyd should be permitted to stay on the programme board.
	
	• Mrs Patel should be allowed to remain on the programme board, provided her interests are appropriately declared and managed. Possible options to help manage her conflict of interests could include:
	  ◦ requiring her to sign a confidentiality agreement which prevents her from disclosing any confidential information regarding the OOH procurement to her husband;
	  ◦ ensuring that she is not part of the evaluation panel that makes recommendations to the programme board on the preferred bidder.
	
	At governing body meetings (where updates on the procurement are provided to a wider CCG audience which includes GPs):
	
	• In advance of the meeting, the Chair of the governing body should ensure that any papers about the OOH procurement, not in the public domain, are not circulated to conflicted members. It is important to discuss this with the secretariat so that there is clarity on who should receive the papers in advance of them being issued.
	
	• It is important that all CCG staff are trained in the management of conflicts of interest and understand how it impacts upon their role. For those providing administrative support to the governing body and sub-groups, they need to understand why some papers may be withheld from certain members for particular agenda items or whole meetings.
	
	• If the meeting is held in public, the agenda should clearly state the purpose of the item and nature of the expected discussion. The CCG should ensure it is made available to the public in advance, so any other potential providers have the opportunity to attend the meeting.
	
	• If the meeting is held in public, the Chair should ask the conflicted GPs to leave the meeting when this item is discussed, but there would be nothing in these circumstances to stop the GPs from joining the audience as members of the public, since the discussions and the subsequent minutes will be in the public domain. The time at which

they left (and returned to) the meeting as governing body members (rather than members of the public) should be recorded in the minutes.

- If confidential information regarding the procurement is under discussion then that part of the meeting should be held in private. Again, the Chair should ask the conflicted individuals to leave the meeting, and the time at which they left (and returned to) the meeting should be recorded in the minutes.

- An alternative to requiring the programme board to report into the CCG's governing body would be to consider whether it could report to the Primary Care Commissioning Committee instead. However, the CCG' s governing body would need to check and (if necessary) amend the terms of reference/scheme of delegation for the PCCC to ensure that it has the appropriate authority before proceeding, as the commissioning of OOH services does not fall within the PCCC's normal remit.

Managing conflicts of interest: Procurement Case Study

D3: A procurement challenge

Context	• Midshire CCG has recently awarded a contract for a new primary care mental health service to a federation of GP practices, the Shire Federation. • The contract was awarded following a six month procurement process. The process was overseen by a small project group. The project group was chaired by Midshire CCG's contract lead for mental health services and included two other CCG managers and a mental health nurse. • The procurement process included an engagement exercise, the development of a specification, an invitation to tender, evaluation of bids against agreed criteria and ratification of the final decision by the governing body. • Midshire CCG receives a challenge from a voluntary sector organisation, Bluebell, who felt that the CCG had favoured the federation. Bluebell has seen that the CCG's register of interests includes a declaration by one of the CCG's governing body members, Dr Myra Nara, that she is a shareholder in Shire Federation. Bluebell alleges that the CCG has favoured the federation in its decision-making process. • Dr Nara was not a member of the project group that oversaw the procurement exercise, but the governing body did receive regular updates on the procurement exercise, signed off the specification and approved the decision to award the contract to the federated GP practices. • A review of the procurement process is undertaken by Midshire CCG's governance lead. This includes a review of the governing body's minutes. Whilst Dr Nara's interests are noted in the minutes, they do not detail the full nature of the conflict of interest, who was involved in the discussions or how the conflict was managed. There is no evidence that the situation was managed in line with the CCG's policy on conflicts of interest. • During the review, it becomes apparent that the CCG's governance lead has not sent any reminders regarding updates to the register of interests for the past fifteen months.
Risks	• Dr Nara has a *direct financial interest* in the outcome of the procurement because of her role in the Shire Federation.

<table>
<tr>
<td></td>
<td>

Even if the CCG has undertaken a robust procurement exercise and fully adhered to its conflicts of interest policy, there is insufficient evidence to prove this in its documentation.
As the register of interests has not been updated in fifteen months, there is a risk that it does not contain the latest information on declared interests, which could have an impact upon decision-making processes.
As well as the risk of challenge from other bidders (which has materialised in this case), there is a risk of loss of public confidence and trust in the CCG and a risk of damage to Dr Nara’s professional reputation if the conflicts of interest are not appropriately managed.

</td>
</tr>
<tr>
<td>Actions to consider</td>
<td>

The CCG’s Conflicts of Interest Guardian, supported by the CCG governance lead, should interview governing body members to confirm how the conflicts were managed at this particular meeting.
If satisfactory assurance cannot be obtained that conflicts were dealt with appropriately at the governing body meetings, including clear evidence that:

Appropriate safeguards were in place to prevent Shire federation from gaining an unfair advantage by having access to confidential information in relation to the procurement; and
Dr Nara was not involved in any decision or deliberations leading up to a procurement decision regarding the award of the contract to the federation;

then it is likely the procurement exercise would need to be rerun to ensure that a fair and transparent process is carried out. This would be at additional cost to the CCG and would likely delay service delivery.
If a breach is identified, Midshire CCG must publish it on their website and should also consider potential disciplinary action in accordance with its conflicts of interest policy.
Although it is an individual’s responsibility to ensure that they declare relevant interests promptly (and in any event within 28 days of the interest arising), the CCG’s Head of Governance should put systems in place to ensure that Midshire CCG’s register of interests is accurate and up-to-date, including requiring declarations of interest (or nil returns) from all relevant individuals at least annually.

</td>
</tr>
</table>

Managing conflicts of interest: Involvement of Commissioning Support Units in procurement

D4: Ensuring conflicts of interest are adequately addressed when procurement processes are managed by CSS/CSUs

Context	• City CCG sought procurement input from Atlantis Commissioning Support Unit (CSU) in order to support the procurement process for a new service. The proposed service involved providing psychological support for people with Long Term Conditions, as part of a primary care pilot. • The value of the contract was around £30,000. Given EU thresholds and procurement law it was decided that the service would be procured via a 'Request for Quotation' exercise, managed by the CSU's procurement service. • Dr Green is a clinical lead for the CCG. He works on the clinical development of business cases and service specifications for Long Term Conditions commissioning. • Dr Green was part of the panel constructed to view and rate presentations from the various bidders. • Two organisations submitted a tender for the contract; a university and a mental health service provider. • The university was successful in applying to deliver the contract, and commenced delivery in 2017. • Dr Green also works as a part-time lecturer for this university. • Dr Green had declared this interest to the CCG and it appeared on the CCG's own register of interests. • Dr Green declared the interest to the CSU as part of the procurement management process. • However, the CSU did not review the declarations of panel members due to the small contract value amount did not consult the CCG's conflicts of interest register in connection with the procurement, and did not meet NHS England Statutory requirements when managing management of conflicts of interest as part of its procurement strategy.
Risks	• Dr Green has a non-financial professional interest. As a lecturer at the university he is unlikely to benefit financially from the awarding of the contract. However, he could obtain professional benefit from the consequences of the commissioning decision. • There could be a perception that the CCG has favoured this particular provider because one of the panel members works there, rather than purely on the merits of the bid. • There is a risk of loss of public confidence and trust in the CCG, as well as legal challenge from the mental health provider which submitted the unsuccessful bid, if the conflicts of interest are not managed appropriately.

	• There is also a risk that the personal reputation of Dr Green will be damaged if his interests are not appropriately declared and managed. • There is a risk that such conflicts of interest could arise again in future if the CSU does not incorporate management of conflicts of interest into its procurement strategy.
Actions to consider	• The Conflicts of Interest Guardian was alerted and an investigation was conducted to ascertain: the details of the procurement; how the conflict occurred; if the conflict occurred via malicious activity on behalf of the clinical lead and if further action was needed. • City CCG reviewed all documentation pertaining to the awarding of this contract and ascertained that Dr Green's ratings were not pivotal to the final decision. The documentation demonstrated that, had Dr Green not been present, the contract would still have been awarded to the university. Furthermore, his ratings were in keeping with other members of the panel. • The exercise was not repeated because by the time this issue came to light the service was already being provided to patients and it would have been detrimental to patients to revoke or interrupt it. Also, it was found that Dr Green's influence did not have a material impact on the outcome. • The CCG has since introduced a policy to withhold payment to clinical leads until they make a formal declaration of interests. • The CCG's governance team conducted a tailored work place training session for the transformation team on Conflicts in Commissioning. The transformation team are the primary point of liaison with the CSU. • The CCG's governance team has worked with the CSU to develop a new procurement strategy, which will be rolled out in 2018. This strategy will ensure the CSU adheres to the revised statutory guidance on managing conflicts of interest for CCGs when carrying out procurement activities. • A procurement checklist has been introduced which will be shared by the CCG and CSU. This will include an action to ensure all members of procurement panels declare conflicts of interest as part of the procurement process. • The CCG and CSU will share information about declarations of conflicts of interest to ensure registers remain up to date within each organisation. • Conflicts of interest is now a standing item for the CCG's procurement working group. • The CCG is considering including articles on conflicts of interest management in the Service Level Agreement with the CSU if and when this is renewed.

Managing conflicts of interest: Demand Management Case Study

E1: Breach of powers for financial gain

Context	• Uptown CCG has a growing waiting list for a number of minor surgery procedures. • In a confidential governing body meeting, the governing body agree to make one-off payments to private providers to reduce the waiting list. This information is not yet public. • Following the meeting, Oswald Price, a GP governing body member who was present at the meeting, arranges for letters to be sent to his patients on the waiting list, informing them of a small list of private providers that can offer the service immediately. At the top of the list is Tallom Health Limited, a private business of which Dr Price is a director. • Dr Price does not inform the patients that he is a director of Tallom Health Ltd., and presents the information in a way that steers the patient to choose Tallom Health Ltd., over the other providers listed. • Dr Price had previously declared his directorship of Tallom Health Ltd. to the CCG and this is recorded in the CCG's register of interests. However, he did not declare this interest again at the governing body meeting.
Risks	• Dr Price has a *direct financial interest* in Uptown CCG's decision to use private providers to help reduce waiting lists. A failure to properly declare and manage this interest could damage the reputation of the CCG, Dr Price and his GP practice, and his attempts to steer his NHS patients towards Tallom Health Ltd. could lead to challenges from other providers. • Dr Price is in significant breach of the CCG's conflicts of interest policy by having used his position for financial gain. This could damage the reputation of the GP, the practice and the CCG. It could damage public trust and weaken patients' confidence in the independence of healthcare professionals. • There is a potential risk that an offence of fraud has been committed under section 3 of the Fraud Act 2016 (fraud by failing to disclose information) or section 4 (fraud by abuse of position).

	• If the other GPs and staff in the practice are not aware of the GP's actions, this may result in damage to the practice as a business and impact upon the trust and relationships with his colleagues.
	
	• There are also other issues for the CCG and the practice need to consider apart from conflicts of interest, including potential breaches of:
	  • The Privacy and E-Communications Regulations 2003;
	  • The Data Protection Act by not informing patients that he is a director of the business;
	  • The Good Medical Practice-Financial and Commercial arrangements and conflicts of interest (2013) issued by the General Medical Council.

Actions to consider	• Dr Price should have declared his interest prior to, or during, the governing body meeting and he should have taken no part in the decision to use private providers to reduce the waiting lists, or in any of the discussions leading up to this decision. His failure to do so, in conjunction with his attempt to use his position for personal financial gain, constitutes a serious breach of the CCG's conflicts of interest policy. • The CCG should consult their policy on counter fraud and seek advice from their local counter fraud specialist. If fraud is suspected, the CCG should refer the case immediately to NHS Protect, so as not to prejudice any potential investigation. This should form part of the CCG's section on breaches within their conflicts of interest policy. • Uptown CCG, with guidance from its Conflicts of Interest Guardian, should consider what steps need to be taken in light of this serious breach. This is likely to include issues in relation to procurement law, data protection law, communication with the affected patients, notification to NHS England, and disciplinary action against Dr Price by the CCG and regulatory bodies. • Once the counter fraud specialist and/or the CCG's Director of Finance has informed the CCG it is safe to do so, the CCG must publish anonymised information about the breach on their website. • The CCG will also need to include the breach as part of their Improvement and Assessment Framework quarterly return for the probity and corporate governance indicator.

Managing conflicts of interest: Contract Management Case Study

F1: Monitoring of voluntary sector contracts

Context	• Amit Bal, senior contract manager for Downswood CCG, leads all contract monitoring meetings for voluntary and community sector organisations which deliver small and grant funded contracts. • At an event in the community, a representative from a small voluntary sector organisation seeks out the CCG's Accountable Officer (AO) to complain that the CCG unfairly favours one particular voluntary sector service, the Hawthorn Care & Support Centre. They imply that the poor quality of the Hawthorn service is consistently overlooked. • The AO discusses this complaint with Mr Bal. During this discussion Mr Bal discloses that he is married to the Business and Development manager of the Hawthorn Care & Support Centre. He states that he has not declared this information to the CCG as he did not think it was important given the relatively small scale of the services provided by Hawthorn Care and Support Centre and the fact that no payments apart from reimbursement of expenses are made to Hawthorn by the CCG.
Risk	• Mr Bal has an *indirect, financial personal interest* which he should have declared. It is irrelevant that the service is a voluntary sector provider: there is still a conflict of interest which should be managed so as to avoid the risk (whether actual or perceived) that he has inappropriately influenced the decision-making process for the award of contracts or grants to the third sector. • There is a risk that Mr Bal's interest could have, or have been perceived to have, impacted upon his contract monitoring role. • There is a potential damage to the CCG's and Mr Bal's reputation, risk of challenge by other potential providers and loss of confidence by other organisations and the public in the probity and fairness of commissioners' decisions.
Actions to consider	• Mr Bal's interest should be recorded in the CCG's register of interests.

- Mr Bal should not be involved in any decisions, or discussions leading up to decisions, relating to any services which are or may be provided by Hawthorn Care & Support Centre.

- Mr Bal should not take part in contract management meetings with Hawthorn Care & Support Centre.

- In light of the allegation which has been made to the Accountable Officer and Mr Bal's failure to declare his interests, a non-conflicted manager should review:
    - The performance of Hawthorn Care & Support Centre against the contract and identify any necessary actions;
    - All contracts or grants awarded to Hawthorn Care & Support Centre to identify who was involved in the process;
    - Whether there is any risk that conflicts of interest could have been inappropriately managed.

- Depending on the outcome of the review, the CCG, advised by its Conflicts of Interest Guardian, should consider whether any disciplinary action is required, and whether the breach should be published on the CCG's website.

- If the contract manager has not undertaken the mandatory online training on managing conflicts of interest, they should do so.

Managing conflicts of interest: Recruitment Case Study

G1: Recruitment of patient representatives with a conflict of interest

Context	• A member of the public, Sarah Thomas, applies to be a patient representative on North County CCG's service user group, following a recent advert for new members. • Ms Thomas works for a consultancy company, Pinewood Services Ltd., which provides services to several providers who hold contracts with the CCG. • Pinewood Services Ltd. may also become a provider in an impending procurement.
Risks	• Ms Thomas has an *indirect financial interest* because Pinewood Services Ltd. stands to gain financially from any contracts which have been, or are in future, awarded by the CCG to providers who are clients of the consultancy company. • She also has a *direct financial interest* in light of Pinewood Services Ltd. participation in the forthcoming procurement process, which may result in the company becoming a provider of services directly to the CCG. • If Ms Thomas becomes a member of the CCG's service user group, then any failure to declare and appropriately manage these interests will lead to a risk (whether actual or perceived) that the group carries out its functions in a way which favours the interests of Pinewood Services Ltd. and/or its clients over and above the interests of other providers. This could lead to costly challenges later on by other potential providers.
Actions to consider	• Before appointment to any role within the CCG, an applicant should be given a form to enable them to declare any interests. • North County CCG will need to consider whether Ms Thomas could effectively fulfil the role she has applied for, if steps are taken to manage the conflict of interests. • The steps required to manage Ms Thomas' conflict of interests are likely to involve excluding her from participating in any meetings of the service user group where Pinewood Services Ltd., or any of its clients, or any services provided by them, are under discussion. If, as a result, she was unable to actively participate in many of the group's discussions, then the CCG should consider not appointing her to this role.

- If the CCG does appoint her, her interests should be recorded in the CCG's register of interests and should be declared at all relevant meetings of the service user group.

- The CCG should request declarations of interest during the recruitment process and give advice to recruiting managers on how to manage any conflicts of interest which become apparent. This could include providing advice on when and why someone would be excluded from appointments due to conflicts of interest.

Managing conflicts of interest: Gifts and Hospitality Case Study

H1: Attendance at a provider funded event

Context	• South CCG's procurement lead Uriah Vadis is invited to an all-day seminar hosted by Daisychain Systems Ltd., which is the CCG's current IT provider. The seminar is about how technology can deliver improvements in healthcare. • A modest buffet lunch is to be provided at the seminar itself, but existing clients of the IT provider, including Mr Vadis, have additionally been invited to an evening dinner consisting of a 4-course meal at a locally renowned restaurant.
Risks	• The acceptance of hospitality could give rise to real or perceived conflict of interests, or accusations of unfair influence, collusion or canvassing with providers.

Actions to consider	• When considering whether to accept the offer of a buffet lunch and/or the offer of a 4 course evening meal, the following principles apply:
	    • Meals and refreshments under a value of £25 may be accepted and need not be declared.
	    • Meals and refreshments of a value between £25 and £75[2] may be accepted and must be declared.
	    • Meals and refreshments over a value of £75 should be refused unless (in exceptional circumstances) senior approval is given. A clear reason should be recorded on an organisation's register(s) of interest as to why it was permissible to accept.
	    • A common sense approach should be applied to the valuing of meals and refreshments (using an actual amount, if known, or an estimate that a reasonable person would make as to its value).
	
	• However these principles are always subject to the overriding principles that: CCG staff should never accept hospitality which may affect, or be seen to affect, their professional judgement; must only accept hospitality where there is a legitimate business reason and the hospitality is proportionate; and individuals should exercise particular caution where the offer comes from an actual or potential supplier or contractor to the CCG, these can be accepted if modest and reasonable but individuals should always obtain senior approval and declare these offers.

[2] The ABPI Code of Practice for the Pharmaceutical Industry: http:www.pmcpa.org.uk/thecode/Pages/default.aspx

- Mr Vadis should consider whether he can demonstrate that attendance at the seminar and/or the evening dinner would benefit South CCG or the wider NHS. Particular caution should be applied in this case because Daisychain Systems Ltd. is an existing supplier to South CCG. Advice should be sought from a senior manager within the CCG where there is any doubt on what action to take.

- Given the generic title of the seminar, there may be clinical leads within the CCG who would gain more from attendance than the procurement lead.

- If the event is close to a potential re-tendering of IT services, then extreme caution should be applied when considering whether or not any representatives from the CCG, especially the procurement lead, should attend. If attendance is favoured then strong consideration should be given to attending similar events offered by other IT suppliers, to avoid accusations of favouring one supplier over another.

- If a clear benefit can be shown for attending the event, and senior approval is obtained, then the provision of a modest buffet lunch is likely to be acceptable if it is on a similar scale to that which the CCG might offer in similar circumstances. Assuming the buffet lunch is likely to be under £25 per head, it can be accepted. It will need to be declared because the hospitality is from a supplier to the CCG.

- Acceptance of the evening dinner invitation is unlikely to be appropriate as it is neither proportionate nor of benefit to the CCG. It is also likely to be over a value of £75 and so should generally be refused anyway unless there are exceptional circumstances. Mr Vadis should therefore politely decline the evening meal invitation

- Refusal of the evening meal invitation should be declared and registered on the CCG's gifts and hospitality register.

J1: Commissioning a Multi-speciality Care Provider (MCP)

Context	• Gothem CCG is planning to commission a fully integrated Multi-speciality Care Provider (MCP). It is intended that the MCP will eventually take on a whole population budget for the local population. • The CCG took on delegated commissioning of primary medical services from 1 April 2016 and has a Primary Care Commissioning Committee (PCCC) constituted with a lay and executive majority. • Due to the potential for conflicts of interests within its governing body, the CCG has decided that its preferred option is to use its PCCC for decisions about the commissioning of the MCP. • A non-decision-making sub-group of the PCCC has been set up to consider the initial options for commissioning the MCP and to make recommendations to the PCCC. The sub-group includes non-clinical representatives from across the CCG. • No members of the sub-group have interests in providers that may be (or form part of) the eventual MCP provider but, at the third meeting of the sub-group, it becomes apparent that some roles within the CCG may transfer to the eventual MCP. This includes the role of Mr Prout, a non-clinician employed within the CCG's contracting team and a member of the sub-group. Mr Prout realises this in the meeting. • Mr Prout does not feel it is necessary to declare this as an interest and feels he should continue to be a member of the sub-group.
Risks	• Mr Prout has a relevant interest (likely to be a *non-financial professional interest*) because his role in the CCG might transfer to the eventual MCP provider in the future. • There is a risk that Mr Prout's ability to exercise judgement in his role on the sub-group could be, or could be seen to be, impaired or influenced by his interest. • There is a risk that Mr Prout's personal reputation will be damaged if his interests are not appropriately declared and managed. He may also face other action - for example, disciplinary action if he fails to comply with CCG conflict of interest policies. • There is a risk of loss of public confidence and trust in the CCG, as well as a risk of challenge, if conflicts of interest are not managed appropriately.

Actions to consider	
	• Gothem CCG should provide clear guidance and training (including mandatory NHS England training) to employees, members and governing body and committee members on what might constitute a conflict of interest and how conflicts are to be declared and managed. • The Chair of the sub-group must ask for declarations of interests/conflicts at the start of each sub-group meeting (see Annex E of the statutory CCG guidance for a useful meeting checklist). • If in any doubt, Mr Prout should declare his interest as soon as he becomes aware of it (and then at each subsequent meeting) and this information should be included in the CCG's conflict of interests register and within the minutes of the meetings of the sub-group. • The Chair of the sub-group, liaising with relevant colleagues (e.g. the CCG's Conflict of Interest Guardian), should consider Mr Prout's interest and whether he should stand down from the sub-group, or whether it can be appropriately managed in another way. Mr Prout's expertise, and alternative sources of that expertise, may (among other things) be relevant in determining the appropriate course of action. • The Chair's decision and details of how the conflict is to be managed should then be formally recorded, including in the minutes of the sub-group, and these minutes should be sent to the PCCC. The PCCC should satisfy itself that conflicts of interest have been managed appropriately and take action where there are concerns. • Given the nature of his interest, the non-decision-making nature of the sub-group, and particularly if his expertise is needed and that cannot be obtained from others who are not similarly conflicted, it is unlikely that Mr Prout would need to stand down from the sub-group, purely as a result of this interest. It may be appropriate for him to be involved in discussions within the sub-group, but the Chair may conclude that he should not be involved in the final "decision" about the sub-group's recommendation to the PCCC. • Going forward, Gothem CCG needs to ensure declarations of interest are regularly confirmed and updated in accordance with the statutory CCG guidance. • This case study focusses on the conflict issues arising in the sub-group but it is worth noting that conflicts will, of course, also need to be considered and managed in relation to the PCCC itself.

	• As mentioned above, it is possible that the CCG will need to consider employment issues that arise in relation to Mr Prout and it will also need to consider its other duties and legal obligations in relation to the commissioning of the MCP including, but not limited to, those relating to consultation/engagement, procurement etc.