

**Best Practice Update
on Conflicts of Interest
Management:
Call to Action for
CCGs
February 2019**



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Description	This document aims to support CCGs to identify and manage conflicts of interest. This guidance is a practical toolkit, which includes templates and case studies to support CCGs with conflicts of interest management
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Cross Reference	06768 - Managing conflicts of interest: Revised statutory guidance for CCGs
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1 Introduction

It is over 18 months since NHS England published [Managing Conflicts of Interest: revised statutory guidance for CCGs](#). During that time, we have seen an increase in the number of CCGs with delegated commissioning arrangements as well as more areas piloting joint and integrated ways of working.

These developments underline the imperative to ensure that conflicts of interest are managed properly.

A recent internal audit identified 8 areas where the management of conflicts of interest could be improved. In response to that, we are asking CCGs to revisit the conflicts of interest guidance to ensure that there are appropriate systems, processes and local knowledge in place to make sure that conflicts are managed effectively.

The 8 areas for improvement – together with the relevant sections in the guidance - are outlined below. In some cases, we have developed additional resources for CCGs to help improve their management of conflicts of interest.

2 Procurement decisions and contract monitoring processes

2.1 Use of CSUs/CSSs

Responsibility for managing conflicts of interest remains the statutory responsibility of the CCG, even when procurement processes are led by other organisations. CCGs need to ensure that any Commissioning Support Unit (CSU) or Commissioning Support Service (CSS) involved in a procurement process is made aware of requirements in the statutory guidance and should use the templates and annexes as appropriate. To assist CCGs, we have developed a further case study focusing on a CSU's role in managing conflicts of interest during a procurement process.

<https://www.england.nhs.uk/publication/managing-conflicts-of-interest-ccg-case-studies/>

CCGs are reminded of the following best practice:

- Conflicts of interest management is still needed where a third-party organisation (CSU, CSS or other CCG) leads the bidding process.
- Discussions around conflicts should take place when procurement specifications are produced, bids are scored, or in meetings where final procurement decisions are made.
- Conflicts of interest should be a standing agenda item for procurement and/or contract meetings.

Reference in statutory guidance: Paragraph 126, 127

The statutory guidance requires all CCGs to have a process in place to record how conflicts of interest are managed when making commissioning decisions, including the use of single tender actions.

The guidance defines the individuals and what types of interests need to be declared, as well as the minimum information and timeframes for declaring interests. In addition, the guidance defines the interests to be published and the process to be followed to redact or not publish declared interests.

The guidance states (paragraph 126): "When using a Commissioning Support Service (CSS), CCGs should have systems to assure themselves that the CSS's business processes are robust and enable the CCG to meet its duties in relation to procurement (including those relating to the management of conflicts of interest). This would require the CSS to declare any conflicts of interest it may have in relation to the work commissioned by the CCG."

Paragraph 127: "A CCG cannot, however, lawfully delegate commissioning decisions to an external provider of commissioning support. Although CSSs are likely to play a key role in helping to develop specifications, preparing tender documentation, inviting expressions of interest and inviting tenders, the CCG itself will need to:

- Determine and sign off the specification and evaluation criteria;
 - Decide and sign off decisions on which providers to invite to tender;
- and
- Make final decisions on the selection of the provider."

2.2 Single tender actions

Some CCGs did not take conflicts of interest into consideration prior to the approval of single tender waivers.

Conflict of Interest Guardians and Accountable Officers should note that procurement processes have been flagged up as an area of focus for management of conflicts of interest and to reflect on how to facilitate good practice in their CCG

Reference in statutory guidance: Paragraph 118

“The decision to use a single tender action, for instance, is a procurement decision and if it results in the commissioner entering into a new contract, extending an existing contract, or materially altering the terms of an existing contract, then it is a decision that should be recorded.”

3 Completeness of registers of interests, gifts and hospitality

CCGs are reminded that conflicts of interest registers must be completed fully and include all the data fields specified in the statutory guidance.

NHS England has produced a [role-specific guide for admin staff](#) . This is a new resource that explains the role of administrative staff in the management of conflicts of interest. CCGs can disseminate this guide to appropriate staff to ensure that registers are well maintained. Admin staff could liaise with HR staff to ensure that a tracker system is set up to record declarations made/outstanding, including nil returns.

Reference in statutory guidance: Paragraph 45, paragraph 47

CCGs must make arrangements to ensure individuals declare any conflict or potential conflict in relation to a decision to be made by the group as soon as they become aware of it, and in any event within 28 days. CCGs must record the interest in the registers as soon as they become aware of it.

Paragraph 45 lists who should complete a declaration.

Under paragraph 47 the guidance states: “CCGs should ensure that, at least annually, staff are prompted to update their declarations of interest, or make a nil return where there are no interests or changes to declare.”

4 Governance structures for managing conflicts of interest

CCGs are reminded that Governance structures should operate in a manner consistent with the principles identified in the statutory guidance. CCG constitutions need to reflect their current governance arrangements.

CCGs should review their governance structures, policies, standing orders and terms of reference to ensure they enable the CCG to take appropriate action to manage conflicts of interest robustly and effectively. The process for reporting and publishing breaches should be included in the CCG's conflicts of interest policy, and the CCG should document, investigate and take mitigating action regarding any breaches that may arise.

Reference in statutory guidance: Paragraph 69, paragraph 6 [Annex K], paragraph 150

Paragraph 69: "CCGs should set out in their constitution a statement of the conduct expected of individuals involved in the CCG, e.g. members of the governing body, members of committees, and employees, which reflect the safeguards in this guidance. This should reflect the expectations set out in the Standards for Members of NHS Boards and Clinical Commissioning Groups".

Paragraph 6 [Annex K]: "CCGs should ensure that their contracts of employment and letters of appointment, HR policies, governing body and committee terms of reference and standing orders are reviewed to ensure that they enable the CCG to take appropriate action to manage conflicts of interest robustly and effectively in such circumstances"

Paragraph 150: "All CCGs must have a clear process for managing breaches of their conflicts of interest policy. The process should be detailed in their policy (see Annex J) for a checklist of suggested matters to include in the conflicts of interest policy)."

5 Managing conflicts when making joint decisions with other partners e.g. other CCGs or Local Authorities

CCGs are reminded that conflicts of interest management is important in the context of joint decision-making processes.

Following the creation of Sustainability and Transformation Partnerships (STPs) and Integrated Care Systems (ICSs), CCGs are working more collaboratively with other CCGs and local partners such as Local Authorities to jointly commission services.

As a result, joint forums and committees are being formed to discuss and make commissioning decisions.

"Better Collaboration Guidance" is due to be published within the next few months. Relevant staff at CCGs likely to be making joint decisions may wish to familiarise themselves with this when published. Also, [Annex K](#) of the statutory guidance specifically focuses on addressing conflicts of interest in new care models.

Reference in statutory guidance: Paragraph 83, Annex K

Paragraph 83: "The chair of a meeting of the CCG's governing body or any of its committees, sub-committees or groups has ultimate responsibility for deciding whether there is a conflict of interest and for taking the appropriate course of action in order to manage the conflict of interest."

Annex K addresses conflicts of interest in relation to new care models. Of particular relevance is paragraph 11: “Appropriate governance arrangements must be put in place that ensure that conflicts of interest are identified and managed appropriately, in accordance with this statutory guidance, without compromising the CCG’s ability to make robust commissioning decisions”.

6 Conflicts of interest training

CCGs are reminded that targeted staff need to complete training on an annual basis. Data will be collected as part of the annual Improvement and Assessment Framework Indicator for 2018/19.

Reference in statutory guidance: Paragraph 167

Paragraph 167: “All CCGs must ensure that training is offered to all employees, governing body members, members of CCG committees and sub-committees and practice staff with involvement in CCG business on the management of conflicts of interest. This is to ensure staff and others within the CCG understand what conflicts are and how to manage them effectively.”

7 Accepting gifts, hospitality and sponsorship

CCGs are reminded that they should record whether prior approval has been given for gifts, hospitality and sponsorship worth more than £75, and in what timeframe. The template register for gifts and hospitality ([Annex D](#)) has been revised to include the details of approving officer and date. CCGs are encouraged to make use of this amended template.

Reference in statutory guidance: Paragraph 53

Paragraph 53 states the register should include: “Action taken to mitigate a conflict, details of any approvals given and details of the officer reviewing/approving the declaration made and date.”

8 Management of conflicts of interest in meetings

CCGs are reminded that conflicted parties may need to leave meetings for certain discussions, and that any actions taken to mitigate a conflict should be recorded. It is particularly important that this is adhered to in remuneration committee meetings.

CCGs must ensure that the chairs and secretariat for all committee meetings have access to the [role-specific guide for admin staff](#) and to remind chairs of their role in managing conflicts of interest.

Reference in statutory guidance: Paragraph 105

Statutory guidance sets out a template for minute-taking in any meeting where conflicts of interest are declared or arise, at paragraph 105.

9 Appointments to and changes of roles and responsibilities within decision-making bodies

CCGs are reminded that they need to have defined procedures for considering conflicts of interest when electing or selecting individuals to join the Governing body or other decision-making body. Conflicts of interest need to be declared prior to appointment, whether a new appointment or a change in roles. CCGs should ensure that there are prompts embedded within the recruitment system to request conflicts of interest declarations prior to appointment, on appointment and on change of role.

Reference in statutory guidance: Paragraph 47

“Declarations of interest should be made as soon as reasonably practicable and by law within 28 days after the interest arises (this could include an interest an individual is pursuing). Further opportunities to make declarations include: on application, on appointment, at meetings, when prompted to do so by organisation or, on change of role.” [These situations are described further in the guidance].

References and contacts

Please refer to the [templates and checklists, cases studies and role-specific guides](#) for additional reference and support. For additional information please contact england.co-commissioning@nhs.net.