Paper: CB.24.02.16/04

BOARD PAPER - NHS ENGLAND

Title: Action on CCG co-commissioning conflicts of interest and sunlight.
Lead Director: Ian Dodge, National Director: Commissioning Strategy. Authors: Niall McDermott, Commissioning Strategy Directorate; Stefanie Rutherford, Senior Co-commissioning Manager; Julia Simon, Commissioning Strategy Directorate
Rationale for this Paper Being Discussed in the Closed Session: So that policy issues can be discussed to finalise NHS England approach.
Purpose of Paper: To inform and update the Board on work taking place to deliver greater transparency across the system, ensuring that conflicts of interest can be effectively managed and to seek appropriate policy steers.
The Board is invited to: Agree the core approach to managing conflicts of interest set out in this paper.

ACTION ON CCG CO-COMMISSIONING CONFLICTS OF INTEREST AND SUNLIGHT

PURPOSE

1. This paper updates the Board on progress with (1) work on revised CCG guidance on the management of conflicts of interest, and, (2) delivering cross system sunlight provisions. A number of policy steers are required to progress work and so the paper invites the Board's views on these.

CONTEXT

2. There has recently been increased external scrutiny of CCGs' management of conflicts of interest:

    i. The National Audit Office ('NAO') published a report in September 2015, concluding that in the year 2014/2015 (and so before the advent of co-commissioning) CCGs generally had arrangements in place to manage conflicts of interest and reduce the risk of decisions being improperly influenced. However, the report called for greater scrutiny and assurance of CCGs' management of conflicts of interest by NHS England.
    ii. In September 2015, we commissioned our audit team to undertake an audit of primary care co-commissioning arrangements. The findings of the audit report suggest that there is action we can take to strengthen the management of real and perceived conflicts of interest.
    iii. The Times recently reported that CCGs have awarded contracts valued at £2.4bn to organisations with which their members are associated. The article raised a number of concerns with the requirements of the conflicts of interest guidance, although no apparent wrong-doing was reported.
    iv. The Telegraph made a series of allegations (most recently on the 18th February 2016) that a number of CCG medicines management leads may have acted inappropriately in their dealings with pharmaceutical companies. This has led to calls for more stringent rules around gifts and hospitality in the NHS and a number of investigations by NHS Protect. Following this NHS England commenced our 'sunlight' work - action we are taking to ensure a robust approach to publishing information in relation to conflicts of interest and gifts and hospitality.

3. To respond to these issues we are:

    i. Revising the "Managing Conflicts of Interest" statutory guidance we issue to CCGs (the 'CCG guidance') to respond to the challenges posed by CCG co-commissioning; and,
    ii. Reviewing CCG, internal NHS England and provider facing policies to ensure that sunlight principles are reflected in these.

4. This paper seeks approval to NHS England's response to the report's recommendations. It is not our usual practice to publish audit reports but we think that, on this occasion, publication will aid the sharing of learning and good practice and help CCGs understand how they might strengthen their own approaches in this area. This is why we agreed with our internal auditors that we would publish an

externally facing version of their report, including the NHS England response to the individual recommendations that were made. It is also vital that NHS England publishes the audit report in advance of the consultation period on the revised CCG guidance - to demonstrate how we have taken on board the findings. Furthermore, we have also committed to the Health Select Committee that we would publish the report and our response.

A prescriptive approach versus local autonomy

5. NHS bodies are already legally required to manage conflicts. Fundamentally, a balance needs to be struck between trusting organisations to manage conflicts of interest appropriately in accordance with their statutory duties, and adopting a more prescriptive approach.

6. In response to a number of issues highlighted by our recent conflicts of interest audit, the allegations raised in the media and feedback from a number of stakeholders including CCG lay members, our recommendations lean towards greater prescription, providing absolute clarity on the minimum requirements and expectations.

ADDRESSING CONFLICTS OF INTEREST IN THE COMMISSIONING SYSTEM

7. The NHS' assumptions are:

    i. The added value of clinically led commissioning outweigh the risks of vested interests and consequent conflicts of interest; and
    ii. Clinically led commissioning is enshrined in the Health and Social Care Act 2012. We need to develop proportionate arrangements to mitigate the inherent risks. Perceptions of conflicts of interest can be as serious as actual conflicts; thus it is necessary to ensure that the revised guidance to CCGs (if complied with) safeguards also against perceived wrongdoing. This will protect the confidence of the public, Parliament, and providers in the integrity of the clinical commissioning system and the wider NHS.

8. NHS England needs to agree what would constitute an acceptable level of risk with regard to conflicts of interest management. This risk level will be reflected in the new requirements of the revised CCG guidance. However, public and media interest in this area is unlikely to abate. The point will be for commissioners to manage those conflicts with transparency and robustness; and for NHS England, to assure itself that this is being done.

CCG conflicts of interest audit

9. In September 2015, NHS England commissioned its audit team to undertake an audit of ten primary care co-commissioning arrangements. The aims of the audit were to:

    i. Evaluate compliance with the CCG guidance;
    ii. Identify and share good practice in managing conflicts of interest; and
    iii. Identify any areas for improvement or where the CCG guidance requires strengthening.

10. The audit found that the CCG guidance had been well received by CCGs, with all audit sites having reviewed their processes in line with it. The audit identified no major conflicts of interest breaches, although it found a number of areas where CCGs and joint committees were not in full compliance with individual requirements of the CCG guidance. In addition, a number of examples of good practice were identified, including the inclusion of out-of-area GPs on the primary care commissioning committee to ensure clinical input into decision-making, whilst minimising the risk of conflicts of interest.

11. The audit identified some inconsistencies in the mechanisms established by CCGs and joint committees to manage conflicts of interest, including:

    i. The processes to declare and record conflicts; as variability was found in minute taking and the frequency of updating Declarations of Interest and registers.
    ii. Governance arrangements; as it was found primary care commissioning committees have different voting arrangements and no clearly defined processes for managing conflicts of interest breaches.
    iii. Training arrangements; as not all audit sites had a structured conflicts of interest training programme.

12. The audit report (a near final draft of which is appended to this paper) encourages NHS England to strengthen the CCG guidance to ensure there is absolute clarity on the minimum requirements.

13. Section 3 of the audit report includes a draft NHS England response. NHS England has committed to publish the audit report in February 2016 to share learning and support commissioners' development, subject to Board approval.

14. Below is a table summarising the key recommendations of the audit with our proposed actions against each recommendation. Some of these actions are set out in greater detail in subsequent sections.

Audit recommendations	**Proposed NHS England actions**	**Timescale**
Recommendation 1 - Each co-commissioning arrangement should define the procedures to follow when a breach is detected.	1. We will review and update the statutory guidance to include more details of responsibilities, the approach to understanding and evaluating the breach and the reporting requirements. We will ask for CCGs who have detected a breach to publish on their website a description of the breach and what they did in response, and also to simultaneously notify their local NHS England team. 2. The introduction of a conflicts of interest 'guardian' role is being considered. The responsibilities will include an oversight role that would include ensuring appropriate records are kept to demonstrate how potential conflicts have been managed and conflicts relating to	<u>1 & 2. 30 May 2016:</u> Revised conflicts of interest management statutory guidance- including this specific area to be approved and published. <u>3. 31 March 2016:</u> 8 additional lay member training sessions on COI management will have been delivered.

	procurement decisions. 3. Further, we are revising our lay member training, which will include information on the management of breaches.	
Recommendation 2 - Each co-commissioning arrangement should document their procedures to manage conflicts of interest risks related to contract monitoring.	We will clarify in the guidance that conflicts of interest safeguards apply to all CCG activities, including contract monitoring, and not solely to procurement activities or contract awards. We will also include more details of conflict of interest risks around contract monitoring, e.g, that conflicted members could have an unfair competitive advantage. We will include a number of worked case studies to illustrate these points.	30 May 2016: Revised conflicts of interest management statutory guidance- including this specific area to be approved and published.
Recommendation 3 – Co-commissioning arrangements should consider the key decisions the primary care commissioning committee is likely to make and identify some conflicts of interest scenarios that may arise and agree how they will be dealt with.	1. We will ensure the revised guidance includes how the primary care commissioning committee should manage conflicts of interest. 2. We will also consider the addition of key decisions within a number of case studies that will form part of an on-line resource for CCGs to access.	1. 30 May 2016: Revised conflicts of interest management statutory guidance- including this specific area to be approved and published. 2. End of May 2016: Conflicts of interest management resource to developed and available.
Recommendation 4 – Co-commissioning arrangements should establish processes to ensure that any potential conflicts are identified and effectively managed throughout the full decision making life-cycle and that records are maintained to demonstrate this to the primary care commissioning committee and presented as part of any options papers.	We will include this in the updated guidance. We will include a template in the updated statutory guidance to illustrate the records that should be provided to the primary care commissioning committees to show how conflicts have been managed in developing options and proposals.	30 May 2016: Revised conflicts of interest management statutory guidance- including this specific area to be approved and published.
Recommendation 5 - Co-commissioning arrangements should have suitable arrangements in place to ensure members of the public can access the Register of Declared Interests and Register of Procurement Decisions on request.	We will ensure the revised conflicts of interest guidance makes explicit the requirements for enabling the public to access the registers. We will state that we expect such registers to be published on CCG websites.	1. 30 May 2016: Revised conflicts of interest management statutory guidance- including this specific area to be approved and published.

Recommendation 6 - Declarations of interests should be undertaken on at least a quarterly basis, with confirmations provided by all members and employees that their declared interests are up-to-date.	We will define a requirement for confirmations of interest to require a nil return. We will define a minimum frequency for confirmations of declared interests and consider whether this should be tailored for staff with different roles and responsibilities.	30 May 2016: Revised conflicts of interest management statutory guidance- including this specific area to be approved and published.
Recommendation 7 – It is important for co-commissioning arrangements to establish and maintain a Register of Procurement Decisions to ensure the transparency of procurement decisions.	In line with other procurement guidance and regulations, we will review whether any further guidance is required on the scope of decisions. We will include a template Register of Procurement Decisions within the updated statutory guidance. As part of the refresh of the statutory guidance, this requirement will be reaffirmed.	30 May 2016: Revised conflicts of interest management statutory guidance- including this specific area to be approved and published. .
Recommendation 8 – To provide increased transparency and ensure easy access to recorded interests, all joint committee members, including NHS England, should be included in the Joint Committee's Register of Declared Interests.	As part of the sunlight work, we will define the approach for NHS England members to record interests. This will consider how the interests are made available to the co-commissioning arrangement, as well as mechanisms to make these available to the public. This will be included in the revised conflicts of interest guidance.	30 May 2016: Revised conflicts of interest management statutory guidance- including this specific area to be approved and published.
Recommendation 9 – It is imperative that co-commissioning arrangements maintain full transparency in relation to decisions regarding general practice services through the minutes of primary care commissioning committee meetings.	The current CCG guidance does provide guidance on the information to be recorded to demonstrate how a potential conflict of interest has been managed. However, to build on this we are considering the addition of examples to demonstrate what 'good' looks like. The introduction of a conflicts of interest 'guardian' role is being considered. The responsibilities will include an oversight role that would include ensuring appropriate records are kept to demonstrate how potential conflicts have been managed and conflicts relating to procurement decisions.	30 May 2016: Revised conflicts of interest management statutory guidance- including this specific area to be approved and published.
Recommendation 10 – Co-commissioning arrangements should ensure that declared conflicts of interest are promptly transferred to the register of interests	This is already explicit in the current guidance. Webinars and training for CCGs has been offered to ensure CCGs are aware of the requirements and know how to implement them. Further training is being planned once the revised guidance is finalised.	30 May 2016: Revised conflicts of interest management statutory guidance- including this specific area to be approved and published.

Recommendation 11 - Each co-commissioning arrangement should provide training to members and employees and define the frequency of ongoing training. Consideration should be given to providing more regular training to individuals in 'higher risk' roles e.g. procurement.	1. We will implement a conflicts of interest online training package that could be completed by all members and employees. Consideration is being given to the different levels of training needed depending on the roles and responsibilities of the individuals. We will consider the circumstances where face-to-face training is required e.g. to support the implementation of the revised guidance. A section on training will be included in the revised guidance to help CCGs determine the level of training that is appropriate. 2. Eight more lay member training sessions will be completed in February and March 2016 and we will update the training to reflect the feedback from the audit. Further, we will establish a separate annual training session to provide training to any new lay members appointed throughout the year.	1. July 2016 2. 31 March 2016: 8 additional lay member training sessions on COI management will have been delivered.

Board Recommendation 1: The Board are asked to agree the proposed NHS England actions in response to the audit, and to note the publication of the audit report and NHS England response.

POLICY ISSUES FOR RESOLUTION

15. Our audit report, the NAO report, and media coverage have raised some concerns about the management of conflicts of interest that centre on the makeup of CCGs and their current governance arrangements. The following sections explore options for how we could strengthen the CCG guidance in these areas.

CCG governance arrangements and the role of lay members

16. CCGs are GP-led membership organisations, which were established to bring more clinical leadership into the commissioning process. By nature, GPs who serve on a CCG have inherent conflicts, in that they are both a provider and a commissioner. Following recent media scrutiny, one suggestion has been to stipulate that no GPs with a financial interest in a provider body should be allowed to serve on a CCG governing body. This approach may warrant further consideration, although it should be noted that it would exclude the majority of GPs from CCG leadership roles, undermine the purpose of CCGs and contribute further to the challenge of CCG succession planning.

17. The CCG guidance currently states that procurement decisions relating to the commissioning of primary medical services should be made by a committee of the CCG's governing body. Membership is up to the determination of the CCG, although committees must have a lay (ie non-clinical) and executive majority and a lay chair and lay vice-chair. By statute, CCGs must have two lay members on their governing

body, one of whom must have a finance interest and relevant professional background and serve as the chair of the audit committee. The second lay member must have knowledge of the geographical area covered in the CCG constitution and serve as a representative of patients and the public (PPI). With regard to delegated co-commissioning arrangements (where CCGs commission general practice), the chair of the CCG and the audit committee chair must both personally formally attest to conflicts of interest having been appropriately managed. It is not, therefore, appropriate for the CCG audit chair to also be the chair of the primary care commissioning committee. This leaves the PPI lay member with the responsibility of chairing this committee, but we understand that this individual often feels ill prepared for the role. Additionally, we know the introduction of primary care co-commissioning has significantly increased the workload of CCG lay members and some CCGs have recruited additional lay members to address this.

18. We believe that stipulating that each CCG must have more than two lay members would go some way towards assuaging the risk of insufficiently robustly managed conflicts of interest. The benefits would include:

    i. A stronger independent voice;
    ii. Greater scrutiny;
    iii. A shift in power on the primary care commissioning committee (as well as on the governing body as a whole); and
    iv. A more reasonable work-load for all lay members on the governing body.

19. We think the number of prescribed lay members on a CCG governing body should be three of four, with four being the optimal number - but this needs to be balanced by the increase in CCG running costs and the availability of sufficiently high calibre lay members.

20. The original intention was for each CCG to have a minimum of two lay members, each of whom would be contracted to work for two days a month to the DH set rate of £8.5k per annum. In reality, many CCGs pay for additional lay member days, and our analysis suggests that the cost of a lay member varies between £8.5-17k nationally. Seventy-one CCGs, or about 30%, already have three or more lay members. Were all CCGs to have three lay members on their governing body, the additional cost nationally would approximate £1.5m, with the corresponding number for four lay members per CCG £3m. This cost pressure would need to be met by CCGs' respective running costs, and this is likely to be a contentious issue. Additionally, some CCGs will find it difficult to recruit high calibre lay members.

21. In mitigation of this, we would encourage CCGs to explore 'sharing' lay members between, for instance, CCGs in the same Sustainability and Transformation area.

22. Further, NHS Clinical Commissioners have indicated that their members are likely to be irritated by what might seem like a knee-jerk reaction from NHS England in response to media stories. We would mitigate this by wide-ranging engagement with CCG leaders.

23. Lastly, a change to the number of lay members on a CCG governing body would necessitate a change to their respective constitution. We would wish to avoid CCGs incurring surplus legal costs as a result of this, and in mitigation would explore, for example, running legal surgeries with members of the NHS England legal team. On balance, our recommendation is to increase lay membership on CCG governing bodies to three or four.

24. As outlined in our response to the first recommendation in the audit report (see paragraph 14 above), to further strengthen the scrutiny and transparency of the decision-making process, we propose that all CCGs appoint a Conflicts of Interest Guardian (akin to a Caldicott Guardian), which we recommend be a lay member without any provider interests. It would be apt if it were the audit chair who played this additional role (if there were additional lay members on the governing body, we would assume that some of the other responsibilities, such as chairing additional committees, could be shared amongst them, thus freeing the audit chair to be the Conflicts of Interest Guardian). The Conflicts of Interest Guardian would:

    i. Act as a conduit for members of the public who have any concerns in regard to conflicts of interest;
    ii. Be the safe point on contact for a whistle-blower within the organisation; and
    iii. Have responsibility for ensuring that the CCG applies conflict of interest principles and policies rigorously and provide independent advice and judgment where there is any doubt about how to apply them in an individual situation.

25. The audit recommends that NHS England is more prescriptive on membership arrangements for the primary care commissioning committee to ensure consistency of approach and to reduce the risk that conflicted members could have inappropriate influence on decision-making. Options include:

    i. Make all GPs non-voting members of the primary care commissioning committee. This safeguard is likely to provide greater confidence to the public in the probity of decision-making, but it can also be seen to jeopardise or undermine clinically led commissioning.
    ii. Stipulate that all CCGs must have at least one out-of-area GP on their decision-making committee. This approach is currently favoured in London: it would ensure clinical input into the decision making process, whilst reducing the risk of conflicts of interest arising, but would entail an associated cost increase. It is also likely to work more easily in urban centres than in rural areas.
    iii. Increase the number of non-GP clinical members on the primary care commissioning committee. There have been calls for NHS England to mandate that the secondary care consultant must be a member of this committee. (By statute, all CCG governing bodies must have as members a secondary care consultant and a nurse). This is to ensure there is appropriate representation of the acute sector, particularly when decisions are being taken to shift care from the acute to the primary and community settings. There is no guarantee, though, that this individual would not themselves have vested interests in the decision-making; the same could be said for the nurse on the governing body. Such a mandate could also be seen as simply adding to the bureaucracy of prescriptive rules without an obvious gain in benefit.

26. On balance none of these options look particularly attractive and it is our view that we should, instead, focus on increasing the numbers of lay members as a way of strengthening scrutiny and transparency.

Board Recommendation 2: The Board are asked to confirm:

- ***i. whether we should stipulate an increase in lay members on CCG governing bodies;***
- ***ii. if so, whether their preference is to increase this to three or four;***
- ***iii. views on whether we should stipulate the appointment of Conflicts of Interest Guardians.***

27. The CCG guidance currently states that where certain members of a decision-making body have a material interest, they should either be excluded from relevant parts of the meetings or join in the discussions, but not participate in the decision-making itself (ie not have a vote). The aim is to balance the need for clinical expertise and input into the strategic planning of services with appropriate probity in the decision-making process, eg with regard to a contract award. The audit has found inconsistencies in how CCGs are applying this safeguard, with some conflicted members contributing to discussions on items where they are conflicted, and others removing themselves entirely from the meeting or moving to the public gallery. The audit recommendations are that the CCG guidance is strengthened to require individuals to leave the meeting room for agenda items where they have a conflict. This would satisfy concerns that conflicted members can still influence discussions even when they abstain from speaking (ie non-verbally) and would afford greater public confidence in the decision making process.

Management of breaches

28. The CCG guidance currently does not detail how breaches in conflicts of interest must be managed. The audit report recommends that any revised CCG guidance should provide more advice on the steps to be taken when a breach is detected. NHS Southwark CCG has established a Conflicts of Interest Panel to serve as an advisory body to the Governing Body and believes this is working well. Its role is to:

    i. Validate commissioning decisions taken by Governing Body committees ensuring proper management of conflicts of interests has taken place;
    ii. Make a recommendation in cases where the referring committee was unable to take a decision or even formulate a recommendation because of actual or perceived conflicts of interest declared by committee members and/or the committee being inquorate; and,
    iii. Validate decisions taken by tender evaluation panels in the awarding of contracts.

29. However, the risk is that this panel would be seen and felt to be an additional layer of bureaucracy that would not necessarily add much benefit, especially in small CCGs with few staff. Therefore more proportionate options include:

i. to set out the principles of what would constitute a breach and to publish worked examples of breaches to establish a pattern of good practice; or
ii. to require CCGs to publish any breaches, and how they handled them, on their website, as well as simultaneously notifying NHS England (as suggested in response to recommendation 2 in the table at paragraph 14 above).

Board Recommendation 3: The Board are asked to confirm whether they agree that we should set out good practice on breach policy and require CCGs to publish information on breaches on their website?

Registers of interest and decision making

30. The current CCG guidance states that CCGs must maintain appropriate registers of interests and publish or make arrangements for the public to access those registers. However, the audit has shown inconsistencies in how conflicts are being recorded and the accessibility of registers to the public. Our response to this is discussed in the sunlight section of this paper below.

Assurance of the management of conflicts of interest

31. NHS England has a statutory duty to make an annual assessment of each CCG's performance. In addition, in cases of NHS England delegated duties—such as the delegation of the commissioning of general practice—NHS England, whilst delegating the functions and associated budgets, still maintain legal liability, should anything go wrong or be legally challenged. In light of this enduring legal responsibility, it is critically important that we have reliable and rapid access to information on how these functions are being discharged; and in cases of non-compliance with the guidance, that we can act swiftly to ensure the matter is rectified.

    i. Following publication of the new guidance, our basic expectation would be for a check of CCGs' websites to ensure they are compliant with the requirements to publish registers of interest; procurement decisions; and gifts and hospitality. The check would also need to include a triangulation of these registers, to ensure that any conflicts of interest registered had appropriately carried through onto the register of procurement decisions. Our aim would be ensure 100% compliance.
    ii. CCGs already undertake an annual self-attestation—jointly signed by the accountable officer and the chair of the audit committee—to the effect that the CCG is robustly managing conflicts of interest. To add depth to the assurance of the attestation, we are proposing an annual, end-of-year, face to face governance conversation between each CCG and their regional NHS England team.
    iii. We will commission our internal auditors to undertake a second sample audit in 2016/17 to get an independent and objective view on how well the arrangements are working in practice.
    iv. Any non-compliance or suspected wrong-doing uncovered through the steps in i, ii and iii above would be immediately escalated to the relevant regional NHS England team for follow-up and investigation, with escalation to NHS Protect as or when necessary.

Board Recommendation 4: Do the Board agree with the recommended actions for assurance of CCGs?

Other action on CCG conflicts of interest

32. We also propose to strengthen the following areas of the CCG guidance, in line with the recommendations in the audit report:

    i. We will include more templates and worked examples in the guidance to support commissioners with its practical implementation.
    ii. We will clarify the minimum standards for documenting potential conflicts and their management in minutes, supported by case study examples.
    iii. We will clarify the practical applicability of the CCG guidance for NHS England members of joint committees.
    iv. We will ensure that the new guidance addresses the conflicts of interest risks associated with the introduction of multispecialty community providers ('MCPs').

33. The audit has highlighted that not all CCGs had a structured approach to the provision of training on conflicts of interest management, as required by the CCG guidance. To support CCGs, we will be procuring an on-line conflicts of interest training package akin to the Information Governance and Counter Fraud mandatory training packages. In addition, to further support CCG lay members (in light of their role in chairing the primary care commissioning committees), we will continue to provide a national training offer on management of conflicts of interest.

34. We will include a requirement in the CCG guidance for committee chairs to receive a declaration of interest checklist ahead of each meeting. This approach has been implemented by NHS Sunderland CCG who report finding it a helpful safeguard: it provides the chair with a helpful reminder of who is conflicted, which agenda item the conflict relates to and how the conflicts should be managed and recorded.

35. The audit report has highlighted a number of examples of good practice for co-commissioning arrangements. We will look at how we can best facilitate the on-going sharing of learning through case studies and other mechanisms.

36. Finally, we will repeat the conflict of interest audit of in the 2016/2017 financial year to follow up on the development of processes to manage conflicts of interest within primary care co-commissioning and to obtain evidence on the on-going operational effectiveness of conflicts of interest management.

SUNLIGHT

37. We are reviewing the information we publish in relation to gifts and hospitality and conflicts of interest, drawing on good practice that already exists, with the aim of ensuring greater consistently across the healthcare system. The approach we have taken has involved:

i. Reviewing our own internal **NHS England** policy to make sure it is fit for purpose and suit the way we do business;
ii. Setting clear expectations of **CCGs** that mirror NHS England policies. We are revising the CCG guidance to do this; and,
iii. Engaging with partners such as NHS Improvement to consider how best the requirements on commissioners can be mirrored in requirements on **providers**, including through provisions in the NHS Standard Contract.

38. In terms of **NHS England**, we intend to strengthen our internal standards of business conduct (SOBC) to ensure that they are fit for purpose and suit the way we do business. This three main policy changes:

    i. Scope: Our intention is to ensure that the scope of coverage of the SOBC applies to all of our employees, contractors, other retained staff such as the National Clinical Directors, members of advisory groups and committees, CSU staff, etc. This would open up the way to collect and publish information concerning gifts and hospitality and conflicts of interest across the spectrum of individuals engaged by us.
    ii. Positive attestation: We will introduce a form of positive attestation every twelve months to those people subject to our SOBC.
    iii. Publication of names: Currently different organisations publish information on gifts and hospitality and conflicts of interest at different levels. For instance, NHS England publishes information on its website in relation to National Directors only. Consideration is needed as to whether to extend this request to other categories of staff.

39. For gifts and hospitality, our rules will stipulate a maximum value of £25 and a ban on cash gifts. This will apply to all hospitality including payments for travel and accommodation by industry. We believe that these measures taken with the provisions in paragraph 40 will serve to eliminate all material gifts and hospitality payments.

40. The Board could choose to go further than this and look to cease employing staff involved in local drugs purchasing decisions who receive payments (salaried or consultancy) from the pharmaceutical industry, and put similar expectations on CCGs. A blanket requirement to do this would be difficult to achieve for current employees due to potential employment law implications and the need to carefully consider which groups of staff this would apply to (for example would it apply to all industry or just pharmaceutical) – defining and securing agreement to an approach is likely to be a complex and difficult. However, this proposal could be more fully worked up with a view to phased implementation.

Board Recommendation 5: Do the board want us to work up in more detail a proposal for how we might look to cease employing staff involved in local drugs purchasing decisions who receive payments (salaried, consultancy or sessional advisors) from the pharmaceutical industry for NHS England and CCGs?

41. From the perspective of NHS England work, it is likely that all of the above matters will, if agreed by the Board, require formal discussion to commence with staff side

representation groups, and external suppliers such as BSA as the technical employer of CSU staff, before any revised policy can be implemented. If the above changes in policy are agreed in principle by the Board then the detailed work on implementation costing for NHS England facing work can proceed and be considered by the Corporate Executive Committee as per the timeline below.

42. Alongside the changes to the CCG guidance discussed elsewhere in this paper, we will ask **CCGs** to adopt the same approach that we take to publication of information on gifts and hospitality and conflicts of interest ourselves, to ensure national consistency.

43. As discussed above, our working assumption is that information on gifts and hospitality and conflicts of interest which is collected for all staff should be published (with appropriate data protection and other safeguards in place to ensure, for instance, that someone's safety is not compromised by having their name published).

44. Publication of the names of all staff who make declarations on gifts and hospitality and conflicts of interests delivers full transparency. However, this would have resource implications in terms of collation and management of returns.

Board Recommendation 6: Do the board agree that this information on conflicts gifts and hospitality should be published in full for all staff?

45. NHS bodies have a legal requirement to establish their own internal disciplinary procedures for identifying and dealing with such breaches. The expectation is that they would refer to NHS Protect for significant or complex cases. Serious breaches could lead to dismissal or criminal proceedings. NHS England will establish and publish a breach policy and will provide clearer guidance and expectations for CCG breach policies, as per recommendation 3 above.

Providers

46. For **providers**, new provisions in line with sunlight principles has been included in the 2016/2017 NHS Standard Contract, issued for consultation in February 2016. The requirements are as follows:

27.1 The Provider must ensure that, in delivering the Services, all Staff comply with Law, Guidance and Good Practice in relation to gifts, hospitality and other inducements and actual or potential conflicts of interest.

27.2 The Provider must ensure that all Staff promptly disclose to the Provider full and accurate details of:

27.2.1 all gifts, hospitality or other inducements received by or offered to them by or on behalf of any manufacturer, distributor or vendor of pharmaceuticals, medical devices, consumables or equipment of a type which is or could be used in the delivery of the Services; and

27.2.2 any other actual or potential conflicts of interest on their part in relation to the delivery of the Services.

The Provider must maintain and publish on its website an up-to-date register containing full and accurate details of all such gifts, hospitality, inducements and actual or potential conflicts of interest.

47. The Standard Contract is not used to commission general practice and other primary care services. Rules relating to conflicts of interest are governed in differing ways across primary care contracts (and legislation) for general practice, dental, optical and pharmacy contractors. Our approach so far has been to wait until policy is settled for NHS England and CCGs and to then seek to replicate provisions for primary care contractors. This now needs to be done.

Medicines optimisation committees

48. In order to eliminate duplication of medicines evaluation at local level, four regional medicines optimisation committees are being established. These committees will work together and ensure medicines evaluation will be done once only and the output shared across the NHS and help support medicines optimisation more generally. This means that local medicines formulary committees will far less involved in processes that the pharmaceutical industry may seek to influence. Committees and staff will be refocused towards improving value and outcomes from medicines use. It is expected these principles will be in place by April and the committees operational later in the year.

TIMELINE

49. The timelines for progressing these strands of work are as follows:

i. Internal NHS England policies:
April – May 2016: Review and clearance of implementation proposals including costings) by the end of April 2016, before recommending to the Audit & Risk Assurance Committee meeting on 10 May 2016. Implementation will start from 1 August 2016.

ii. CCG guidance refresh:
February 2016: Policy discussion with Commissioning Committee and Audit Risk and Assurance Committee, to help settle contents of guidance. Audit report and NHS England response put to NHS England Board (Private Session)
March 2016: Consultation on revisions to CCG guidance (5 weeks)
April 2016: Finalisation of CCG guidance
May 2016: Guidance considered and cleared by Audit Risk and Assurance Committee and NHS England Board

iii. NHS Standard Contract clause:

February 2016: Draft Contract approved by NHS England Board for release for consultation
February 2016: Stakeholder consultation
February 2016: Final version of Contract published
1 April 2016: Clause in force

SUMMARY OF RECOMMENDATIONS

50. This paper proposes a range of mechanisms to improve the way conflicts of interest are managed. Given the variation that exists in the system, the recommendations lean towards greater prescription, providing absolute clarity on the minimum requirements and expectations. The Board's views on whether we have struck the right balance is sought.

51. A summary of the decision points are as follows:

i) *The Board are asked to agree the proposed NHS England actions in response to the audit, and to note publication of the audit report and NHS England response.*

ii) *The Board are asked to confirm:*
   a. *whether we should stipulate an increase in lay members on CCG governing bodies;*
   b. *if so, whether their preference is to increase this to three or four;*
   c. *views on whether we should not stipulate the appointment of Conflicts of Interest Guardians.*

iii) *The Board are asked to confirm whether they agree that we should set out good practice on breach policy and require CCGs to publish information on breaches on their website?*

iv) *Do the Board agree with the recommended actions for assurance of CCGs?*

v) *Do the board want us to work up in more detail a proposal for how we might look to cease employing staff involved in local drugs purchasing decisions who receive payments (salaried, consultancy or sessional advisors) from the pharmaceutical industry for NHS England and CCGs?*

vi) *Do the board agree that information on conflicts gifts and hospitality should be published in full for all staff?*

Author: **Niall McDermott, Senior Policy Manager, Commissioning Strategy Directorate;**
Stefanie Rutherford, Senior Co-commissioning Manager, Commissioning Strategy Directorate;
Julia Simon, Head of Commissioning Policy Unit, Commissioning Strategy Directorate

Date: **18 February 2016**

NHS England

Co-commissioning Conflicts of Interest Audit: Summary report

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Co-commissioning Conflicts of Interest Audit

Summary Report

Version number: 1

First published: February 2016

Prepared by: Co-commissioning policy team

Classification: Official

The National Health Service Commissioning Board was established on 1 October 2012 as an executive non-departmental public body. Since 1 April 2013, the National Health Service Commissioning Board has used the name NHS England for operational purposes.

Contents

Executive Summary

In September 2015, NHS England commissioned an independent audit of conflicts of interest management in ten primary care co-commissioning arrangements. The aim of the audit was to review how the safeguards set out in the *Managing Conflicts of Interest* statutory guidance were operating in practice, share learning and good practice and identify any areas for improvement. The scope of the audit encompassed seven delegated arrangements and three joint arrangements and this report summarises the key learning in support of commissioners' development.

The audit found that the *Managing Conflicts of Interest* statutory guidance has been well received by CCGs, with all audit sites having reviewed their processes in line with the statutory guidance. The audit identified a number of examples of good practice, including the inclusion of out-of-area GPs on the Primary Care Commissioning Committee to ensure clinical input into decision-making, whilst minimising the risk of conflicts of interest.

The report highlights some inconsistencies in the processes established by the audit sites to manage conflicts of interest including:

- **Governance arrangements**, as the Primary Care Commissioning Committees had different voting arrangements and no clearly defined processes for managing conflicts of interest breaches;

- **Training arrangements**, as not all audit sites had a structured conflicts of interest training programme;

- **Processes to declare and record conflicts**, including inconsistencies in minute taking and frequency of updating Declarations of Interest.

In light of the findings, the report recommends that joint and delegated co-commissioning arrangements:

- Establish **processes** to ensure that any potential conflicts are identified and effectively managed throughout the full decision making life-cycle, including at sub-committees of the Primary Care Commissioning Committee.

- Define the procedures to follow when a **breach** is detected.

- Document procedures to manage conflicts of interest risks relating to **contract monitoring**.

- Consider the key decisions the Primary Care Commissioning Committee is likely to make and the potential **conflicts of interest scenarios** and how they should be dealt with.

- Ensure members of the public can **access** the most up-to-date version of the Register of Declared Interests and Register of Procurement Decisions.

- Collate **Declarations of Interest** on at least a quarterly basis, with confirmations provided by all members and employees that their declared interests are up-to-date.

- Ensure that any declared conflicts of interest are promptly transferred onto the **Register of Interests.**

- Establish and maintain a **Register of Procurement Decisions** to ensure the transparency of procurement decisions.

- With regards to joint arrangements, ensure that all joint committee members, including NHS England staff, are included in the **Joint Committee's Register of Declared Interests.**

- Ensure the **minutes** of primary care commissioning committee detail the nature of any conflict, who had the conflict and how the conflict was managed to ensure full transparency in the decision-making process.

The report highlights a number of areas of the statutory guidance where further clarity is needed on the minimum requirements. This will help to reduce the level of variation in processes for managing conflicts of interest. NHS England will be reviewing and updating the statutory guidance on managing conflicts of interest, with a view to publishing revised guidance in Spring 2016. The guidance will include more examples and templates to further support commissioners with practical implementation of the guidance.

CCGs are recommended to review the audit findings and consider and evaluate their current arrangements for managing conflicts of interest and if they could be strengthened.

1 Introduction

1.1 Background

"A conflict of interest occurs where an individual's ability to exercise judgement, or act in a role, is or could be impaired or otherwise influenced by his or her involvement in another role or relationship" (NHS England (2014) Managing Conflicts of Interest Statutory Guidance for CCGs)

Commissioners manage conflicts of interest as part of their day-to-day activities. Effective handling of such conflicts is crucial for the maintenance of public trust in the commissioning system. Importantly, it also serves to give confidence to patients, providers, Parliament and tax payers that commissioning decisions are robust, fair, transparent and offer value for money.

In 2014, NHS England invited Clinical Commissioning Groups (CCGs) to take on an increased role in the commissioning of general practice (GP) services, through one of three co-commissioning models:

- **Greater involvement:** where CCGs collaborate more closely with their local NHS England teams in decisions about primary care services.
- **Joint commissioning:** where one or more CCGs jointly commission GP services with NHS England through a joint committee.
- **Delegated commissioning:** where CCGs assume full responsibility for the commissioning of GP services.

The intention of co-commissioning is to empower and enable CCGs to improve primary care services locally for the benefit of patients and local communities. It aims to bring more clinical leadership into general practice commissioning and enable more local decision making in support of the development of out-of-hospitals services. However, it is recognised that co-commissioning increases the risk of both real and perceived conflicts of interest arising for CCGs and their Governing Body members, particularly under delegated arrangements.

In light of this, in December 2014 NHS England published statutory guidance on *Managing Conflicts of Interest* for CCGs, in collaboration with national partners and regulators. The statutory guidance sets out the minimum requirements of what CCGs must do in respect of managing conflicts of interest, including:

- Maintain appropriate registers of interests.
- Publish or make arrangements for the public to access those registers.

- Make arrangements requiring the prompt declaration of interests by members and employees and ensure that these interests are entered into the relevant register.

- Make arrangements for managing conflicts and potential conflicts of interest e.g. developing appropriate policies and procedures.

- Have regard to guidance published by NHS England and Monitor on conflicts of interest.

With regards to NHS England staff, they are bound by the codes set out in the NHS England's Standards of Business Conduct, but are also required to adhere to the statutory guidance when serving on a joint committee with one or more CCGs.

When the statutory guidance was published, NHS England agreed to undertake a sample audit to review how the conflicts of interest safeguards were operating in practice, share learning and good practice and identify any areas for further support. This report sets out the key findings from the audit.

1.2 Scope and objectives of the audit

In September 2015, NHS England commissioned its internal audit team to evaluate the arrangements for managing conflicts of interest at a non-statistical sample of ten primary care co-commissioning arrangements. This, included seven delegated arrangements and three joint commissioning arrangements (where both CCGs' and NHS England's arrangements were reviewed). The aims of the audit were to:

- Understand and evaluate compliance with the statutory guidance on managing conflicts of interest.

- Identify and report on good practice in managing conflicts of interest across the co-commissioning arrangements visited.

- Identify areas in the statutory guidance where further clarity was required.

- Identify and report upon lessons or areas for improvement.

The focus of this audit was on the 'design'[1] of mechanisms to manage conflicts of interest and how these met the requirements set out in the statutory guidance. The audit focussed on the following areas:

[1] The audit focussed on whether mechanisms and controls were in place in line with the statutory guidance, which, if operating effectively, would reduce the co-commissioning arrangement's conflicts of interest risk. However, due to the varied number of decisions made across the co-commissioning arrangements, the audit could not perform sufficient work to confirm that those controls and mechanisms were being operated in line with their design. It is proposed that future work is undertaken to evaluate operating effectiveness.

- Governance arrangements.
- Processes to identify and declare conflicts.
- Mechanisms to record, maintain and publish conflicts of interest.
- Commissioning and contract monitoring.
- Processes to identify and manage non-compliance.

The audit included a desk top review of key documentation and interviews with CCG and NHS England representatives, as well as Healthwatch, Local Medical Committee and Local Pharmaceutical Committee representatives. The scope did not include the identification of actual or potential conflicts of interest, or confirmation that primary care commissioning decisions were appropriate. Full terms of reference are located in Appendix C.

1.3 Purpose of the report

The purpose of the report is:

- **To summarise the key findings and lessons from the audit**: Commissioners are encouraged to review their arrangements for managing conflicts of interest in light of the findings and consider whether they need to be enhanced.

- **To set out the next steps and actions for NHS England:** The audit made a number of recommendations for NHS England and the report sets out how NHS England will address these in the refresh of the statutory guidance on managing conflicts of interest.

2 Key findings and lessons learned

2.1 Summary of the key findings

The statutory guidance on Managing Conflicts of interest has been well received by CCGs. All audit sites had reviewed and updated their policies for managing conflicts of interest. In most cases, training had been provided to individuals in decision-making roles, such as members of the Governing Body and the Primary Care Commissioning Committees, on the identification and management of conflicts of interest.

There was strong engagement from CCG and NHS England stakeholders in the audit and a strong awareness of the need to effectively manage conflicts of interest and declare and record interests in a timely manner. The audit sites demonstrated a strong awareness of the conflicts of interest risks associated with commissioning primary medical services and had taken steps to review their governance structures and procedures to manage these effectively.

All the co-commissioning arrangements audited were implemented on 1 April 2015 and the number of primary care decisions they had taken up to the end of December 2015 varied. Whilst decisions had been made in relation to practice closures, practice mergers, PMS reviews and payments for various GP schemes and projects, at the time of the audit only one co-commissioning arrangement had made a primary care commissioning procurement decision, which resulted in the award of a contract to a provider. The audit therefore focused upon the mechanisms and processes set up to manage conflicts of interest.

A number of examples of good practice were identified during the audit, including:

- Some Primary Care Commissioning Committees included either retired GPs or GPs 'co-opted' from another CCG to sit on the committee. This reduced the risk of the likelihood of conflicts of interest arising, whilst maintaining clinical input in the decision making process.

- There was evidence of proactive consideration of conflicts of interest ahead of Primary Care Commissioning Committee meetings, so that Chairs could consider how known conflicts of interest would be managed in advance of the meeting.

- A number of CCGs had incorporated a review of their general practice co-commissioning arrangements, including management of conflicts of interest, within their internal audit plans

The audit identified a number of inconsistencies in the processes developed to manage conflicts of interest and deliver the requirements set out in the statutory guidance in the following areas:

- **Governance arrangements**, as the sites had different voting arrangements and also no clearly defined processes for managing conflicts of interest breaches;

- **Training arrangements**, as not all audit sites had a structured conflicts of interest training programme;

- **Processes to declare and record conflicts,** including inconsistencies in minute taking;

The findings are expanded upon in section 2.2, which also makes recommendations for joint and delegated arrangements moving forward.

2.2 Key learning for joint and delegated co-commissioning arrangements

The following section outlines the inconsistencies identified in the processes developed to manage conflicts of interest and makes recommendations for co-commissioning arrangements. Section 2.3 summarises the recommendations for NHS England and section 3 how NHS England will seek to address these.

2.2.1 Conflicts of interest policies and processes

The statutory guidance requires that there are sufficient management and internal controls to detect breaches of the CCG's conflicts of interest policy, including appropriate external oversight and adequate provision for whistleblowing. Whilst none of the co-commissioning arrangements had identified a breach with regards to their conflicts of interest policy, there was a lack of detail on the procedures to be followed were a breach to be identified, including how any contracts affected by the breach would be managed.

Recommendation 1 - Each co-commissioning arrangement should define the procedures to follow when a breach is detected.

Whilst all of the CCG conflicts of interest policies reviewed applied to all activities of the co-commissioning arrangement, most audit sites had not documented specific procedures to manage conflicts of interest with regards to contract monitoring.

Recommendation 2 - Each co-commissioning arrangement should document their procedures to manage conflicts of interest risks related to contract monitoring.

The conflicts of interest guidance states that commissioners should agree in advance how a range of possible conflicts of interest scenarios will be handled. The CCG conflicts of interest policies reviewed contained some examples of the types of conflicts of interests that may occur. However, very few case studies were included within the policies to demonstrate how these should be managed.

Recommendation 3 - Co-commissioning arrangements should consider the key decisions the Primary Care Commissioning Committee is likely to make and identify some conflicts of interest scenarios that may arise and agree how they will be dealt with.

2.2.2 Governance arrangements and sub-committees of the Primary Care Commissioning Committees

The statutory guidance on managing conflicts of interest sets out how Primary Care Commissioning Committees should be constituted. Out of the ten audit sites, one was not in compliance with the guidance as it had not established a separate Primary Care Commissioning Committee. In addition, there were variations in the composition of Primary Care Commissioning Committees, particularly concerning the inclusion of GP members and their voting rights. See Appendix B for more information, including the benefits and dis-benefits of each model.

The majority of the processes and mechanisms that co-commissioning arrangements had in place to manage conflicts of interests focussed on decision-making at the Primary Care Commissioning Committee. However, often primary care options appraisals and proposals were prepared outside of the Primary Care Commissioning Committee in working groups or sub-committees. Whilst the statutory guidance is applicable to all CCG activities, in most cases, the decision-making committees did not have visibility of, or gain assurance over, the management of conflicts of interest within their supporting groups.

Recommendation 4 - Co-commissioning arrangements should establish processes to ensure that any potential conflicts are identified and effectively managed throughout the full decision making life-cycle and that records are maintained to demonstrate this to the Primary Care Commissioning Committee and presented as part of any options papers.

2.2.3 Registers of Declared Interests and Registers of Procurements

The statutory guidance requires that co-commissioning arrangements publish and make arrangements to ensure that members of the public have access to both the

Register of Declared Interests and Register of Procurement Decisions on request, including publishing the Register of Procurement Decisions in the Annual Report and Accounts. The audit found:

- All co-commissioning arrangements had published a Register of Interests on their website, however, for two this was not the current version.
- There was variation on whether a full or partial register was published. For example, some CCGs published a Register of Declared Interests that detailed only Governing Body members, whereas other CCGs published a Register of Declared Interests that detailed Governing Body members, GP members and employees.
- Where a partial register had been published, there were a number of instances where there was no notification to flag to the public that a full register was available upon request.
- In addition, only one audit site had made the Register of Procurement Decisions available in the Annual Report and Accounts.

Recommendation 5 - Co-commissioning arrangements should have suitable arrangements in place to ensure members of the public can access the most up-to-date versions of the Register of Declared Interests and Register of Procurement Decisions.

The audit found that co-commissioning arrangements had established a process to send reminders to members and employees to consider whether their interests were up-to-date and to request any updates to be added to the Register of Interests. The frequency of the reminders varied between monthly, quarterly, six-monthly and annually. In addition, four co-commissioning arrangements did not require "nil" responses from employees to confirm they had reviewed their interests and had no changes to declare.

Recommendation 6 - Declarations of interests should be undertaken on at least a quarterly basis, with confirmations provided by all members and employees that their declared interests are up-to-date.

Only six of the co-commissioning arrangements had established a Register of Procurement Decisions, even though CCGs should have a Register to capture other procurement decisions they are making.

Recommendation 7 - It is important for co-commissioning arrangements to

establish and maintain a Register of Procurement Decisions to ensure the transparency of procurement decisions.

Two of the three joint committees included in the audit had not required its NHS England members to be included on the Register of Declared Interests. In these instances, pre-existing CCG Registers of Declared Interests were being used and NHS England members of the joint committee had not been added. The joint commissioning arrangement which included NHS England members on its Register of Declared Interests had set up a specific register for the Joint Committee.

Recommendation 8 - To provide increased transparency and ensure easy access to recorded interests, all joint committee members, including NHS England, should be included in the Joint Committee's Register of Declared Interests.

Whilst the statutory guidance requires NHS England staff to adhere to the statutory guidance when serving on a joint committee with one or more CCGs, there was sometimes a lack of clarity on whether NHS England members should be subject to, for example, ongoing training and periodic declarations of interests. NHS England members should adhere to the full requirements of the statutory guidance when serving on a joint committee.

2.2.4 Minute taking

The statutory guidance states that all decisions, and details of how any conflict of interest issue has been managed, should be recorded in meeting minutes. However, there was considerable variation in the level of detail maintained in the minutes of Primary Care Commissioning Committee meetings to document the identification and management of conflicts of interests. The audit identified a number of instances where the minutes flagged the identification of conflicts in decisions to be made by the committee, but did not detail the nature of the conflict, who had the conflict and how the conflict was managed. For other decisions made, there was no evidence in the minutes to demonstrate that conflicts had been considered to confirm that no conflicts existed.

Recommendation 9 - It is imperative that co-commissioning arrangements maintain full transparency in relation to decisions regarding general practice services through the minutes of primary care commissioning committee meetings.

Instances were found where conflicts declared in meetings had not been transferred to the register of interests in a timely manner. Transparency of the management of

conflicts in decision making is vital to maintain confidence in the integrity of decision making.

Recommendation 10 - Co-commissioning arrangements should ensure that declared conflicts of interest are promptly transferred to the register of interests.

2.2.5 Conflicts of Interest training

The statutory guidance requires CCGs to provide training to their staff to raise awareness of conflicts and what they should do when they are identified. The audit found that:

- Co-commissioning arrangements had not defined the frequency of conflicts of interest training for members and employees.
- Where training had been delivered, this had largely been focussed on members of the Governing Body and those on the Primary Care Commissioning Committees, responsible for making decisions.
- A small number of audit sites had rolled out structured training to all employees. However, two co-commissioning arrangements had not provided any structured training to members or employees, including those on the commissioning committee.

Recommendation 11 - Each co-commissioning arrangement should provide training to members and employees and define the frequency of ongoing training. Consideration should be given to providing more regular training to individuals in 'higher risk' roles e.g. procurement.

Appendix A provides more detailed findings from the audit.

We recommend that CCGs review the report to consider and evaluate their current arrangements based on the observations raised. Each co-commissioning arrangement should consider whether their processes to manage conflicts of interest can be enhanced.

2.3 Recommendations for NHS England

The audit made a number of recommendations for NHS England and how it should consider strengthening the current guidance on managing conflicts of interest. The audit sites requested greater clarity in the statutory guidance on the minimum requirements and expectations of commissioners. This included more clarity on the:

- scope of employees to be included in the **Register of Declared Interests.**
- scope of decisions that should be included in the **Register of Procurement Decisions.**
- the frequency of **confirmations of declared interests** and the requirement to obtain positive confirmation.
- the minimum standards for documenting potential conflicts and their management in **minutes**, supported by case study examples.
- practical applicability of the conflicts of interest statutory guidance for NHS England members of **joint committees**.
- **training** requirements on conflicts of interest management.
- And more guidance on management of conflicts of interest **breaches** and management of conflicts of interests in relation to **contract monitoring.**

The audit concluded that greater clarity in these areas would reduce the risk of variability in the development of processes to manage conflicts of interest.

In addition, many co-commissioning arrangements reported that they required further support to understand the practical implementation of the statutory guidance within different scenarios. The audit recommended that NHS England facilitates the sharing of knowledge through case studies and worked examples.

Section 3 of the report sets out how NHS England will address these recommendations.

3 Next steps

NHS England welcomes the findings and recommendations made by the audit. The audit demonstrates that commissioners are taking seriously their responsibilities in relation to conflicts of interest and putting in place processes to ensure that they are appropriately managed.

We recognise that there are areas for improvement - both for CCGs and NHS England teams - and will be looking at how we can best support commissioners to address these.

Over the coming months, we will review the statutory guidance on managing conflicts of interest, with an aim of strengthening the provisions and providing absolute clarity on the minimum standards required. This includes addressing the points of ambiguity outlined in section 2.3. In addition, we will include more templates and worked examples in the guidance to support commissioners with its practical implementation.

The audit has highlighted a number of examples of good practice for both co-commissioning arrangements. We will look at how we can best facilitate the on-going sharing of learning through case studies and other mechanisms.

We will also provide further training to CCG lay members on conflicts of interest management in support of their roles chairing the Primary Care Commissioning Committees. Further information on the training programme can be found here.

Finally, we plan to perform a further review within the 2016/17 financial year in order to follow up on the development of processes to manage conflicts of interest within primary care co-commissioning and to obtain evidence on the on-going operational effectiveness of conflicts of interest management.

Below is a summary of the key actions that NHS England will take based on the findings from the audit:

NHS England Actions	Timescale
Review and update the statutory guidance on managing conflicts of interest to take account of the findings and messages from the audit.	February - March 2016
Issue the revised statutory guidance for consultation.	March – April 2016
Provide national training for CCG lay members on managing conflicts of interest	February – March 2016
Finalise and publish revised statutory guidance on managing conflicts of interest.	Spring 2016
Continue to obtain feedback from co-commissioning arrangements on conflicts of interest management and facilitate the sharing of knowledge and learning between CCGs.	FY2016/17
Plan a follow up audit of the effectiveness of conflicts of interest management practices within co-commissioning arrangements.	FY2016/17

Appendices

This report is supplemented by a number of appendices:

- **Appendix A**: **Detailed Findings –** This appendix details the findings of the audit against the requirements of the statutory guidance, including where exceptions and areas for improvement were identified[2].

- **Appendix B: Example co-commissioning governance structures** – This appendix highlights the range of delegated and joint commissioning governance models that have been implemented, offering reflections on their benefits and challenges.

- **Appendix C: Audit terms of reference** – This appendix sets out the full terms of reference for the co-commissioning conflicts of interest audit

[2] The table provides a summary of the key themes across all ten visits and does not include the details of every individual finding.