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NHS
Merton
Clinical Commissioning Group

CONFLICTS OF INTEREST POLICY

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CCG Policy Reference: Merton CCG/SECSU/GOV/026

This policy replaces or supersedes Policy Ref: Not applicable

THIS POLICY WILL BE APPROVED BY THE CLINICAL COMMISSIONING GROUP (CCG) GOVERNING BODY, AND WILL HAVE EFFECT AS IF INCORPORATED INTO THE CONSTITUTION AS PART OF THE SCHEME OF DELEGATION.

Target Audience	Governing Body members, sub-committee members and all staff working for, or on behalf of, the CCG
Brief Description (max 50 words)	This policy sets out how NHS Merton Clinical Commissioning Group (CCG) will manage conflicts of interest arising from the operation of the business of the organisation. This policy is in line with the NHS Merton CCG Constitution and local and national guidance.
Action Required	<p>Following approval at the CCG Governing Body, The Chief Officer will ensure that the requirements of this policy will be raised at all team meetings, and confirm the requirements with the chairs of each Committee, and with CCG executives.</p> <p>Chairs of Committees will identify the programme of review with the Accountable Executive for each policy within their committee remit.</p> <p>Accountable Executives will identify policy owners for each policy within their remit.</p> <p>The Governing Body Secretary will establish and maintain a corporate register of all policies and their status, and will ensure that these are appropriately reflected on the website.</p>

Approved: 24 March 2016

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0.4	02/07/2013	Jitendra Patel	Updated following input from PAG
0.5	03/2014	Louise Morgan	Updated following input from CCG CO / Director feedback
0.6	03/14	Louise Morgan	Amendments regarding statements on thresholds
0.7	15/05/2014	Louise Morgan	Following Merton CCG EMT review: - Page 7: "group" changed to read "Merton CCG's" [website] - 1.3 Removal of reference to "procurement strategy" - 1.5 Reference to "GPs" removed and replaced with "healthcare professionals" - 3.7 Words added: "but not exclusively, for example," - 3.7 Removal of reference to "LMC officers as key officials in the CCG" - 4.3 Reference to share capital removed and changed to "any substantial interest in the company" - 5.4 Words added: "but not exclusively" - 5.6 References to "Chief Accountable Officer/Chief Operating Officer" changed to "Chief Officer" - 5.10 Reference to "Corporate Office" changed to "Board Secretary" - 5.10 "COI" acronym removed and replaced with "Conflict of Interest" - 7.10d Reference to "employees" changed to "employees who are key decision makers" - 8.9 Removal of 8.9 Waiver Section - 9.8 Removal of 9.8 as no locality representative on the GB - References to "consortium" changed to "CCG"
0.8	13/02/15	D. Cotter/ B. Vinter	Updated for revised NHSE Guidance issued December 2014
0.9	24/02/16	D. Cotter	To reflect IA recommendations from Col Audit January 2016
1.0	22/08/16	T. Burns	Updates to reflect revised NHSE

			guidance, issued July 2016
1.1	20/09/16	T. Burns	Update to include 'exceptional circumstances' comment in section 8

Document Information:

Title /Version Number/(Date)	CCG Conflicts of Interest Policy v1.1
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Date Approved	
Approved By	CCG Governing Body
Publication Date	
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Author	David Cotter (SECSU)
Stakeholders engaged in development or review	Through Governing Body Representatives
Equality Analysis	<p>Equality Analysis</p> <p>This Policy is applicable to the Governing Body, every member of staff within the CCG and those who work on behalf of the CCG. This document has been assessed for equality impact on the protected groups, as set out in the Equality Act 2010. This document demonstrates Merton CCG's commitment to create a positive culture of respect for all individuals, including staff, patients, their families and carers as well as community partners. The intention is, as required by the Equality Act 2010, to identify, remove or minimise discriminatory practice in the nine named protected characteristics of age, disability, sex, gender reassignment, pregnancy and maternity, race, sexual orientation, religion or belief, and marriage and civil partnership. It is also intended to use the Human Rights Act 1998 and to promote positive practice and value the diversity of all individuals and communities.</p>
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This policy progresses the following Authorisation Domains and Equality Delivery System (tick all relevant boxes).

Clear and Credible Plan		Commissioning processes	X
Collaborative Arrangements	X	Leadership Capacity and Capability	X
Clinical Focus and Added Value		Equality Delivery System	
Engagement with Patients/Communities	X	NHS Constitution : Section 8 p25	X

Associated Policy Documents

Title
Refer to section 3

Glossary

Term	Definition
Accountable Executive	CCG Executive accountable for development, implementation and review of the policy
Policy Owner	Post holder responsible for the development, implementation and review of the policy
Document definitions	These are provided in Section 1

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Overview

Clinical involvement in commissioning may lead to a perception amongst patients and the public of conflicts of interest, and the risk of actual conflicts of interest arising. Therefore, conflicts of interest must be managed effectively and openly.

The constitution for Merton Clinical Commissioning Group (CCG) makes provision for dealing with conflicts of interest of which this policy is a part.

The policy sets out how the CCG will manage conflicts of interest. It reflects the Nolan seven principles of public life:

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership

This policy applies to all employees and appointed individuals who are working for NHS Merton CCG, persons serving on committees and other decision-making groups and members of NHS Merton CCG Governing Body (“GB”).

It reflects the most recent NHS guidance (Managing Conflicts of Interest: Statutory Guidance for CCGs, NHSE December 2014).

A conflict of interest is defined as:

- A conflict between the private interests and the official responsibilities of a person in a position of trust
- A set of conditions in which a professional judgement concerning a primary interest (such as patients’ welfare or the validity of research) tends to be unduly influenced by a secondary interest (such as financial gain)
- The creation of a set of circumstances where one party is favoured over another by an inadvertent preferential interest
- A perception of wrong doing, impaired judgement or undue influence can be as detrimental as any of them actually occurring.
- If in doubt, it is better to assume a conflict of interest and manage it appropriately rather than ignore it
- For a conflict to exist, financial gain is not necessary.

It is the responsibility of all staff employed or appointed by the CCG and those serving in a formal capacity to ensure that they are not placed in a position which creates a potential conflict between their private interests and their CCG duties.

Declarations of interest made by members of the CCG Governing Body will be published on the CCG website. The Register of Declarations of Interest will be reported to the NHS Merton CCG Audit and Governance Committee annually.

1. Background

Introduction

“If conflicts of interest are not managed effectively by CCGs, confidence in the probity of commissioning decisions and the integrity of clinicians involved could be seriously undermined. However, with good planning and governance, CCGs should be able to avoid these risks.”

*RCGP and NHS Confederation’s briefing paper on managing conflicts of interest September 2011

- 1.1 NHS Merton Clinical Commissioning Group (CCG) manages conflicts of interest as part of its 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 CCG commissioning decisions are robust, fair, transparent and offer value for money.
- 1.2 The CCG has opted to take on an increased responsibility for the joint commissioning of primary care enabling it to commission care for its patients and populations in more coherent and joined-up ways. However in doing so the CCG is exposing itself to a greater risk of conflicts of interest, both real and perceived.
- 1.3 In December 2014 NHS England, in consultation with national stakeholders, developed strengthened guidance for the management of conflicts of interest. This guidance supersedes previous NHS England guidance and is reflected in this Policy.
- 1.4 The Policy is also compliant with statutory guidance issued under sections 140 and 14Z8 of the National Health Service Act 2006 (“the Act”).
- 1.5 The Act sets out clear requirements for every CCG to make arrangements for managing conflicts of interest and potential conflicts of interest, to ensure they do not affect, or appear to affect, the integrity of the CCG’s decision making processes. These requirements are supplemented by procurement-specific requirements in the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013:
 - The CCG must not award a contract for the provision of NHS health care services where conflicts, or potential conflicts, between the interests involved in commissioning such services and the interests involved in providing them affect, or appear to affect, the integrity of the award of that contract; and

- The CCG must keep a record of how it managed any such conflict in relation to NHS commissioning contracts it enters into. (As set out in section 8 below, details of this should also be published by the CCG.)
 - Regulation 6 sets out the basic framework within which the CCG must operate. The detailed requirements are set out in the guidance issued by Monitor (Substantive guidance on the Procurement, Patient Choice and Competition Regulations) and, in particular, section 7 of that statutory guidance (included as Appendix 7 to this Policy).
- 1.6 As a joint commissioner of primary care services the CCG Chair of the Audit and Governance Committee and the Accountable Officer will be required to provide direct formal attestation to NHS England that the CCG has complied with national guidance. Subsequently, this attestation will form part of an annual certification. CCG approaches to management of conflicts of interest will also be considered on an ongoing basis as part of CCG assurance.
- 1.7 The policy will be reviewed at least annually. Its contents should be viewed alongside the CCG's Hospitality & Gifts Policy, Code of Business Conduct, Anti-Bribery Procedures and Procurement Strategy
- 1.8 The CCG Governing Body holds ultimate responsibility for all actions carried out by staff and decisions taken within the CCG's activities. This responsibility includes the stewardship of significant public resources and the commissioning of healthcare for the community. This context means the Governing Body is determined to ensure the organisation inspires confidence and trust amongst its patients, staff, partners, funders and suppliers by demonstrating integrity and avoiding any potential or real situations of undue bias or influence within its decision-making.
- 1.9 Where GPs are both providing care and deciding where that care takes place, how it is provided and who provides it, there is a real risk that a doctor's probity may come into question. Conflicts of interest therefore need to be managed effectively and openly to prevent any such problems arising, and also to avoid the perception among patients and the public that these issues may be a problem. The taint of conflict of interest is almost as damaging as the reality and all doctors involved in commissioning at any level must always consider what adverse comment an observer might say about their activities before making commissioning decisions.
- 1.10 The policy sets out the organisation's commitment to on-going training and awareness-raising on this subject and an induction programme for new members of the Governing Body.

2. Purpose

- 2.1 This policy sets out how the CCG will manage conflicts of interest arising from the operation of the business of the organisation. This policy is in line with the Merton CCG Constitution and local and national guidance.
- 2.2 The CCG's function is to commission health services for the benefit of the local population and as such has responsibility for the stewardship of significant public funds. The Governing Body will ensure that the organisation inspires confidence and trust amongst its members, staff, partners, funders, suppliers and the public by demonstrating integrity and avoiding any potential or real situations of undue bias or influence in decision-making.
- 2.3 This policy reflects the seven principles of public life promulgated by the Nolan Committee:
- Selflessness
 - Integrity
 - Objectivity
 - Accountability
 - Openness
 - Honesty
 - Leadership

See Appendix 1 for more information on the 'Nolan Principles'.

- 2.4 The CCG will ensure that health need assessments, consultation mechanisms, commissioning strategies and robust procurement procedures will enable conflicts of interest to be identified and mitigated. CCG Governing Body members are expected to act in accordance with the Nolan Principles of public life. It is recognised that any perceptions of wrong doing, impaired judgement or undue influence can be as detrimental as any of them occurring.
- 2.5 Conflicts of interest may arise where an individual's personal interests or loyalties or those of a connected person (a relative or close friend or personal business contact) conflict with those of the CCG. Such conflicts may create problems such as inhibiting free discussion which could result in decisions or actions that are not in the interests of the CCG, and risk giving the impression that the CCG has acted improperly.
- 2.6 Conflicts of interest may also occur where an individual is a member of a professional body and the views, policies or interests of the professional body conflict with those of the CCG. Such conflicts may create problems such as inhibiting free discussion which could result in decisions or actions that are not in the interests of the CCG, and risk giving the impression that the CCG has acted improperly.
- 2.7 It is not possible, or desirable, to define all instances, real or perceived, in which an interest may be perceived to be in conflict. It is for each individual to exercise their judgement in deciding whether to register any interests that may

be construed as a conflict. Individuals can seek guidance from the Board Secretary, but should decide to declare when in doubt.

3. Scope

- 3.1 This policy applies to all employees and appointed individuals who are working for NHS Merton CCG, persons serving on committees and other decision-making groups and members of NHS Merton CCG Governing Body.
- 3.2 The Policy must be read in conjunction with the following documents which form part of the CCG Risk Management Framework:
- CCG Anti-Fraud and Bribery Policy
 - CCG Code of Requirements Policy.
 - CCG Constitution
 - CCG Disciplinary Policy and Process
 - CCG Equality and Diversity Policy
 - CCG Gifts and Hospitality Policy
 - CCG Whistleblowing Policy
 - CCG Working with Pharmaceuticals Policy

In the event of a conflict of interpretation between policies in the area of conflicts of interest the provisions of this policy shall prevail to the fullest extent applicable that law and NHS guidance allows.

The Policy should also be read with due reference to the following documents which set out generic guidelines and responsibilities for NHS organisations and General Practitioners in relation to conflicts of interests:

- CCG Standing Orders, Reservation and Delegation of Powers and Standing Financial Instructions
- Code of Conduct for NHS Managers 2012
- Appointments Commission: Code of Conduct and Code of Accountability
- The Healthy NHS Board: Principles for Good Governance
- General Medical Council: Good Medical Practice 2006
- NHS Commissioning Board: Code of Conduct: Managing Conflicts of Interest where GP Practices and potential providers of CCG-commission services (Appendix 3)
- British Medical Association: Conflicts of Interest in the new commissioning system April 2013
- Managing Conflicts of Interest: Statutory Guidance for CCGs, NHSE December 2014

Staff and Governing Body members should also refer to their respective professional codes of conduct relating to the declaration of conflicts of interest.

3.3 NHS Merton CCG will ensure that all employees and decision-makers are aware of the existence of this policy. The following will be undertaken to ensure awareness:

- Introduction to the policy during local induction for new starters to the organisation
- Annual reminder of the existence and importance of the policy via internal communications methods
- Annual reminder to update declaration forms sent to all Governing Body members and committee members

3.4 A conflict of interest is defined as:

- A conflict between the private interests and the official responsibilities of a person in a position of trust.
- A set of conditions in which a professional judgement concerning a primary interest (such as patients' welfare or the validity of research) tends to be unduly influenced by a secondary interest (such as financial gain or to avoid a negative financial consequence)
- The creation of a set of circumstances where one party is favoured over another by an inadvertent preferential interest
- A perception of wrong doing, impaired judgement or undue influence can be as detrimental as any of them actually occurring.
- If in doubt, it is better to assume a conflict of interest and manage it appropriately rather than ignore it
- For a conflict to exist, financial gain is not necessary.

3.5 The categories of conflict of interest cover:

- a direct pecuniary interest: where an individual may financially benefit from the consequences of a commissioning decision (for example, as a provider of services);
- an indirect pecuniary interest: for example, where an individual is a partner, member or shareholder in an organisation or professional body that will benefit financially from the consequences of a commissioning decision;
- a non-pecuniary interest: where an individual holds a non-remunerative or not-for profit interest in an organisation or professional body, that will benefit from the consequences of a commissioning decision (for example, where an individual is a trustee of a voluntary provider that is bidding for a contract);
- a non-pecuniary personal benefit: where an individual may enjoy a qualitative benefit from the consequence of a commissioning decision which cannot be given a monetary value (for example, a reconfiguration of hospital services which might result in the closure of a busy clinic next door to an individual's house);
- Where an individual is closely related to, or in a relationship, including friendship or has personal business contact with an individual in the

above categories.

3.6 These conflicts may arise in a number of situations including, but not exclusively, for example:

- Appointing a governing body
- Designing service requirements
- Procurement of services where clinical commissioning leaders have a financial interest in a provider company;
- Direct or indirect financial interests: Where GPs may refer their patients to a provider company in which they have a financial interest;
- Non-financial or personal conflicts
- Where GPs make decisions regarding the care of their patients to influence the 'quality premium' they receive through their CCG;
- Where enhanced services are commissioned that could be provided by member practices;
- Conflicts of loyalties
- Conflict of professional duties and responsibilities

4. Policy Statement

4.1 This policy supports a culture of openness and transparency in business transactions, ensuring trust and confidence in the organisation and enabling commissioning decisions to be made that are in the best interests of taxpayers and the local population.

4.2 All employees and appointees of the CCG are required to:

- Ensure that the interests of patients remain paramount at all times
- Be impartial and honest in the conduct of their official business
- Use public funds entrusted to them to the best advantage of the service, always ensuring value for money
- Ensure that they do not abuse their official position for personal gain or to the benefit of their family or friends
- Ensure that they do not seek to advantage or further, private or other interests, in the course of their official duties.

4.3 Directors of provider health and social care companies with a substantial interest in the company must make a declaration of interest in line with this policy and be excluded from decision making processes as appropriate.

4.4 The CCG will view instances where this policy is not followed as serious and may take disciplinary action against individuals, which may result in dismissal.

5. Principles and general safeguards

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- 5.1 The general safeguards that will be needed to manage conflicts of interest will vary to some extent, depending on at what stage in the commissioning cycle decisions are being made. The following principles will need to be integral to the commissioning of all services, including decisions on whether to continue to commission a service, such as by contract extension.
- 5.2 The CCG will manage Conflicts of interest by:
- Doing business appropriately. If needs assessments, consultation mechanisms, commissioning strategies and procurement procedures are right from the outset, then conflicts of interest become much easier to identify, avoid and/or manage, because the rationale for all decision-making will be clear and transparent and should withstand scrutiny;
 - Being proactive, not reactive. The CCG will seek to identify and minimise the risk of conflicts of interest at the earliest possible opportunity, by:
 - considering potential conflicts of interest when electing or selecting individuals to join the governing body or other decision-making bodies;
 - Ensuring individuals receive proper induction and training so that they understand their obligations to declare conflicts of interest.
 - Establishing and maintaining registers of interests, and agreeing in advance how a range of possible situations and scenarios will be handled, rather than waiting until they arise;
 - Ensuring that all CCG employees, governing body members, CCG committee and sub-committee members and any practice staff with involvement in CCG business undertake mandatory annual conflicts of interest training;
 - Assuming that individuals will seek to act ethically and professionally, but may not always be sensitive to all conflicts of interest. Rules will assume people will volunteer information about conflicts and, where necessary, exclude themselves from decision-making, but there will also be prompts and checks to reinforce this;
 - Being balanced and proportionate. Rules will be clear and robust but not overly prescriptive or restrictive. They will ensure that decision-making is transparent and fair, but not constrain people by making it overly complex or cumbersome;
 - Being Open. Ensuring early engagement with patients, the public, clinicians and other stakeholders, including local Healthwatch and Health and Wellbeing Boards, in relation to proposed commissioning plans;

- Responsiveness and best practice. Ensuring that commissioning intentions are based on local health needs and reflect evidence of best practice – securing ‘buy in’ from local stakeholders to the clinical case for change;
- Transparency. Documenting clearly the approach taken at every stage in the commissioning cycle so that a clear audit trail is evident;
- Securing expert advice. Ensuring that plans take into account advice from appropriate health and social care professionals, e.g. through clinical senates and networks, and draw on commissioning support, for instance around formal consultations and for procurement processes;
- Engaging with providers. Early engagement with both incumbent and potential new providers over potential changes to the services commissioned for a local population;
- Creating clear and transparent commissioning specifications that reflect the depth of engagement and set out the basis on which any contract will be awarded;
- Following proper procurement processes and legal arrangements, including even-handed approaches to providers;
- Ensuring sound record-keeping, including up to date registers of interests; and
- A clear, recognised and easily enacted system for dispute resolution.
- Complying with the requirements of the Bribery Act 2010

5.3 This Policy makes references throughout regarding the 7 Nolan Principles which fairly explains the CCG’s expectations of those who undertake procurement work or decisions on behalf of the CCG (See Appendix A).

In July 2011, the Bribery Act 2010 came into force making it more important than ever before that all staff are aware of and conduct CCG business in accordance with Nolan’s seven principles. The Act reforms the criminal law of bribery, enabling simpler prosecution of offences. The Act creates a new offence whereby a criminal offence is committed if a commercial organisation fails to prevent bribery. The term commercial organisation encompasses all NHS bodies.

The relevant sections of the Act are:

- Section 1 – Offences of bribing another person
- Section 2 – Offences related to being bribed
- Section 7 – Failure of commercial organisations to prevent bribery

The CCG will commit a Section 7 offence if fails to prevent bribes being paid, directly or indirectly, by persons associated with them.

The Act states that an associated person may be an employee, agent or subsidiary. Section 7 is intended to have a broad scope and it is likely that other categories of individual, for example, contractors and agents, will fall within the definition.

Under the 2010 Bribery Act an organisation will be able to use in its defence evidence that demonstrates that it has adequate procedures in place which are designed to prevent bribes being paid and promotes a culture of awareness and compliance with this policy.

Under the Act penalties for a successful conviction include an unlimited fine and (in the case of individuals) imprisonment for up to ten years.

- 5.4 These general processes and safeguards will apply at all stages of the commissioning process, but will be particularly important at key decision points, e.g., whether and how to go out to procurement of new or additional services.
- 5.5 Ensuring that GB members and all relevant staff are aware of the particular considerations pertaining to the CCGs responsibilities for joint commissioning of primary care.

6. Responsibilities and Roles

Responsibilities

- 6.1 It is the responsibility of all staff employed or appointed by the CCG and those serving in a formal capacity to ensure that they are not placed in a position which creates a potential conflict between their private interests and their CCG duties.
- 6.2 The CCG needs to be aware of all situations where an individual has interests outside of his / her NHS Contract of Employment or other involvement with the CCG, where that interest has potential to result in a conflict of interest between the individual's private interests and their CCG duties.
- 6.3 All decision-makers must therefore declare relevant and material interests to the CCG upon appointment, when a new conflict of interest arises, or upon becoming aware that the CCG has entered into or proposes entering into a contract in which they or any person connected with them has any financial interest, either direct or indirect.

6.4 'Relevant and material interests' (requiring declaration) are defined as, but not exclusively:

- Roles and responsibilities held within member practices
- Directorships, including non-executive directorships held in private companies or public limited companies (with the exception of those of dormant companies)
- Ownership or part ownership of companies, businesses or consultancies which may seek to do business with the CCG
- Shareholdings (more than 1% or £10,000 in value) of companies in the field of health and social care;
- Membership of or a position of authority or trust in an organisation (e.g., charity, professional body or voluntary organisation) in the field of health and social care;
- Any connection with a voluntary or other organisation contracting for NHS services
- Research funding/grants that may be received by the individual or any organisation they have an interest or role in
- Interests in pooled funds that are under separate management (any relevant company included in this fund that has a potential relationship with the CCG must be declared)
- Formal interest with a position of influence in a political party or organisation
- Current contracts with the CCG in which the individual has a beneficial interest
- Any other employment, business involvement or relationship or that of a spouse or partner that conflicts, or may potentially conflict with the interests of the CCG.
- Personal healthcare needs or those of a spouse or partner that conflicts, or may potentially conflict with the interests of the CCG.
- Media appearances where members appear in the capacity of a health professional.

Roles

6.5 Chief Officer

The Chief Officer has overall responsibility for ensuring Merton CCG has appropriate governance policies and procedures in place to ensure the CCG works to best practice and complies with all relevant legislation. They also have responsibility for ensuring the CCG applies the principles of this policy and that there are suitable resources to support its implementation.

6.6 Lay member for Governance

The lay member with responsibility for governance is responsible for reviewing the Register of Interests against the agenda for the Committee or Governing Body Meetings. The lay member will make themselves available to provide

advice to any individual who believes they have, or may have, a conflict of interest.

The CCG will ensure that at least three lay members are appointed to the Governing Body, in accordance with NHS England recommendations, in order to strengthen their voice and influence and bring scrutiny to the decisions involving potentially conflicted members. The CCG Constitution will reflect this.

6.7 Governing Body Secretary

The Governing Body Secretary is responsible for maintaining the Conflicts of Interest Register and ensuring this is produced for the Chair at every Governing Body and Committee Meeting. The Governing Body Secretary will ensure that “Register of Interests” is a standard agenda item for all Committee and Sub-Committee meetings. In the event of withdrawal of a conflicted member, it is the responsibility of the GB/Committee Secretary to monitor quorum and advise the Chair accordingly.

6.8 Governing Body and Senior Management

The Governing Body and senior management staff have a responsibility to declare any conflict of interest in line with this policy.

6.9 The Governing Body Secretary will hold details of each query in regard to Col to provide an audit trail on each query and the action taken. These records may be used to compile a body of “case law” for use by the Governing Body Lay Member when providing advice

6.10 Managers of NHS Merton CCG must ensure members of staff are aware of the policy and process to be followed.

6.11 It is the responsibility of all employees and appointees to familiarise themselves with this policy and comply with the provisions set out in it.

Conflicts of Interest Guardian

The chair of the Audit and Governance Committee will undertake the role of Conflicts of Interest Guardian for the CCG. They will act as a conduit and safe point of contact for anyone with concerns relating to conflicts of interest and provide independent advice and judgment on managing conflicts of interest. They will be supported in this role by the CCG governance lead.

Primary Care Commissioning Committee Chair

The Primary Care Commissioning Committee will have a lay chair and a lay vice chair. The chair of the audit committee will not hold the role of chair of the committee, but may serve as a committee member, provided safeguards

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are agreed and put in place to avoid compromising their role as the Conflicts of Interest Guardian. The chair of the Audit and Governance Committee may only hold the role of vice chair if specific local circumstances require it, such as the lack of another suitable lay candidate.

Role of commissioning support services/ units

- 6.12 Commissioning Support Units (CSUs) will play an important role in helping the CCG to decide the most appropriate procurement route, undertake procurements and manage contracts in ways that manage conflicts of interest and preserve integrity of decision-making.

When using a CSU, the CCG must ensure that it has systems to assure itself that the CSU'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).

- 6.13. When the CCG is undertaking procurement with the help of a CSU, it will demonstrate fairness and transparency by asking the CSU to prepare and present information on bids, including an assessment of whether providers meet pre-qualifying criteria and an assessment of which provider provides best value for money.
- 6.14. The CCG cannot, however, lawfully delegate commissioning decisions to an external provider of commissioning support. Although CSUs 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.

Role of NHS England

- 6.15 NHS England will support the CCG, where necessary, in meeting its duties in relation to managing conflicts of interest. In the context of co-commissioning, in doing so, the CCG will need to comply with the requirements of regulation 9 of the Procurement, Patient Choice and Competition Regulations.
- 6.16 NHS England will make available, an online training package for CCGs to use as part of their annual compulsory conflicts of interest training for CCG employees, governing body members, CCG committee and sub-committee members and any practice staff involved in CCG business.
- 6.17 NHS England will also need to assure itself that the CCG is meeting its statutory duties in managing conflicts of interest, including having regard to the statutory guidance published by Monitor and NHS England. Where there

are any concerns that the CCG is not meeting these duties, NHS England or monitor could ask for further information or explanation from the CCG or take such other action as is deemed appropriate.

7. Non-compliance with policy:

- 7.1 The CCG Governing Body will view instances where this policy is not followed as serious and may take disciplinary action against individuals, which may result in dismissal, including from the Governing Body.
- 7.2 Any disciplinary action will be taken following the policy and procedures set out in the NHS Merton CCG Disciplinary Policy and Procedures and CCG Constitution.
- 7.3 Suspected breaches should be reported to the Conflict of Interest Guardian or the CCG Governance Lead immediately. An appropriate person, unconnected with the breach, will be appointed to investigate and report on the outcome to the Audit and Governance Committee. Any breaches that are substantiated will be reported to NHS England by the CCG Governance Lead and will be published on the CCG website, with anonymised details.

8. Register of Declarations of Interest

- 8.1 NHS Merton CCG has established a Register of Declarations of Interest, which is held by the Governing Body Secretary. The CCG will maintain one or more registers of the interests of:
 - a) its Practice Leads (representatives of the membership of the CCG);
 - b) GP practice partners
 - c) any other practice staff with direct involvement with CCG business and/or decision making activities
 - d) members of its Governing Body;
 - e) members and attendees, of its committees or sub-committees and the committees or sub-committees of its Governing Body; and
 - f) all employees of the CCG.
- 8.2 Declarations of interest made will be published on the group's website in the register of interests. In exceptional circumstances, where the public disclosure of information could give rise to a real risk of harm or is prohibited by law, an individual's name and/or other information may be redacted from the publicly available register(s). Where an individual believes that substantial damage or distress may be caused, to him/herself or somebody else by the publication of information about them, they are entitled to request that the information is not

published. Such requests must be made in writing. Decisions not to publish information must be made by the Conflicts of Interest Guardian for the CCG, who should seek appropriate legal advice where required, and the CCG should retain a confidential un-redacted version of the register(s).

- 8.3 The Register of Declarations of Interest will be reported to the NHS Merton CCG Audit and Governance Committee annually.
- 8.4 All members of the CCG Governing Body will be required to complete a Declaration of Interests proforma upon appointment to their position. Where there are no interests to declare a nil return is required. Any subsequent interests shall be declared once the potential conflict of interest arises. Individuals will be asked to review and update the register at the beginning of every meeting of the Governing Body and its committees and at least every three months.
- 8.5 Other members of staff and other members of committees and groups should complete the form as soon as they identify a potential conflict of interest or if requested by the CCG's Governance team as part of the CCG's quarterly review of interests.
- 8.6 When an individual changes role or responsibility within the organisation or its governing body, any changes to the individuals' interests should be declared within 28 days of the relevant events or change. The Register of Interest shall note the date that any potential interest/interest is declared and action required.
- 8.7 The Declaration of Interests proforma is attached at Appendix 2.

Data Protection

- 8.8 The information provided will be processed in accordance with data protection principles as set out in the Data Protection Act 1998. Data will be processed only to ensure that the CCG acts in the best interests of the group and the public and patients the group was established to serve. The information provided will not be used for any other purpose, unless otherwise stated within statutory legislation.

9. Declaration of Interests

- 9.1 The agenda (both public and confidential agenda) for meetings of the CCG Governing Body and also of its committees will contain a standing item at the commencement of each meeting, requiring members to declare any interests relating specifically to the agenda items being considered.
- 9.2 It shall be the responsibility of the Chair of the Governing Body and the Chairs of its committees to review the Register of Interests against the Agenda at the beginning of each meeting.

- 9.3 If it is not known what can be declared, or whether/when the declaration needs to be updated, advice should be sought from the Governing Body Secretary or SECSU Corporate Affairs Manager
- 9.4 If during the course of a meeting, an interest not previously declared is identified, this shall be declared. Minutes of the meeting shall detail all declarations made.
- 9.5 Governing Body and committee members must be specific when declaring interests. They should state which agenda the potential conflict of interest relates to and the nature of that conflict.
- 9.6 Where an interest is significant or when the individual or a connected person has a direct financial interest in a decision, the individual should not take part in the discussion or vote on the item and should consider leaving the room when the matter is discussed. The Chair of the meeting may insist that a member leaves the room if they have a significant interest or a direct financial interest in a matter under discussion.
- 9.7 The minutes of the meetings will record the actions taken to manage a conflict of interest. i.e.
- the points at which a member leaves the room and subsequently returns shall be recorded,
 - the points at which a member withdraws from a discussion and subsequently re-joins will be recorded.
 - when a member sits out of a vote will be recorded,
 - When a member with a declared interest continues to take part in a discussion, the minutes will record how that conflict of interest is being managed within the meeting.
- 9.8 If there is any doubt as to whether an interest should be declared, a declaration should be made and / or advice sought from the CCG Governance Team or from the Lay Member of the governing body, with particular responsibility for governance.
- 9.9 Where all of the GPs or other practice representatives on a decision-making body could have a material interest in a decision, particularly where the CCG is proposing to commission services on a single tender basis from all GP practices in the area, or where it is likely that all or most practices would wish to be qualified providers for a service under Any Qualified Provider regime, the decision should be referred to the governing body and exclude all GPs or other practice representatives with an interest from the decision-making process, i.e. so that the decision is made only by the non-GP members of the governing body including the lay members and the registered nurse and secondary care doctor; under the terms of the Merton CCG Constitution a quorum can be made up in order to progress the item of business by inviting on a temporary basis one or more of the following:

- a member of the clinical commissioning group who is an individual;
- an individual appointed by a member to act on its behalf in the dealings between it and the clinical commissioning group;
- a member of a relevant Health and Wellbeing Board;
- A member of a governing body of another clinical commissioning group.

9.10 Decisions taken where a Governing Body or Committee member has an interest

In the event of a committee having to decide upon a question in which a Committee Member has an interest, all decisions will be made by consensus and by vote if necessary, with a simple majority required. A quorum must be present for the discussion and decision; interested parties will not be counted when deciding whether the meeting meets quorum. Interested committee members must not vote on matters affecting their own interests.

All decisions under a Conflict of Interest will be recorded by the GB/Committee Secretary and reported in the minutes of the meeting. The report will record:

- the nature and extent of the conflict;
- an outline of the discussion;
- The Chairs decision on the declared conflict.
- the actions taken to manage the conflict, including instances when it is decided that no action need be taken

Where a committee member benefits from the decision, this will be reported in the Annual Report and Accounts, as a matter of best practice

10. Managing Conflicts of Interest: contracting and procurement

10.1 Anyone seeking information in relation to procurement, or participating in procurement, or otherwise engaging with the CCG in relation to the potential provision of services or facilities to the CCG, will be required to make a declaration of interest.

10.2. Anyone contracted to provide services or facilities directly to the CCG will be subject to the same provisions of this constitution in relation to managing conflicts of interests. This requirement will be set out in the contract for their services.

Transparency in Procuring Services

10.3. The CCG recognises the importance in making decisions about the services it procures in a way that does not call into question the motives behind the procurement decision that has been made. Merton CCG will procure services in

a manner that is open, transparent, non-discriminatory and fair to all potential providers.

10.4. The CCG will publish a Procurement Strategy approved by its Governing Body which will ensure that:

- a) all relevant clinicians (not just members of the CCG) and potential providers, together with local members of the public, are engaged in the decision-making processes used to procure services;
- b) Service redesign and procurement processes are conducted in an open, transparent, non-discriminatory and fair way.

Register of procurement decisions

10.5 The CCG will maintain a register of procurement decisions taken, including:

- The details of the decision;
- Who was involved in making the decision (i.e. governing body or committee members and others with decision-making responsibility); and
- A summary of any conflicts of interest in relation to the decision and how this was managed by the CCG.

10.6 The register will be updated whenever a procurement decision is taken.

10.7. In the interests of transparency, the register of interests and the register of decisions will be publicly available and easily accessible to patients and the public including by:

- ensuring that both registers are available in a prominent place on the CCG's website
- The CCG making both registers available upon request for inspection at their headquarters.

10.8. The CCG will also consider any particular access needs that their stakeholders have.

10.9. The registers will form part of the CCG's annual accounts and will be signed off by external auditors.

Procurement issues

10.10. The CCGs will capture and manage any conflicts or potential conflicts of interest that may arise in relation to procurement.

10.11. The Act, the Health and Social Care Act 2012 ("the HSCA") and associated regulations set out the statutory rules with which commissioners are required to comply when procuring and contracting for the provision of clinical services. They need to be considered alongside the Public Contract

Regulations and, where appropriate, EU procurement rules. Monitor's Substantive guidance on the Procurement, Patient Choice and Competition Regulations advises that the requirements within these create a framework for decision making that will assist commissioners to comply with a range of other relevant legislative requirements.

10.12. The Procurement, Patient Choice and Competition Regulations place requirements on commissioners to ensure that they adhere to good practice in relation to procurement, do not engage in anti-competitive behaviour that is against the interest of patients, and protect the right of patients to make choices about their healthcare.

10.13. The regulations set out that commissioners must:

- manage conflicts and potential conflicts of interests when awarding a contract by prohibiting the award of a contract where the integrity of the award has been, or appears to have been, affected by a conflict; and
- Keep appropriate records of how they have managed any conflicts in individual cases.

10.14 Monitor has a statutory duty under section 78 of the HSCA to produce guidance on compliance with any requirements imposed by the regulations and how it intends to exercise the powers conferred on it by these regulations. Monitor's Substantive guidance on the Procurement, Patient Choice and Competition Regulations is the relevant statutory guidance.

General considerations and use of the Procurement Template (Appendix 3)

10.15. The most obvious area in which conflicts could arise is where the CCG commissions or co-commissions (or continues to commission by contract extension) healthcare services, including GP services, in which a member of the CCG has a financial or other interest. This may most often arise in the context of co-commissioning of primary care, particularly with regard to delegated or joint arrangements, but it will also need to be considered in respect of any commissioning issue where GPs are current or possible providers. The CCG will address the factors needing consideration by using the Procurement Template when drawing up their plans to commission services (Appendix 3).

10.16 The CCG will make evidence of their deliberations on conflicts publicly available by publishing the completed Procurement Templates.

Designing service requirements

10.17. The CCG will engage relevant providers, especially clinicians, in confirming that the design of service specifications will meet patient need. Such engagement will be done transparently, fairly and legally. To guard against potential conflicts of interest occurring the CCG will not engage selectively

with only certain providers (be they incumbent or potential new providers) in developing a service specification for a contract for which the providers may later bid.

10.18. The CCG will seek, as far as possible, to specify the outcomes that it wishes to see delivered through a new service, rather than the process by which these outcomes are to be achieved. As well as supporting innovation, this will help prevent bias towards particular providers in the specification of services.

10.19. Such engagement will follow the three main principles of procurement law, namely equal treatment, non-discrimination and transparency. This includes ensuring that the same information is given to all.

10.20. The CCG will also:

- advertise the fact that a service design/re-design exercise is taking place widely and invite comments from any potential providers and other interested parties (ensuring a record is kept of all interactions);
- As the service design develops, engage with a wide range of providers on an ongoing basis to seek comments on the proposed design, e.g. via the commissioner's website or via workshops with interested parties;
- use engagement to help shape the requirement to meet patient need but take care not to gear the requirement in favour of any particular provider(s);
- If appropriate, engage the advice of an independent clinical adviser on the design of the service;
- be transparent about procedures;
- ensure at all stages that potential providers are aware of how the service will be commissioned; and
- Maintain commercial confidentiality of information received from providers.

10.21. The CCG recognises that, when engaging providers on service design, that the CCG has ultimate responsibility for service design and for selecting the provider of services. The CCG will refer to Monitor Guidance on the use of provider boards in service design.

10.22. The CCG will also ensure that it has systems in place for managing conflicts of interest on an ongoing basis. This will include monitoring a contract that has been awarded to a provider in which an individual commissioner has a vested interest.

Dispute Resolution [See paragraph 5.2 above – last bullet point]

10.23. Where disputes arise, we would hope that in most cases these could be resolved informally, without recourse to a formal process. If however the dispute cannot be resolved informally, this section sets out the process by which the perceived breach will be handled.

Examples of disputes which may arise include;

- Clarification of scoring criteria and/or assessment
- Score weighting
- Application of SFIs
- Contract duration
- Assessment of impact upon existing providers and/or local health economy

10.24. The design of the procedure is based on the principle that disputes should be resolved at the most local level possible.

- The first port of call is Merton CCG
- If the dispute is not successfully resolved at this level, the complaint should then be heard by the local Health and Wellbeing Board.
- If the provider is unhappy with the HWB response, it should be escalated to the NHS England.
- Subject to being invited by a member practice involved in a dispute, the practice may invite the local LMC to be informally involved.

10.25. The CCG is committed to engaging with its members around strategic proposals and developments. However, where a member finds it has a dispute or grievance with the wider CCG as a whole, or its Governing Body or committees to whom it has delegated powers with regard to:

- Matters of eligibility or disqualification; or
- The interpretation and application of their respective powers and obligations under this Constitution; or
- A decision which the CCG has made on behalf of its members; or
- Any other relevant matter that the CCG considers fair and equitable to be the subject of a complaint or guidance

The Governing Body's decision as a representative body is recognised as final subject only to legal requirements, matters of regional or national policy and supported by the principles of locally brokered mediation to be instigated at the direction of the CCG Chair.

10.26. **Objectives of the procedure**

The objectives of the procedure are as follows:

- To provide the CCG with an appropriate mechanism for dealing with reasonable disputes
- To resolve disputes transparently, fairly and consistently.
- To assure providers that the process is fair and transparent.
- To mitigate risks and protect the reputation of the CCG
- To prevent where possible legal challenge/ expensive external referral processes.

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10.27. When handling disputes, Merton CCG will:

- Commit to transparency
- Communicate the process and decision making criteria widely and in advance
- Engage all relevant stakeholders
- Enforce declarations of interest
- Publish findings within and across the CCG to enable consistency
- Be objective and base the analysis and the decision on objective information and criteria
- Maintain an audit trail

10.28 The Procedure

The CCG dispute resolution procedure is made up of the following stages:

Stage 1: Making the Complaint

Any complaint must be submitted to the Chair of NHS Merton CCG in writing. The complaint will be acknowledged within five working days.

Stage 2: Triage

Following the receipt of the complaint, the CCG may get in contact with the complainant at this stage and request clarification or further information. If the complaint is not deemed to warrant proceeding, further the complainant is notified that the complaint will not progress.

If the complaint should be fast tracked to another organisation, the claimant is informed of the course of action.

Where the complaint is in scope and not subject to fast tracking, it will proceed to the next stage. In most cases, we would envisage that the triage process will be carried out within five working days.

Stage 3: Chair review

Following the triage, the CCG Chair will review the complaint to determine whether a swift resolution can be achieved without the need to involve the Governing Body. The Chair may call a meeting of the parties concerned to discuss the matter informally and without prejudice.

Stage 4: The Governing Body

If the complaint cannot be resolved by the Chair, the Governing Body will then formally review the complaint and may refer on to the Audit and Governance Committee to advise.

Stage 5: The decision

Once the Governing Body has made the decision, it will write to the complainant notifying them of the decision, explaining the rationale and necessary the course of action. It will also notify the NHSE of the dispute and the outcome.

If the complainant does not believe that the case has been satisfactorily resolved it can appeal. The Governing Body may convene a separate forum to advise on the appeal. In most cases, this stage of the process is expected to take no longer than 25 days.

While the timescales set out for each stage above are illustrative, the process as a whole will take no longer than three months.

10.29 Right of Appeal

The expectation is that most complaints will be successfully resolved. However, if the complainant is unsatisfied by the results of this procedure, they can refer the complaint to the NHSE process. Appeals to the NHSE must be made within 3 months of the complainant being informed of the CCG's decision.

Record keeping

10.30. A clear record of any conflicts of interest will be kept by the CCG in its register of interests. The CCG will also ensure that it records procurement decisions made, and details of how any conflicts that arose in the context of the decision have been managed. These registers will be available for public inspection as detailed above.

10.31. The CCG will ensure that details of all contracts, including the contract value, are published on its website as soon as contracts are agreed. Where the CCG decides to commission services through Any Qualified Provider (AQP), it will publish on the website the type of services commissioned and the agreed price for each service. Further, the CCG will ensure that such details are also set out in its annual report. Where services are commissioned through an AQP approach, the CCG will ensure that there is information publicly available about those providers who qualify to provide the service.

11. Decision-making when a conflict of interest arises: primary medical care

11.1. Procurement decisions relating to the commissioning of primary medical services across South West London (including Merton) currently undertaken by NHS England will be made by the South West London Joint Commissioning Committee ("the Committee"), a joint committee established between the six CCGs in SW London and NHS England:

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- Croydon CCG
 - Kingston CCG
 - Merton CCG
 - Richmond CCG
 - Sutton CCG
 - Wandsworth CCG
 - NHS England
- 11.2. The Committee will comply with its Terms of Reference which have been agreed by the 6 CCG members of the Committee and NHS England. The Terms of Reference cover membership, quoracy and voting rights, and have been prepared with reference to the relevant guidance issued by NHS England. The Committee will regularly review its terms of reference to ensure that they comply with national statutory guidance.
- 11.3. Members of The Committee have agreed that conflicts of interest issues relating to the joint commissioning of primary medical services by the joint committee will be managed in reference to the Wandsworth CCG Conflicts of Interest Policy. The Wandsworth Policy is compliant with national statutory guidance. All conflicts of interest issues will be considered on an individual basis.
- 11.4 A standing invitation has been made to the CCG's local Healthwatch and Health and Wellbeing Board to appoint representatives to attend commissioning committee meetings, including, where appropriate, for items where the public is excluded from a particular item or meeting for reasons of confidentiality. These representatives are attendees and do not form part of the membership of the committee.
- 11.5. As a general rule, meetings of The Committee, including the decision- making and the deliberations leading up to the decision, will be held in public (unless the Committee has concluded it is appropriate to exclude the public).
- 11.6. The arrangements for primary medical care decision making do not preclude GP participation in strategic discussions on primary care issues, subject to appropriate management of conflicts of interest. They apply to decision-making and the deliberations leading up to the decisions.

12. Equality and Diversity Statement

- 12.1 The organisation is committed to ensuring that it treats its employees fairly, equitably and reasonably and that it does not discriminate against individuals or groups on the basis of their ethnic origin, physical or mental abilities, gender, age, religious beliefs or sexual orientation. An Equality Analysis has been completed for this policy.

- 12.2 If you have any concerns or issues with the contents of this policy or have difficulty understanding how this policy relates to you or your role, please contact the Governing Body Secretary.

13. Monitoring Compliance and Effectiveness of the Policy.

- 13.1 The policy will be reviewed annually by the Merton CCG Audit and Governance Committee. Staff and decision-makers will be reminded of the policy and register of interests at least quarterly.
- 13.2 The Chief Finance Officer will review register entries on a regular basis and take any action necessary as highlighted by the review.
- 13.3 Conflicts of interest management will form part of the internal audit cycle on an annual basis. This will be carried out according to NHS England guidance and using the template provided alongside it. The results of the audit will be reflected in the Annual Governance Statement.

Appendix 1 – The Nolan Principles

The ‘Nolan Principles’ set out the ways in which holders of public office should behave in discharging their duties

The seven principles are:

Selflessness – Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.

Integrity – Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

Objectivity – In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability – Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness – Holders of public office should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty – Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership – Holders of public office should promote and support these principles by leadership and example.

Source: The First Report of the Committee on Standards in Public Life (1995)

Appendix 2: Template Declaration of interests for CCG members and employees*

*Member / practice partner / employee / governing body member / committee or sub-committee member (including committees and sub-committees of the governing body) declaration form: financial and other interests

This form is required to be completed in accordance with the CCG's Constitution and section 14O of *The National Health Service Act 2006, the NHS (Procurement, Patient Choice and Competition) regulations 2013 and the Substantive guidance on the Procurement, Patient Choice and Competition Regulations*

Notes:

- Merton CCG must make arrangements to ensure that the persons mentioned above declare any interest which may lead to a conflict with the interests of the CCG and /or NHS England and the public for whom they commission services in relation to a decision to be made by the CCG and/or NHS England or which may affect or appear to affect the integrity of the award of any contract by the CCG and/or NHS England.
- Within 28 days of a relevant event, members and employees need to register their financial and other interests.
- If any assistance is required in order to complete this form, then the member or employee should contact the SECSU Governance Team
- The completed form should be sent by both email and signed hard copy to the SECSU Governance Team
- Any changes to interest declared must also be registered within 28 days of the relevant event by completing and submitting a new declaration form.
- Declarations of interest made by members of the CCG Governing Body will be published on the group's website.
- Members and employees completing this declaration form must provide sufficient detail of each interest so that a member of the public would be able to understand clearly the sort of financial or other interest the member or employee has and the circumstances in which a conflict of interest with the business or running of the CCG might arise.
- If in doubt as to whether a conflict of interest could arise, a declaration of the interest should be made.

Name:				
Position within, or relationship with, the CCG (or NHS England in the event of joint committees):				
Detail of interests held (complete all that are applicable):				
Type of Interest * *See reverse of form for details	Description of Interest (including for indirect Interests, details of the relationship with the person who has the interest)	Date interest relates From & To		Actions to be taken to mitigate risk (to be agreed with line manager or a senior CCG manager)

The information submitted will be held by the CCG for personnel or other reasons specified on this form and to comply with the organisation's policies. This information may be held in both manual and electronic form in accordance with the Data Protection Act 1998. Information may be disclosed to third parties in accordance with the Freedom of Information Act 2000 and published in registers that the CCG holds.

I confirm that the information provided above is complete and correct. I acknowledge that any changes in these declarations must be notified to the CCG as soon as practicable and no later than 28 days after the interest arises. I am aware that if I do not make full, accurate and timely declarations then civil, criminal, or internal disciplinary action may result.

I do / do not [delete as applicable] give my consent for this information to published on registers that the CCG holds. If consent is NOT given please give reasons:

--

Signed:

Date:

Signed:

Position:

Date:

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(Line Manager or Senior CCG Manager)

Please return to <insert name/contact details for team or individual in CCG nominated to provide advice, support, and guidance on how conflicts of interest should be managed, and administer associated administrative processes>

Types of interest

Type of Interest	Description
Financial Interests	<p>This is where an individual may get direct financial benefits from the consequences of a commissioning decision. This could, for example, include being:</p> <ul style="list-style-type: none"> • A director, including a non-executive director, or senior employee in a private company or public limited company or other organisation which is doing, or which is likely, or possibly seeking to do, business with health or social care organisations; • A shareholder (or similar owner interests), a partner or owner of a private or not-for-profit company, business, partnership or consultancy which is doing, or which is likely, or possibly seeking to do, business with health or social care organisations. • A management consultant for a provider; • In secondary employment (see paragraph 56 to 57); • In receipt of secondary income from a provider; • In receipt of a grant from a provider; • In receipt of any payments (for example honoraria, one off payments, day allowances or travel or subsistence) from a provider • In receipt of research funding, including grants that may be received by the individual or any organisation in which they have an interest or role; and • Having a pension that is funded by a provider (where the value of this might be affected by the success or failure of the provider).
Non-Financial Professional Interests	<p>This is where an individual may obtain a non-financial professional benefit from the consequences of a commissioning decision, such as increasing their professional reputation or status or promoting their professional career. This may, for example, include situations where the individual is:</p> <ul style="list-style-type: none"> • An advocate for a particular group of patients; • A GP with special interests e.g., in dermatology, acupuncture etc. • A member of a particular specialist professional body (although routine GP membership of the RCGP, BMA or a medical defence organisation would not usually by itself amount to an interest which needed to be declared); • An advisor for Care Quality Commission (CQC) or National Institute for Health and Care Excellence (NICE); • A medical researcher.
Non-Financial	<p>This is where an individual may benefit personally in ways which are not directly linked to their professional career and do not give rise to a direct</p>

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Type of Interest	Description
Personal Interests	financial benefit. This could include, for example, where the individual is: <ul style="list-style-type: none">• A voluntary sector champion for a provider;• A volunteer for a provider;• A member of a voluntary sector board or has any other position of authority in or connection with a voluntary sector organisation;• Suffering from a particular condition requiring individually funded treatment;• A member of a lobby or pressure groups with an interest in health.
Indirect Interests	This is where an individual has a close association with an individual who has a financial interest, a non-financial professional interest or a non-financial personal interest in a commissioning decision (as those categories are described above). For example, this should include: <ul style="list-style-type: none">• Spouse / partner;• Close relative e.g., parent, grandparent, child, grandchild or sibling;• Close friend;• Business partner.

Appendix 3 – Procurement Template [To be used when commissioning services from GP practices, including provider consortia or organisations in which GPs have a financial interest]

NHS Merton Clinical Commissioning Group

Service:	
Question	Comment/Evidence
Questions for all procurement routes	
How does the proposal deliver good or improved outcomes and value for money – what are the estimated costs and the estimated benefits? How does it reflect the CCG’s proposed commissioning priorities? How does it comply with the CCG’s commissioning obligations?	
How have you involved the public in the decision to commission this service?	
What range of health professionals have been involved in designing the proposed service?	
What range of potential providers have been involved in considering the proposals?	
How have you involved your Health and Wellbeing Board(s)? How does the proposal support the priorities in the relevant joint health and wellbeing strategy (or strategies)?	
What are the proposals for monitoring the quality of the service?	
What systems will there be to monitor and publish data on referral patterns?	

Have all conflicts and potential conflicts of interests been appropriately declared and entered in registers which are publicly available Have you recorded how you have managed any conflict or potential conflict?	
Why have you chosen this procurement route? ¹	
What additional external involvement will there be in scrutinising the proposed decisions?	
How will the CCG make its final commissioning decision in ways that preserve the integrity of the decision-making process and award of any contract?	

Additional question when qualifying a provider on a list or framework or pre selection for tender (including but not limited to any qualified provider) or direct award (for services where national tariffs do not apply)	
How have you determined a fair price for the service?	

Additional questions when qualifying a provider on a list or framework or pre selection for tender (including but not limited to any qualified provider) where GP practices are likely to be qualified providers	
How will you ensure that patients are aware of the full range of qualified providers from whom they can choose?	

Additional questions for proposed direct awards to GP providers	
What steps have been taken to demonstrate that there are no other providers that could deliver this service?	
In what ways does the proposed service go above and beyond what GP practices should be expected to provide under the GP contract?	
What assurances will there be that a GP practice is providing high-quality services under the GP contract before it has the opportunity to provide any new services?	

¹ **Taking into account S75 regulations and NHS Commissioning Board guidance that will be published in due course, Monitor guidance, and existing procurement rules.**

Appendix 4: Declaration of conflict of interests for bidders/contractors template

NHS Merton Clinical Commissioning Group
Bidders/potential contractors/service providers declaration form: financial and other interests

This form is required to be completed in accordance with the CCG's Constitution, and s140 of the NHS Act 2006 (as amended by the Health and Social Care Act 2012) and the NHS (Procurement, Patient Choice and Competition) (No2) Regulations 2013 and related guidance

Notes:

- All potential bidders/contractors/service providers, including sub-contractors, members of a consortium, advisers or other associated parties (Relevant Organisation) are required to identify any potential conflicts of interest that could arise if the Relevant Organisation were to take part in any procurement process and/or provide services under, or otherwise enter into any contract with, the CCG, or with NHS England in circumstances where the CCG is jointly commissioning the service with, or acting under a delegation from, NHS England. If any assistance is required in order to complete this form, then the Relevant Organisation should contact [*CCG to specify*].
- The completed form should be sent to [*CCG to specify*].
- Any changes to interests declared either during the procurement process or during the term of any contract subsequently entered into by the Relevant Organisation and the CCG must notified to the CCG by completing a new declaration form and submitting it to [*CCG to specify*].
- Relevant Organisations completing this declaration form must provide sufficient detail of each interest so that the CCG, NHS England and also a member of the public would be able to understand clearly the sort of financial or other interest the person concerned has and the circumstances in which a conflict of interest with the business or running of the CCG or NHS England (including the award of a contract) might arise.
- If in doubt as to whether a conflict of interests could arise, a declaration of the interest should be made.

Interests that must be declared (whether such interests are those of the Relevant Person themselves or of a family member, close friend or other acquaintance of the Relevant Person), include the following:

- the Relevant Organisation or any person employed or engaged by or otherwise connected with a Relevant Organisation (Relevant Person) has provided or is providing services or other work for the CCG or NHS England;
- a Relevant Organisation or Relevant Person is providing services or other work for any other potential bidder in respect of this project or procurement process;

- the Relevant Organisation or any Relevant Person has any other connection with the CCG or NHS England, whether personal or professional, which the public
- Could perceive may impair or otherwise influence the CCG's or any of its members' or employees' judgements, decisions or actions.

Name of Organisation:	
Details of interests held:	
Type of Interest	Details
Provision of services or other work for the CCG or NHS England	
Provision of services or other work for any other potential bidder in respect of this project or procurement process	
Any other connection with the CCG or NHS England, whether personal or professional, which the public could perceive may impair or otherwise influence the CCG's or any of its members' or employees' judgements, decisions or actions	

Name of Relevant Person	[complete for all Relevant Persons]	
Details of interests held:		
Type of Interest	Details	Personal interest or that of a family member, close friend or other acquaintance?
Provision of services or other work for the CCG or NHS England		
Provision of services or other work for any other potential bidder in respect of this project or procurement process		
Any other connection with the CCG or NHS England, whether personal or professional, which the public could perceive may impair or otherwise influence the CCG's or any of its members' or employees' judgements, decisions or actions		

To the best of my knowledge and belief, the above information is complete and correct. I undertake to update as necessary the information.

Signed:

On behalf of:

Date:

Appendix 5: 10 key questions (for information)

These questions are provided as a prompt By NHS England to CCGs in considering key issues when reviewing their current arrangements for managing conflicts of interest.

1. Do you have a process to identify, manage and record potential (real or perceived) conflicts of interest that could affect, or appear to affect, the integrity of an award of a contract, including those that could arise in relation to co-commissioning of primary care?
2. How will the CCG make its final commissioning decisions in ways that preserve the integrity of the decision-making process?
3. Have all conflicts and potential conflicts of interests been appropriately declared and entered in registers, including an explanation of how the conflict has been managed?
4. Have you made arrangements to make registers of interest accessible to the public?
5. Have you set out how you will you ensure fair, open and transparent decisions about:
 - priorities for investment in new services
 - the specification of services and outcomes
 - The choice of procurement route?
6. How will you involve patients, and the public, and work with your partners on the Health and Wellbeing Boards and providers (old and new) in informing these decisions?
7. What process will you use to resolve disputes with potential providers?
8. Have you summarised your intended approach in your constitution, and thought through how your governing body will be empowered to oversee these systems and processes – both how they will be put in place and how they will be implemented?
9. What systems will there be to monitor the patterns of decision making and how any conflicts of interest were managed?
10. Has your decision making body identified and documented in the constitution the process for remaining quorate where multiple members are conflicted?

Appendix 6: NHS Clinical Commissioners, Royal College of General Practitioners and British Medical Association - Shared principles on conflicts of interest when CCGs are commissioning from member practices

December 2014

1. Introduction

The ability for CCGs to become involved in co-commissioning General Practice and primary care services has the potential to bring many benefits but it also brings with it the potential for perceived and actual conflicts of interest.

NHS Clinical Commissioners (NHSCC), the Royal College of General Practitioners (RCGP) and the British Medical Association (BMA) have decided to collectively outline their high level starting principles in managing conflicts of interest when CCGs commission from member practices. In large part this has brought together principles articulated in previous lines/guidance/steer from the above organisations and NHS England.

Our principles are applicable to each of the three primary care commissioning models open to CCGs and should not be seen as being directive or be interpreted to mean that we prefer one model over another. These decisions need to remain a local, professionally led, decision.

In developing these shared principles we would like them to sit alongside NHS England's updated guidance on Managing Conflicts of Interest (December 2014). We are on a journey regarding the co-commissioning of primary care and we will review these principles when needed and as CCGs work through the guidance.

It should be noted that this paper is not designed to address the issue of perceived or actual conflicts of interest in CCGs holding and performance managing GP contracts under co-commissioning arrangements.

2. Our headline shared principles around conflicts of interest

We collectively agree the following in relation to managing conflicts of interest when CCGs commission from member practices:

- If CCGs are doing business properly (needs assessments, consultation mechanisms, commissioning strategies and procurement procedures), then the rationale for what and how they are commissioning is clearer and easier to withstand scrutiny.

Decisions regarding resource allocation should be Evidence based, and there should be robust mechanisms to ensure open and transparent decision making.

- CCGs must have robust governance plans in place to maintain confidence in the probity of their own commissioning, and maintain confidence in the integrity of clinicians.
- CCGs should assume that those making commissioning decisions will behave ethically, but individuals may not realise that they are conflicted, or lack awareness of rules and procedures. To mitigate against this, CCGs should ensure that formal prompts, training and checks are implemented to make sure people are complying with the rules. As a rule of thumb, 'if in doubt, disclose'
- CCGs should anticipate many possible conflicts when electing/selecting individuals to commissioning roles, and where necessary provide commissioners with training to ensure individuals understand and agree in advance how different scenarios will be dealt with.
- It is important to be balanced and proportionate – the purpose of these tools is not to constrain decision-making to be complex or slow.

3. Addressing perceived as well as actual conflicts of interest

Conflicts of interest in the NHS are not new and they are not always avoidable. The documents we reviewed to produce this paper were all clear that the existence of a conflict is not the same as impropriety and focus on how to avoid potential or perceived wrongdoing. Most importantly all acknowledge that perceived wrongdoing can be as detrimental as actual wrongdoing, and risks losing confidence in the probity of CCGs and the integrity of wider clinicians such as GPs in networks/federations, individual practices and partners.

The RCGP/NHS Confederation also notes evidence from the BMJ that people think they aren't biased by potential conflicts but often are so the common theme is - *if in any doubt it's important to disclose*.

The RCGP/NHS Confederation and NHS England Guidance identify four types of potential conflict of interest:

- direct financial;
- Indirect financial (for example a spouse has a financial interest in a provider);
- Non-financial (i.e. reputation) and;
- Loyalty, i.e., to professional bodies

The BMA recognises that for CCGs there will be situations where the best decision for the population and taxpayers is not in the best interest of individual patients (for whom GPs are required to advocate) and that this can create a perceived conflict. The RCGP/NHS Confederation paper acknowledges this but in terms of the governance when commissioning services.

4. Planning for populations

CCGs must always demonstrate that their commissioned services meet the needs of their local populations, as such CCGs will need to work with their Health and Wellbeing Board's or other local strategic bodies to ensure there is alignment to local strategic plans.

What is clear from all the existing guidance is that CCGs will need to identify the situations where they are involving their governing body clinicians to strategically plan for their population, and situations where their governing body clinicians need to be separated from procurement, planning and decision-making processes. In the former it is critically important to secure clinical expertise. In the latter, the CCG will need to manage risks around perceived and actual conflicts in relation to the tendering of services.

The BMA outlines that decisions regarding resource allocation should be evidence based, and there should be robust mechanisms to ensure open and transparent decision making. As such, GP involvement must be agreed at each stage of the commissioning and procurement process so that potential risks of conflicts are appropriately defined and mitigated early on.

5. Good practice – for CCGs

All the guidance suggests CCGs must have robust governance plans in place to maintain confidence in the probity of their own commissioning, and maintain confidence in the integrity of clinicians.

The RCGP/NHS Confederation suggests using existing NHS guidance as a starting point:

- Identify potential conflicts
- Declare interests in a register
- Exclude individuals from discussion or decision making if financial interest exceeds 1% equity in the provider organisation - depending on the nature of the discussion (we would also add that includes considering the share of the contract value to make sure there are no loopholes, this might also apply to practices with profit sharing arrangements).
- Continue to manage conflicts post-decision i.e. contract managing (carefully separating overall strategy development for populations from individual procurement processes. The former will be important for CCG lay involvement will be important and include secondary care clinicians and non-executive Board nurses, the latter can be managed by managers).

NHS England guidance also says that an individual with a 'material interest' in an organisation which provides or is likely to provide significant business should not be member of CCG governing body. The BMA suggests anything above 5% equity is a material interest. The RCGP/NHS Confederation reference this threshold but also say that something lower than a 1% stake could also be a material interest (if the size of the bid is significant).

Clearly these thresholds need to be considered in relation to individual practices and GP partners once co-commissioning is in place. The perceived risks must be recognised early on and we feel some worked case study examples would be helpful for CCGs as they work through the updated guidance. NHSCC, the RCGP and the BMA are planning to work with NHS England and Monitor to identify these examples.

NHSCC believe that CCG lay members, secondary care doctors and nurses on governing bodies play a vital role in both the design, implementation, leadership and monitoring of conflicts of interest systems and processes. They can provide robust challenge and ultimately a protection for GPs working in both the commissioning and provision of health care. Enabling them to carry out their roles in this regard is vital.

CCGs should also be proactive in their approach when considering conflicts when electing/selecting people, doing a proper induction (i.e. include continuous training and review at both Governing Body and membership (assembly level) and ensuring understanding from individuals, and agree in advance how different scenarios will be dealt with. The CCG should ensure individuals are prompted to declare an interest but not absolved from their responsibility to declare as well. Again, CCG lay members, secondary care doctors and nurse members of the governing body have a critical role in this process, as an independent arbiter and as those providing appropriate scrutiny and oversight.

NHS England's [Code of Conduct](#) guidance specifically explores when CCGs are commissioning services from their own GP member practices. When CCGs are commissioning from federations of practices, the same guidance should apply.

As practical support NHS England have also produced an updated code of conduct template for use when drawing up local plans (see their updated guidance). The template asks a series of questions to provide assurance to Health and Wellbeing Boards that the service meets local needs, and to the Audit Committee or external auditors that robust process was used to commission the service, select the appropriate procurement route and address potential conflicts of interest.

6. Good practice - for individuals

The current guidance suggests that individuals making decisions in CCGs do so with the Nolan principles of public life in mind: selflessness, integrity, objectivity, accountability, openness, honesty, and leadership.

They also refer to the [guidance](#) the General Medical Council (GMC) has produced for doctors including:

- You must not allow any interests you have to affect the way you prescribe for, treat, refer or commission services for patients.
- If you are faced with a conflict of interest, you must be open about the conflict, declaring your interest informally, and you should be prepared to exclude yourself from decision making.
- You must not try to influence patients' choice of healthcare services to benefit you, someone close to you, or your employer. If you plan to refer a patient for investigation, treatment or care at an organization in NHS England guidance indicates that individuals must declare an interest as soon as they come aware of it, and within 28 days. More informally, the RCGP/NHS Confederation also suggested the simple 'Paxman test' - whether explaining the situation to an investigative reporter/journalist like Jeremy Paxman would cause embarrassment. We think it would be helpful to develop this type of text into a tool for CCGs to use locally.

NHS England guidance indicates that individuals must declare an interest as soon as they come aware of it, and within 28 days.

Finally, the BMA suggested that commissioner doctors:

- Declare all interests, even if they are potential conflicts or the individual is unsure whether it counts as a conflict, as soon as possible.
- Update a register of interests every three months.
- Doctors must be familiar with their organisation's formal guidance.
- If individual doctors have any questions, they should seek advice from colleagues, err on the side of being open about conflicts of interest, or seek external advice from professional or regulatory bodies.

In addition to the above, the RCGP suggests there should also be a requirement to update the register of interests if a material difference arises in the circumstances of an individual at any point.

7. Procurement processes – CCGs and member practices

According to the BMA guidance, when CCGs are procuring community level services, these contracts are often below threshold requiring a competitive tender process.

There are a number of procurement options for CCGs in this situation – for example a few may include:

1. Competitive tender where GP practices are likely to bid
2. AQP where GP providers are likely to be among the qualified providers
3. Single tender from GP practices

From the guidance that exists different questions arise around conflicts of interest when the above procurement processes are used. For example:

- Identifying whether approaches such as AQP are being used with the safeguards to ensure that patients are aware of the choices available to them.
- If single tender is the route used, CCGs will need to demonstrate a few things depending on the nature of the procurement. For example that there are no other capable providers, why the successful bid was preferred to the others and the impact of disproportionate tendering costs. ([Monitor's procurement guidance](#) provides many useful steers on what CCGs will need to demonstrate)

For primary care co-commissioning, NHSCC believes one of the elements to include on procurement processes are the issues around standing financial orders and schemes of delegation which should not allow CCGs to divide primary care budgets into smaller budgets to circumvent the procurement process. NHSCC's lay member network will have examples/steer on the correct wording to use from previous local experiences.

Regardless of what the local application is the most important part of this process is transparency. NHS England says to set out the details, including the value of all contracts on the CCG website. If they are using AQP, the types and prices of

services they are commissioning should be on the website. All of this information should also be in the CCG's annual report.

When making procurement decisions, the current guidance suggests that anyone with a perceived or material conflict should be excluded from decision making, either both excluded from voting or from discussion and voting. What is not clear in the guidance is how far back this rule goes – i.e. to the planning stage or just the development of the specification and procurement. CCGs will need to agree that line locally.

According to the reviewed guidance if all GPs and practice representatives due to make a decision are conflicted, then the CCG should be:

- Referring decisions to the governing body, so that lay members / the nurse / the secondary care doctor can make the final decision. However this may weaken GP clinical input into decision making.
- Co-opting individuals from the HWB or another CCG onto the governing body, or invite the HWB / another CCG to review proposal to provide additional scrutiny (these individuals would only be able to participate in decision making if this was set out in the CCG constitution)
- Ensure that quoracy rules enable decisions to be made in this circumstance
- Plan ahead to ensure that agreed processes are followed.
- Use an appropriately constituted arms-length external scrutiny committee to ensure probity (recommended by the BMA)

CCGs can use commissioning support services (CSS) to reduce potential conflicts, for example a CSS can help select the best procurement route and prepare bids etc. However, this cannot completely eliminate the conflict as CCGs are responsible for signing off specification and evaluation criteria, signing off which providers to invite to tender, and making the final decision on the selection of the provider. The CCG is responsible for ensuring that their CSS or other third parties are compliant with regulations in the same way that the CCG must be.

NHS England also suggest any questions about the service going beyond the scope of the GP contract should be discussed with NHS England area teams, clearly that would need review in light of new delegated co-commissioning arrangements.

Networks and Federations

We note that the increasing number of GP networks and federations could potentially present an added complication to local procurement processes. If most or all CCG member practices are part of the local federation, then this could mean that a practice not part of the federation/excluded from a federation may not have the opportunity to win contracts through competitive tender – because the process is more suited to federated organisations. One way to mitigate this would be for the CCG to always design and procure service specifications according to best practice (with openness and transparency), thereby supporting all practices to bid. One area to be careful about is when all the GPs on a governing body have a declared interest in local federations – this makes decision making and accountability complex and the CCG will need to work that through carefully with the input of its lay members and wider clinicians on the governing body. Again, an external scrutiny committee with non-conflicted clinicians such as from a neighbouring CCG may be helpful.

8. Local engagement

Separately, the BMA suggests that LMCs should be involved in CCGs either by formal consultation, a non-voting seat on governing body, or as an observer on governing body. They indicate that a non-voting governing body seat would be the best option. Neither of the other two papers we reviewed address this.

9. Other conflicts of interest issues for consideration

Personal conflict

The RCGP/NHS Confederation highlight that in CCG governing bodies a personal conflict can arise because CCG leaders are elected by their constituent GP members. There could be a perception that CCG governing bodies are favouring the most vocal or influential of their GP practice members. Related to this is the potential indirect interest for elected GPs to build a constituency of supporters within their CCG.

The CCG is responsible for ensuring that their CSS or other third parties are compliant with regulations in the same way that the CCG must be.

NHS England guidance suggests that in the case of every GP governing body member being conflicted, the lay members, registered nurse and secondary care doctor make the decision (and that the constitution is written so that this is quorate). This could however mean that decisions would be taken without a GP perspective. Alternatively, CCGs may bring in members of the Health and Wellbeing Board or another CCG to provide oversight, or as the BMA suggests use an external scrutiny committee to make decisions.

Use of primary care incentive schemes

In its guidance, the BMA highlights its concerns about the professional and ethical implications of CCGs applying incentive schemes to reduce referral or prescribing activity. The BMA urges any doctor, whether commissioner or provider, to consider the schemes carefully and ensure that scheme is based on clinical evidence. NHSCC suggests that one solution is to ensure the expertise of secondary care clinicians and nurses on governing bodies plays an important part in providing clinical input and lay members can scrutinize commercial/ financial and performance data.

The RCGP acknowledge that it is not ethical to under-treat or under-refer for financial gain, but is not unethical to 'review and reflect' on variations in referral/prescribing rates and try to reduce referrals in line with evidence or best practice.

Note to the reader:

This paper has been developed from a review of three guidance documents and brings together previous lines/guidance from NHSCC, NHS England, the RCGP and the BMA.

- [BMA 'Conflicts of interest in the new commissioning system: Doctors in commissioning roles'](#) April 2013
- [RCGP/NHS Confederation 'Managing conflicts of interest in clinical commissioning groups'](#) September 2011

- [NHS England](#) 'Managing conflicts of interest: guidance for clinical commissioning groups.' March 2013 (includes Commissioning Board Document that precedes it). We have also read across the paper to the new version of this document published December 2014.

NHSCC have also supplemented the principles raised in this paper with some points for steer that have been raised by members of its lay member network.

Appendix 7: Section 7 of Monitor's Substantive Guidance on the Procurement, Patient Choice and Competition Regulations

7.1 Introduction

This section provides guidance for commissioners on handling conflicts of interest. Regulation 6(1) of the Procurement, Patient Choice and Competition Regulations prohibits commissioners from awarding a contract for NHS health care services where conflicts, or potential conflicts, between the interests involved in commissioning such services and the interests in providing them affect, or appear to affect, the integrity of the award of that contract.

Regulation 6(2) requires commissioners to maintain a record of how any conflicts that have arisen have been managed.

S.140 of the National Health Service Act 2006 includes further requirements relating to conflicts of interest. Guidance on how to comply with these requirements (including managing conflicts of interest) has been published by NHS England and is available on NHS England's website.

Members of commissioning organisations that are registered doctors will also need to ensure that they comply with their professional obligations, including those relating to conflicts of interest. These are described in the General Medical Council's guidance, *Good Medical Practice* and *Financial and commercial arrangements and conflicts of interest*. These are available on the General Medical Council's website.

7.2 What is a conflict?

Broadly, a conflict of interest is a situation where an individual's ability to exercise judgment or act in one role is/could be impaired or influenced by that individual's involvement in another role.

For the purposes of Regulation 6, a conflict will arise where an individual's ability to exercise judgment or act in their role in the commissioning of services is impaired or influenced by their interests in the provision of those services.

7.3 What constitutes an interest?

Regulation 6 of the Procurement, Patient Choice and Competition Regulations makes it clear that an interest includes an interest of:

- a member of the commissioner;
- a member of the governing body of the commissioner;
- a member of the commissioner's committees or sub-committees, or committees or sub-committees of its governing body; or

- an employee.

Other interests that might give rise to a conflict include the interests of any individuals or organisations providing commissioning support to the commissioner, such as CSUs, who may be in a position to influence the decisions reached by the commissioner as a result of their role.

7.4 What interests in the provision of services may conflict with the interests in commissioning them?

A range of interests in the provision of services may give rise to a conflict with the interests in commissioning them, including:

- Direct financial interest - for example, a member of a CCG or NHS England who has a financial interest in a provider that is interested in providing the services being commissioned or that has an interest in other competing providers not being awarded a contract to provide those services. Financial interests will include, for example, being a shareholder, director, partner or employee of a provider, acting as a consultant for a provider, being in receipt of a grant from a provider and having a pension that is funded by a provider (where the value of this might be affected by the success or failure of the provider).
- Indirect financial interest - for example, a member of a CCG or NHS England whose spouse has a financial interest in a provider that may be affected by a decision to reconfigure services. Whether an interest held by another person gives rise to a conflict of interests will depend on the nature of the relationship between that person and the member of the CCG or NHS England. Depending on the circumstances, interests held by a range of individuals could give rise to a conflict including, for example, the interests of a parent, child, sibling, friend or business partner.
- Non-financial or personal interests - for example, a member of a CCG or NHS England whose reputation or standing as a practitioner may be affected by a decision to award a contract for services or who is an advocate or representative for a particular group of patients.
- Professional duties or responsibilities. For example, a member of a CCG who has an interest in the award of a contract for services because of the interests of a particular patient at that member's practice.

Commissioners will also need to consider whether any previous or prospective roles or relationships may give rise to a conflict of interest. A conflict of interest may arise, for example, where a person has an expectation of future work or employment with a provider that is bidding for a contract.

7.5 Conflicts that affect or appear to affect the integrity of an award

Even if a conflict of interest does not actually affect the integrity of a contract award, a conflict of interest that appears to do so can damage a commissioner's reputation and public confidence in the NHS. Regulation 6 of the Procurement, Patient Choice and Competition Regulations therefore also prohibits commissioners from awarding contracts in these circumstances.

As well as affecting the decision to award a contract and to which provider, a conflict of interest may affect a variety of decisions made by a commissioner during the commissioning cycle in a way that affects, or appears to affect, the integrity of a contract award decision taken at a later point in time. For example, conflicts of interest might affect the prioritisation of services to be procured, the assessment of patients' needs, the decision about what services to procure, the service specification/design, the determination of qualification criteria, as well as the award decision itself.

Conflicts might arise in many different situations. A conflict of interest might arise, for example where the spouse of a staff member of a local area team at NHS England is employed by a provider that is bidding for a contract. A conflict could also arise where a CCG is deciding whether to procure particular services from GP practices in the area or from a wider pool of providers, or where it is deciding whether to commission services that would reduce demand for services provided by GP practices under the NHS General Medical Services contract.

Depending on the circumstances of the case, there may be a number of different ways of managing a conflict or potential conflict of interest in order to prevent that conflict affecting or appearing to affect the integrity of the award of the contract.

It will often be straightforward to exclude a conflicted individual from taking part in decisions or activities where that individual's involvement might affect or appear to affect the integrity of the award of a contract. The commissioner will need to consider whether in the circumstances of the case it would be appropriate to exclude the individual from involvement in any meetings or activities in the lead up to the award of a contract in relation to which the individual is conflicted, or whether it would be appropriate for the individual concerned to attend meetings and take part in discussions, having declared an interest, but not to take part in any decision-making (not having a vote in relation to relevant decisions). It is difficult to envisage circumstances where it would be appropriate for an individual with a material conflict of interest to vote on relevant decisions.

Where it is not practicable to manage a conflict by simply excluding the individual concerned from taking part in relevant decisions or activities, for example because of the number of conflicted individuals, the commissioner will need to consider alternative ways of managing the conflict. For example, depending on the circumstances of the case, it may be possible for a CCG to manage a conflict affecting a substantial proportion of its members by:

- involving third parties who are not conflicted in the decision-making by the CCG, such as out-of-area GPs, other clinicians with relevant experience, individuals from a Health and Wellbeing Board or independent lay persons; or

- inviting third parties who are not conflicted to review decisions throughout the process to provide ongoing scrutiny, for example the Health and Wellbeing Board or another CCG.

Whether a conflict of interests affects or appears to affect the integrity of a contract award (such that the commissioner may not award the contract) will depend on the circumstances of the case. The list of factors in the box below is not exhaustive, but covers some of the core factors that a commissioner is likely to need to consider in deciding whether it is appropriate to award a contract. See box below.

Conflicts that affect or appear to affect the integrity of a contract award: Examples of factors that a commissioner is likely to need to consider in deciding whether or not it can award a contract:

- the nature of the individual's interest in the provision of services, including whether the interest is direct or indirect, financial or personal, and the magnitude of any interest;
- whether and how the interest is declared, including at what stage in the process and to whom;
- the extent of the individual's involvement in the procurement process, including, for example, whether the individual has had a significant influence on service design/specification, has played a key role in setting award criteria, has been involved in deliberations about which provider or providers to award the contract to and/or has voted on the decision to award the contract; and
- what steps have been taken to manage the actual or potential conflict (or example, via an external review of the decisions taken throughout the procurement process, including whether a conflict of a member of a CCG has been dealt with in accordance with the CCG's constitution).

7.6 Recording how conflicts have been managed

Regulation 6 of the Procurement, Patient Choice and Competition Regulations also requires commissioners to maintain a record of how any conflicts that have arisen have been managed.

Commissioners will need to include all relevant information to demonstrate that the conflict was appropriately managed. See box below.

Examples of what information a record might contain:

Commissioners might include the following information in a record of how a conflict of interest has been managed:

- the nature of the individual's interest in the provision of services, including whether the interest is direct or indirect, financial or personal, and the magnitude of any interest;

- whether and how the interest is declared, including at what stage in the process and to whom;
- the extent of the individual's involvement in the procurement process, including, for example, whether the individual has had a significant influence on service design/specification, has played a key role in setting award criteria, has been involved in deliberations about which provider or providers to award the contract to and/or has voted on the decision to award the contract; and
- what steps have been taken to manage the actual or potential conflict (or example, via an external review of the decisions taken throughout the procurement process, including whether a conflict of a member of a CCG has been dealt with in accordance with the CCG's constitution).

Appendix 8: Declarations of interest checklist

Under the Health and Social Care Act 2012, there is a legal obligation to manage conflicts of interest appropriately. It is essential that declarations of interest and actions arising from the declarations are recorded formally and consistently across all CCG governing body, committee and sub-committee meetings. This checklist has been developed with the intention of providing support in conflicts of interest management to the Chair of the meeting- prior to, during and following the meeting. It does not cover the requirements for declaring interests outside of the committee process.

Timing	Checklist for Chairs	Responsibility
<p>In advance of the meeting</p>	<p>1. The agenda to include a standing item on declaration of interests to enable individuals to raise any issues and/or make a declaration at the meeting.</p>	<p>Meeting Chair and secretariat</p>
	<p>2. A definition of conflicts of interest should also be accompanied with each agenda to provide clarity for all recipients.</p>	<p>Meeting Chair and secretariat</p>
	<p>3. Agenda to be circulated to enable attendees (including visitors) to identify any interests relating specifically to the agenda items being considered.</p>	<p>Meeting Chair and secretariat</p>
	<p>4. Members should contact the Chair as soon as an actual or potential conflict is identified.</p>	<p>Meeting members</p>
	<p>5. Chair to review a summary report from preceding meetings i.e., sub-committee, working group, etc., detailing any conflicts of interest declared and how this was managed.</p>	<p>Meeting Chair</p>
	<p>A template for a summary report to present discussions at preceding meetings is detailed below.</p>	
<p>6. A copy of the members' declared interests is checked to establish any actual or potential conflicts of interest that may occur during the meeting.</p>	<p>Meeting Chair</p>	

Timing	Checklist for Chairs	Responsibility
<p>During the meeting</p>	<p>7. Check and declare the meeting is quorate and ensure that this is noted in the minutes of the meeting.</p> <p>8. Chair requests members to declare any interests in agenda items- which have not already been declared, including the nature of the conflict.</p> <p>9. Chair makes a decision as to how to manage each interest which has been declared, including whether / to what extent the individual member should continue to participate in the meeting, on a case by case basis, and this decision is recorded.</p> <p>10. As minimum requirement, the following should be recorded in the minutes of the meeting:</p> <ul style="list-style-type: none"> • Individual declaring the interest; • At what point the interest was declared; • The nature of the interest; • The Chair’s decision and resulting action taken; • The point during the meeting at which any individuals retired from and returned to the meeting - even if an interest has not been declared; • Visitors in attendance who participate in the meeting must also follow the meeting protocol and declare any interests in a timely manner. <p>A template for recording any interests during meetings is detailed below.</p>	<p>Meeting Chair</p> <p>Meeting Chair</p> <p>Meeting Chair and secretariat</p> <p>Secretariat</p>

Timing	Checklist for Chairs	Responsibility
Following the meeting	11. All new interests declared at the meeting should be promptly updated onto the declaration of interest form; 12. All new completed declarations of interest should be transferred onto the register of interests.	Individual(s) declaring interest(s) Designated person responsible for registers of interest