



Merton

Clinical Commissioning Group

Report to the Merton Clinical Commissioning Group Governing Body

Date of Meeting: 29th May 2014

Agenda No: 6.3

Attachments: 6&7

<p>Title of Document: MCCG Freedom of Information (FOI) Policy MCCG Conflict of Interest (COI) Policy</p>	<p>Purpose of Report: For Agreement</p>
<p>Report Author: Louise Morgan, South London CSU</p>	<p>Lead Director: MCCG Conflict of Interest Policy – Director of Quality MCCG Freedom of Information Policy – Director of Commissioning and Planning</p>
<p>Executive Summary:</p> <p>The FOI policy sets out the principles by which the CCG will ensure compliance with the Freedom of Information Act 2000.</p> <p>The COI 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 NHS Merton CCG Constitution and local and national guidance.</p>	
<p>Recommendation(s): It is recommended that the Governing Body AGREE the following:</p> <ul style="list-style-type: none"> • Freedom of Information Policy • Conflict of Interest Policy 	
<p>Committees which have previously discussed/agreed the report: Merton CCG Executive Management Team – May 2014 Merton CCG Audit and Governance Committee – May 2014</p>	
<p>Financial Implications: As referenced within the Conflict of Interest Policy</p>	
<p>Other Implications: (including patient and public involvement/Legal/Governance/ Risk/ Diversity/ Staffing) As described within the individual policies</p>	
<p>How has the Patient voice been considered in development of this paper: n/a</p>	
<p>Equality Analysis: As described within the individual policies</p>	
<p>Information Privacy Issues: As per Freedom of Information Act 2000</p>	
<p>Communication Plan: (including any implications under the Freedom of Information Act or NHS Constitution) May 2014 Governing Body papers and CCG website following approval</p>	



Merton

Clinical Commissioning Group

CONFLICTS OF INTEREST POLICY

CONFLICTS OF INTEREST POLICY

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

This policy replaces or supersedes Policy Ref: New Policy

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 Corporate Affairs Manager 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: [to be completed following approval]

Review date: 05/03/2015

Document Control	
Title:	Merton Conflicts of Interest Policy
Original Author(s):	Ben Vinter / David Cotter
Owner:	Chief Officer
Reviewed by:	Chief Officer
Quality Assured by:	Deputy Director of Governance (SLCSU)
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Approval Date:	[to be completed following approval]

Amendment History

This Policy is substantially based on a Policy developed by NHS SW London and this is gratefully acknowledged.

Version	Date	Reviewer Name(s)	Comments
0.1	8/02/2013	Ben Vinter/ David Cotter	1 st Pre consultation draft
0.2	18/02/2013	Ben Vinter/ David Cotter	2 nd Pre consultation draft
0.3	01/03/2013	Ben Vinter/ David Cotter	Updated to final draft CSU policy
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"

Document Information:

Title /Version Number/(Date)	SLCSU Conflicts of Interest Policy
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Responsible Post holder/Policy Owner	Chief Officer (MCCG)
Date Approved	[to be completed following approval]
Approved By	CCG Governing Body
Publication Date	[to be completed following approval]
Review Date	05/03/2015
Author	David Cotter/ Ben Vinter
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>
Contact details for further information	Merton Clinical Commissioning Group 020 3668 1221

This policy progresses the following Authorisation Domains and Equality Delivery System (tick all relevant boxes).

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

Clinical involvement in commissioning may lead to a perception amongst patients and the public of conflicts of interest. 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.

It reflects the most recent NHS guidelines.

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 Merton CCG's website. The Register of Declarations of Interest will be reported to the NHS Merton CCG Audit Committee annually.

1. Background

- 1.1. This policy was written at a point of time when Clinical Commissioning Groups (CCGs) were progressing toward establishment and authorisation and builds upon the experience gained during the period of shadow operation. The principles contained within this document are just those and build upon those commonly understood and applied through boards operation within the NHS. Accordingly, they apply consistently to newly authorised governing bodies and the organisation known as NHS Merton CCG.
- 1.2. Merton Clinical Commissioning Group assumed responsibility for commissioning substantial areas of health for its population following the abolition of the PCT on 31 March 2013.
- 1.3. The policy will be reviewed at least annually. It contents should be viewed alongside the CCG's Hospitality & Gifts Policy, Code of Business Conduct and Anti-Bribery Procedures.
- 1.4. The CCG Governing Body holds ultimate responsibility for all actions carried out by staff and decisions taken within Merton 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.
- 1.5. Where healthcare professionals 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 their 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 and other healthcare professionals involved in commissioning at any level must always consider what adverse comment an observer might say about their activities before making commissioning decisions.
- 1.6. Under the Health & Social Care Act (2012), the constitution of a CCG must make provision for dealing with conflicts of interest of its members or employees and of members of its Governing Body. This is reflected in the constitution for NHS Merton CCG.
- 1.7. The policy follows current national policies and guidance on avoiding conflicts of interest such as maintaining an active register of members' interests and

adhering to the Nolan Principles of Public Life and the Standards for members of NHS boards and Clinical Commissioning Group governing bodies in England.

- 1.8. 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 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.
- 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 should be read in conjunction with the following documents, which also set out generic guidelines and responsibilities for NHS organisations and General Practitioners in relation to conflicts of interests:

- NHS Merton CCG Constitution
- Standing Orders, Reservation and Delegation of Powers and Standing Financial Instructions
- NHS Merton CCG Gifts and Hospitality Policy
- NHS Merton CCG Disciplinary Policy and Process
- Code of Conduct for NHS Managers 2012
- Appointments Commission: Code of Conduct and Code of Accountability
- The Healthy NHS Board 2013: 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

- 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 communication methods
- Annual reminder to update declaration forms sent to all Board members and committee members.

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

3.5 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.**

3.6 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.

3.7 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 any 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. Responsibilities and Roles

Responsibilities

- 5.1 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.
- 5.2 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.
- 5.3 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.
- 5.4 '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

5.6 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.

5.7 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.

5.8 Board Secretary

The Board Secretary is responsible for maintaining the Conflicts of Interest Register and ensuring this is produced for the Chair at every Governing Body and appropriate Committee Meeting. The Board 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 Board Secretary to monitor quorum and advise the Chair accordingly.

5.9 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.

5.10 The Board Secretary will hold details of each query in regard to Conflict of Interest 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

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

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

6. Non-compliance with policy:

- 6.1 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.
- 6.2 Any disciplinary action will be taken following the policy and procedures set out in the NHS Merton CCG Disciplinary Policy and Procedures.

7. Register of Declarations of Interest

- 7.1 NHS Merton CCG has established a Register of Declarations of Interest, which is held by the Board Secretary. The CCG will maintain one or more registers of the interests of:
 - a) its Practice Leads;
 - b) members of its Governing Body;
 - c) members and attendees, of its committees or sub-committees and the committees or sub-committees of its Governing Body; and
 - d) employees who are key decision makers.
- 7.2 Declarations of interest made by members of the CCG Governing Body will be published on the group's website.
- 7.3 The Register of Declarations of Interest will be reported to the NHS Merton CCG Audit Committee annually.
- 7.4 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.
- 7.5 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.
- 7.6 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.
- 7.7 The Declaration of Interests proforma is attached at Appendix 2.

Data Protection

- 7.8 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 CCG members act 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. Signing the declaration form will also signify that you consent to your data being processed for the purposes set out in this policy.

8. Declaration of Interests

- 8.1 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.
- 8.2 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.
- 8.3 If it is not known what can be declared, or whether/when the declaration needs to be updated, advice should be sought from the Board Secretary or Corporate Affairs Manager
- 8.4 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.
- 8.5 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.
- 8.6 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.
- 8.7 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 rejoins 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.

8.8 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.

8.9 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 or another committee or sub-committee of 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, for example:

- 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.

8.10 **Decisions taken where a board 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, even where the use of the waiver has been approved by the Chair and used.

All decisions under a Conflict of Interest will be recorded by the Board/ 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
- the use of the waiver and reasons for its implementation.

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

9. Managing Conflicts of Interest: contractors

- 9.1 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.
- 9.2. 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

- 9.3. 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.
- 9.4. 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.

Dispute Resolution

- 9.5. 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
- 9.6. 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 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.

9.7 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 (see 9/9 (d)) to be instigated at the direction of the CCG Chair.

9.10 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.

9.11 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

9.12 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 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 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.

9.13 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 NHSE must be made within 3 months of the complainant being informed of the CCG's decision.

10. Equality and Diversity Statement

- 10.1 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.
- 10.2 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 Board Secretary.

11. Monitoring Compliance and Effectiveness of the Policy

- 11.1 The policy will be reviewed annually by Merton CCG Audit Committee. Staff and decision-makers will be reminded of the policy and register of interests at least quarterly.
- 11.2 The Director of Finance will review register entries on a regular basis and take any action necessary as highlighted by the review.

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 – Declaration of Personal and Financial Interests – Governing Body Member/Director

This form is required to be completed in accordance with the NHS Merton CCG's Constitution and Conflict of Interest Policy

Notes:

- 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 SLCSU Governance Team
- The completed form should be sent by both email and signed hard copy to the SLCSU 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.
- The Register of Declarations of Interest will be reported to the NHS Merton CCG Audit Committee annually.
- 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.

Interests that must be declared:

- 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) 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.
- Any other role or relationship which the public could perceive would impair or otherwise influence the individual's judgement or actions in their role within the CCG. Whether such interests are those of the individual themselves or of a family member or close friend of the individual.
- 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.
- Other specific interests

DECLARATION:

Name:			
Position within the CCG			
Interests			
Type of Interest	Details	Materiality	Personal interests or that of a family member, close friend
Roles and responsibilities held within member practices	<i>Details</i>	<i>Materiality</i>	
		<i>Value</i>	
Directorships, including non-executive directorships, held in private companies or PLCs	<i>Details</i>	<i>Materiality</i>	
		<i>Value</i>	
Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the CCG	<i>Details</i>	<i>Materiality</i>	
		<i>Value</i>	
Shareholdings (more than 1% or £10,000) of companies in the field of health and social care	<i>Details</i>	<i>Materiality</i>	
		<i>Value</i>	
Positions of authority in an organisation (e.g. charity or voluntary organisation) in the field of health and social care	<i>Details</i>	<i>Materiality</i>	
		<i>Value</i>	

Any connection with a voluntary or other organisation contracting for NHS services	<i>Details</i>	<i>Materiality</i>	
		<i>Value</i>	
Research funding/grants that may be received by the individual or any organisation they have an interest or role in	<i>Details</i>	<i>Materiality</i>	
		<i>Value</i>	
[Other specific interests?] – Please state	<i>Details</i>	<i>Materiality</i>	
		<i>Value</i>	
Personal healthcare needs or those of your spouse or partner	<i>Details</i>	<i>Materiality</i>	
Media appearances where you have appeared in the capacity as a healthcare professional	<i>Details</i>	<i>Materiality</i>	
		<i>Value</i>	
Any other role or relationship which the public could perceive would impair or otherwise influence the individual's judgement or actions in their role within the CCG	<i>Details</i>	<i>Materiality</i>	
		<i>Value</i>	

To the best of my knowledge and belief, the above information is complete and correct. I undertake to update as necessary the information provided and to review the accuracy of the information provided regularly and no longer than annually. I give my consent for the information to be used for the purposes described in the CCG Constitution.

Signed:

Dated:

Appendix 3 – 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 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?	
Why have you chosen this procurement route? ¹	

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

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?	

Additional question for AQP or single tender (for services where national tariffs do not apply)	
How have you determined a fair price for the service?	

Additional questions for AQP only (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 single tenders from 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?	



Merton

Clinical Commissioning Group

FREEDOM OF INFORMATION POLICY FOR NHS MERTON CCG

FREEDOM OF INFORMATION POLICY FOR NHS MERTON CCG

CCG Policy Reference: MERTON CCG-SLCSU/GOV/044

This policy replaces or supersedes Policy Ref: Not Applicable

THIS POLICY WILL BE APPROVED BY MERTON CLINICAL COMMISSIONING GROUP GOVERNING BODY.

Target Audience	Governing Body members, committee members and all staff working for, or on behalf of, the CCG
Brief Description (max 50 words)	This policy sets out the principles by which the CCG will ensure compliance with the Freedom of Information Act 2000
Action Required	<p>Following approval at the Information Governance Steering Group and 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>The policy will be reviewed within three years by the Information Governance Steering Group Chairs of committees will identify the programme of review with the Accountable Executive for each policy within their committee remit.</p> <p>This policy will be maintained on the corporate register of all policies by the Director of Quality, and will ensure that these are appropriately reflected on the website.</p>

Approved: [to be completed following approval]

Review date: 1st March 2015

Document Control	
Title:	Freedom of Information Policy
Original Author(s):	Margaret Benbow
Owner:	Chief Officer, Merton CCG
Reviewed by:	Adam Doyle – Director of Commissioning and Planning
Quality Assured by:	Executive Directors have all read and reviewed the policy, with changes made as a result. Information Governance Steering Group (IGSG)
File Location:	[to be completed following approval]
Approval Body:	IGSG, Governing Body
Approval Date:	[to be completed following approval]

Document Review Control Information

Version	Date	Reviewer Name(s)	Comments
0.1	24/06/2013	SLCSU IG Governance leads /Equality lead	Draft circulated for comments
1.0	12/12/2013	Merton CCG	Draft circulated for comments
1.0	24/02/2014	Wasia Shahain	Amended Equality Impact Assessment template
2.0	17/03/2014	Margaret Benbow	Incorporated CCG comments

Document Information:

Title /Version Number/(Date)	Freedom of Information Act Policy
Document Status (for information/ action etc.) and timescale	For implementation (01/06/2014)
Accountable Executive	Chief Officer
Responsible Post holder/Policy Owner	Director of Commissioning and Planning
Date Approved	[to be completed following approval]
Approved By	CCG Governing Body
Publication Date	[to be completed following approval]
Review Date	1 st March 2015
Author	Margaret Benbow, CSU FOI officer
Stakeholders engaged in development or review	Merton CCG Executive Management Team reviewed during Q3/4 of 2013/14
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 NHS 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.</p> <p>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>
Contact details for further information	

This policy progresses the following Authorisation Domains and Equality Delivery System (tick all relevant boxes).

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

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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Section 1: Introduction

1.1 Freedom of Information Policy statement and aim

The Freedom of Information (FOI) Act 2000 states that any person making a request for information to a public authority is entitled to:

- Be informed in writing by the public authority whether it holds information of the description specified in the request
- If that is the case, to have that information communicated to him/her within 20 working days.

This policy aims to provide a general understanding of the principles of the FOI Act and what is required of NHS Merton CCG to comply with these regulations.

The Act also specifies a number of **exemptions** (see Appendix 5) which can be claimed by public authorities when denying a request. These fall into two main types: Absolute and Qualified. Qualified exemptions are subject to the Public Interest Test.

1.2 Objectives

The objective of this Policy is to set out the main features of the Act, along with the responsibilities of departments and individuals to ensure the CCG deals with requests for information within statutory regulations and guidelines, in a consistent manner and delivers quality responses.

1.3 Principles

The Policy supports the principle that openness and not secrecy should be the norm in public life. NHS Merton CCG also believes that people have rights to privacy and confidentiality. This Policy will not overturn existing rights under common law, specifically under the Data Protection Act 1998. NHS Merton also believes that, in order to discharge its function effectively, certain information will be exempt from disclosure.

NHS Merton recognises the importance of the Freedom of Information Act 2000 and, in order to assist organisational compliance with the Act, the CCG will endeavour to ensure that Information is available on request within 20 working days.

If the information requested is subject to an exemption, NHS Merton will implement the public interest test (as defined by the Information Commissioner's Office) to determine whether the information can be released.

Section 2: Scope of Freedom of Information Policy

This policy applies to NHS Merton's statutory obligation under the FOI Act (hereafter referred to as the Act) and how it meets these obligations. The policy will apply to all NHS Merton CCG staff. The policy will provide a framework within which the organisation will ensure compliance with the requirements of The Act. The policy will underpin any operational procedures and activities connected with the implementation of The Act.

This policy is intended to cover all records created in the course of the business of NHS Merton CCG, i.e. corporate records which are also public records under the terms of the Public Records Acts 1958 and 1967. This includes e-mail messages and other electronic records.

2.1 Equality

This document demonstrates the organisation'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.

Section 3: Governance

3.1 Roles and Responsibilities

3.1.1 Chief Officer

The Chief Officer has overall responsibility for NHS Merton CCG's Freedom of Information programme and ensuring that this operates effectively.

3.1.2 Director of Commissioning and Planning

The Director of Commissioning and Planning is responsible for the Freedom of Information strategy within NHS Merton CCG and will liaise with other senior members of the CCG as required.

3.1.3 Directors

The Directors of the CCG are responsible for overseeing Freedom of Information activities within their service areas/teams, in accordance with the CCG's Freedom of Information Policies and Procedures and advising the Director of Commissioning and Planning on risk issues in relation to Freedom of Information.

3.1.4 Freedom of Information Manager

The Freedom of Information Manager is the designated FOI advisor for NHS Merton CCG and has day-to-day responsibility for the management of all aspects relating to the Act. The Freedom of Information Manager is responsible for advising all staff throughout the organisation on issues relating to all areas of the Act.

The Freedom of Information Manager will provide quarterly reports to the Director of Commissioning and Planning, detailing all aspects of the disclosure and non-disclosure of recorded information by the CCG under The Act. They will be responsible for providing reports to relevant management committees as required.

3.1.5 All Staff and Managers

All staff across NHS Merton CCG have a responsibility to ensure they comply with the CCG's statutory obligation under the Act, and any policies and procedures laid down to ensure compliance. Failure to do so may result in disciplinary action.

All managers are to ensure that the staff they are responsible for are aware of, and adhere to, the Policy. They are also responsible for ensuring that all staff are updated with regards to any changes in the Policy.

3.1.6 NHS South London Commissioning Support Unit (NHS SLCSU)

NHS South London Commissioning Board is responsible for ensuring that appropriate Freedom of Information Systems are in place to support NHS Merton CCG in meeting its statutory obligations. This includes the publication scheme although it remains the duty of the CCG to inform the SLSCU communications team that relevant updates are available. The Freedom of Information Manager, working on behalf of Merton CCG is an employee of NHS SLCSU.

3.1.7 Information Governance Steering Group

The Information Governance Steering Group within the CCG is responsible for reviewing all aspects of FOI.

Section 4: The Policy

- 4.1** Any area of the CCG may receive requests for information but not all of these will be classed as a FOI request. Some requests may be deemed as 'business as usual'. A 'business as usual' request is one which is defined, under guidance from the Information Commissioner's Office (ICO), as a general business request and can be responded to outside of the requirements of the Act.
- 4.2** Requests from individuals for details of their own health records come under the Data Protection Act 1998 and should not be dealt with under this policy. Please refer to the Information Governance policy and your Subject Access Request procedure for how these types of request should be handled.
- 4.3** Under Freedom of Information legislation, requests can be received in writing via email or a letter. FOI requests must contain a contact name, email address or postal address but they do not have to provide a reason why they want the information or specifically state they are requesting information under the Act.
- 4.4** Requests for information under the Act should be promptly forwarded to the FOI staff.
- 4.5** The FOI staff will manage all FOI requests for information requested under statutory regulations whilst complying with other legal requirements such as the Data Protection Act 1998.
- 4.6** We are required under the Act to respond to requests within 20 working days.
- 4.7** We have a requirement to comply with all requests for information except where information requested is subject to certain regulations and exemptions. These exemptions, which will be applied by the FOI staff, include personal information, information accessible to the applicant by other means, information subject to future publication and commercial interest. Repeated or vexatious requests may also be refused. See section 4.19 on Vexatious/Repeated requests in this policy.
- 4.8** The CCG has a duty under the Act to adopt and maintain the ICO model publication scheme to assist the public in finding CCG information already in a published format. The publication scheme can be found on the Merton website www.mertonccg.nhs.uk within the Freedom of Information pages.
- Timescales for Responding to Requests**
- 4.9** In line with good practice all FOI requests will be acknowledged by the FOI team. This will be done within 2 working days.

- 4.10** The CCG has a statutory requirement to respond to all requests promptly but within 20 working days. The 20 days are considered to start the day after the CCG (not the FOI Office) receives a request.
- 4.11** If we require clarification of a request or if we request a fee for the information, the 20 day rule is suspended until we receive the clarification or receive the fee.
- 4.12** The CCG nominated FOI leads must respond to all requests for information within 12 working days to ensure adequate time for any queries to be resolved and for the approval process to be completed where applicable.

Internal Reviews

- 4.13** If the applicant is unhappy with either the way their request has been handled or the response, they may appeal to the FOI manager for an internal review to be conducted into the response or the handling of the request. The internal review will be carried out promptly and in no more than 20 working days from the date of the request for review. If the applicant remains unhappy, they will be notified of their right to complaint to the Information Commissioner's Office.
- 4.14** There may be a small number of cases which involve exceptional circumstances where it may be reasonable to take longer to review a case. In these cases the total time taken to review a complaint will not exceed 40 working days.

The Appropriate Limit (Fees)

- 4.15** The Fees Regulations (Section 12) of the FOI Act provides an exemption from our obligation to comply with a request for information where the cost of compliance is estimated to exceed the appropriate limit. The Fees Regulations state £450 for the NHS. We must still confirm or deny whether we hold the information requested unless the cost of this alone would exceed the appropriate limit.
- 4.16** In estimating whether responding to a request would exceed the appropriate limit, the CCG may only take into account the costs we would reasonably expect to incur in:
- determining whether we hold the information
 - locating the information
 - retrieving the information
 - extracting the information
- Costs are calculated at £25 per hour per person (total of 18 hours). The figure of £450 relates only to the appropriate limit and not to the fees that may be charged.
- Where a reasonable estimate has been made that the appropriate limit may be exceeded, there is no requirement for the CCG to undertake work up to the limit. However the applicant may be offered a lesser amount of information, which will come below the cost/time limit.

- 4.17** The CCG will not charge for the majority of requests however we are entitled to charge a fee for the photocopying and postage of information, although we will not make a charge if the cost of raising and processing an invoice is greater. If the request exceeds the appropriate time limit we have the right to make a charge or refuse the request.

Advice and Assistance to Applicants

- 4.18** We will always endeavour to provide advice and assistance in all aspects of a request but particularly:
- to clarify unclear requests
 - help to provide the information requested in an acceptable format
 - to narrow responses which exceed the appropriate limit
 - where information is readily accessible to the applicant
 - when a request is transferred to another public authority because the information is held by it, and not by us.
- 4.19** The FOI team and the CCG will always assist and make adaptations to ensure that Freedom of Information requests can be made by any member of the public who wish to make requests. This will ensure that the provisions of the Act can be accessed by all.

Vexatious/Repeated Requests

- 4.20** NHS Merton CCG will not comply with a request for information if the request is deemed vexatious. A vexatious request is one where one or more of the following conditions are met
- Abusive or Aggressive Language
 - Burden on the Authority
 - Personal grudges
 - Unreasonable persistence
 - Unfounded accusations
 - Intransigence
 - Frequent or overlapping requests
 - Deliberate intention to cause annoyance
 - Scattergun approach
 - Disproportionate effort
 - No obvious intent to obtain information
 - Futile requests
 - Frivolous requests

For a request to be deemed vexatious, The Chief Officer, the Director of Commissioning and Planning and the Freedom of Information Manager must all agree that one or more of the above conditions have been met.

- 4.21** Where the CCG has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

What is a reasonable interval will largely depend on the circumstances, including:

- how likely the information is to change;
- how often records are updated; and
- any advice previously given to the requester (e.g. on when new information is likely to be available)

Taking into account the circumstances given above, NHS Merton CCG deems this period to be three months.

Applying Exemptions

4.22 An applicant may ask for any information that is held by the CCG. However, this does not mean that the CCG is always obliged to provide the information. In some cases, there will be a good reason why some or all of the information requested should not be made public.

The Freedom of Information Act contains a number of exemptions that allow the CCG to withhold information from an applicant. Full details of these exemptions are given in Appendix 4 and a more detailed explanation of their use can be found on the Information Commissioner's website at the following link:http://www.ico.org.uk/for_organisations/freedom_of_information/guide/refusing_a_request.

Please note that if an exemption or redaction is used, the manager using the exemption should be aware that they may need to substantiate their decision if challenged by the Information Commissioner's office. It is therefore advisable to document and date all decisions made in relation to using exemptions. The FOI Manager will advise CCG staff on the use of the exemptions where applicable.

Section 5: Audit and monitoring criteria

5.1 Monitoring of compliance

The Information Governance Steering Group will annually evaluate the effectiveness of the Freedom of Information process. This review mechanism will be supported by:

- Information Governance Toolkit annual submissions;
- Quarterly reports on Information requests received.
- Complaints;
- Audits and Reviews.

5.2 Non Compliance

Non-compliance with this Policy by staff will be brought to the attention of the Chief Officer and the Director of Commissioning and Planning.

Section 6: Review

6.1 Next formal review

Review will take place every three years, or sooner if the law or national guidance changes.

6.2 Latest Version

The audience of this document should be aware that a physical copy may not be the latest version. The latest version, which supersedes all previous versions, is available at the location indicated in the document control section of this document. Those to whom this policy applies are responsible for familiarising themselves periodically with the latest version and for complying with policy requirements at all times.

Section 7: Statement of evidence/references

7.1 Legislative and Regulatory Environment

The Freedom of Information (FOI) Act 2000 gives members of the public a right to request access to all types of recorded information held by public authorities, promoting a culture of openness and accountability across the public sector. It is within this environment that this Policy has been written to reflect how the Act will be implemented within NHS Merton CCG.

- 7.2.** The Protections of Freedoms Act 2012 adds new provisions to the FOI Act regarding datasets. The new provisions are about how information is released rather than what information is released. They only relate to information that the CCGs holds as a dataset which is a defined term in the new provisions. Please see Appendix 4 for further information.

7.3. Other References

Further information on and relating to the Freedom of Information Act, the Environmental Information Regulations, the model publication scheme and the Data Protection Act can be found at www.ico.org.uk.

Section 8: Implementation and dissemination of document

This Policy will be distributed to staff by the staff bulletin and placed on the intranet.

Section 9: The Appendices

Appendix 1	Equality Analysis Template
Appendix 2	The Process
Appendix 3	Process Flowchart
Appendix 4	Protections of Freedoms Act Amendments
Appendix 5	The Exemptions

Appendix 1: Equality Analysis Template

An Equality Analysis is a review of a policy, function or service which establishes whether there is a negative effect or impact on particular social groups. In turn this enables the organisation to demonstrate it does not discriminate and, where possible, it promotes equality.

This check list is a way to help staff think carefully about the likely impact of their work on equality groups and take action to improve services and projects for local people where it has a positive or negative impact.

1. Equality Group	2. What evidence has been used for this analysis?	3. What engagement and consultation has been used	4. Identify positive and negative impacts	5. How are you going to address issues identified?	6. Lead and Timeframe
Age Think about different age groups and think about the policy / function / service and the way the user would access, is it user friendly for that age?	This policy is aimed at staff and does not adversely affect any age group.	N/A	N/A	N/A	N/A
Disability Think outside the box, you may not be able to see the disability. It could be physical (hearing, seeing) or a learning disability (Autism). <ul style="list-style-type: none"> • Accessibility – venue, location, signage, furniture, getting around • Disability awareness training for staff 	The CCG will make adjustments for staff with disabilities should this policy adversely affect them.	This is a legal requirement – but needs to be weighed against the requirements on the FOI team regarding requests that might require disproportionate effort e.g. requests	Positive impact	Section 4.18 addresses accessibility Monitor requests as these come in and seek advice from the Equality and Diversity team where a request may be deemed to require	FOI team - ongoing

1. Equality Group	2. What evidence has been used for this analysis?	3. What engagement and consultation has been used	4. Identify positive and negative impacts	5. How are you going to address issues identified?	6. Lead and Timeframe
<ul style="list-style-type: none"> Actively involve the service user and talk it through with them 		in Braille		'disproportionate effort' (section 4.19)	
<p>Gender Reassignment Think about creating an environment within the service / policy or function that is user friendly and non-judgemental.</p> <p>If the policy / function / service are specifically targeting this protected characteristic, think carefully about training, confidentiality and communication skills.</p>	The CCG will make adjustments as may be required to ensure that this policy does not adversely affect any group of people.	This is a legal requirement	Positive impact	Section 4.18 addresses accessibility.	FOI team - ongoing
<p>Marriage and Civil Partnership Think about access and confidentiality, the partner may not be aware of involvement or access to the service.</p> <p>Staff training.</p>	This policy is aimed at staff and should not adversely affect this group.	N/A	N/A	N/A	N/A
<p>Pregnancy and maternity The policy / function / service must be accessible for all e.g.</p>	The CCG will make adjustments as may	This is a legal requirement	Positive impact	Section 4.18 addresses accessibility	FOI team - ongoing

1. Equality Group	2. What evidence has been used for this analysis?	3. What engagement and consultation has been used	4. Identify positive and negative impacts	5. How are you going to address issues identified?	6. Lead and Timeframe
<p>opening hours.</p> <p>Are the chairs appropriate for breast feeding, is there a private area? Are there baby changing facilities and is there space for buggies?</p>	<p>be required to ensure that this policy does not adversely affect any group of people</p>				
<p>Race</p> <p>You need to think carefully about the local demographics of the population who will be accessing the policy / function / service. Talk to public health. Think about:</p> <ul style="list-style-type: none"> • Cultural issues (gender, clothing etc) • Languages • Support to access • Staff training on cultural awareness, interpreting 	<p>The CCG will make adjustments as may be required to ensure that this policy does not adversely affect any group of people.</p>	<p>This is a legal requirement – but needs to be weighed against the requirements on the FOI team regarding requests that might require disproportionate effort e.g. requests in other languages</p>	<p>Positive impact</p>	<p>Section 4.18 addresses accessibility</p> <p>Monitor requests as these come in and seek advice from the Equality and Diversity team where a request may be deemed to require ‘disproportionate effort’ (section 4.19)</p>	<p>FOI team - ongoing</p>
<p>Religion or Belief</p> <p>As above, think about local population and what religion or belief they may have. Think about:</p>	<p>The CCG will make adjustments as may be required to ensure that this policy does</p>	<p>This is a legal requirement</p>	<p>Positive impact</p>	<p>Section 4.18 addresses accessibility.</p>	

1. Equality Group	2. What evidence has been used for this analysis?	3. What engagement and consultation has been used	4. Identify positive and negative impacts	5. How are you going to address issues identified?	6. Lead and Timeframe
<ul style="list-style-type: none"> Staff training on respecting differences, religious beliefs Are you trying to implement during a time of religious holidays e.g. Ramadan Is there an area for prayer times? 	not adversely affect any group of people			Monitor requests as these come in and seek advice from the Equality and Diversity team where a request may be deemed to require 'disproportionate effort' (section 4.19)	FOI team - ongoing
<p>Sex This is the impact on males / females.</p> <p>For example same sex accommodation, are their areas for privacy?</p> <p>Is it accessible for both taking into account working service users? Would it be a venue they would go to?</p>	The CCG will make adjustments as may be required to ensure that this policy does not adversely affect any group of people.	This is a legal requirement	Positive impact	Section 4.18 addresses accessibility.	FOI team - ongoing
<p>Sexual Orientation Don't make assumptions as this protected characteristic may not</p>	The CCG will make adjustments as may	This is a legal requirement	Positive impact	Section 4.18 addresses	FOI team - ongoing

1. Equality Group	2. What evidence has been used for this analysis?	3. What engagement and consultation has been used	4. Identify positive and negative impacts	5. How are you going to address issues identified?	6. Lead and Timeframe
<p>be visibly obvious.</p> <p>Providing an environment that is welcoming for example visual aids, posters, leaflets.</p> <p>Using language that respects LGB&T people.</p> <p>Staff training on how to ask LGB&T people to disclose their sexual orientation without fear or prejudice.</p>	<p>be required to ensure that this policy does not adversely affect any group of people.</p>			<p>accessibility.</p>	
<p>Carers</p> <p>Does your policy / function / service impact on carers? Ask them.</p> <p>Do you need to think about venue, timing?</p> <p>What support will you be offering?</p>	<p>This policy is aimed at staff and should not adversely affect this group.</p>	<p>N/A</p>	<p>N/A</p>	<p>N/A</p>	<p>N/A</p>

Appendix 2: The Process

FOI Request Processing Procedure

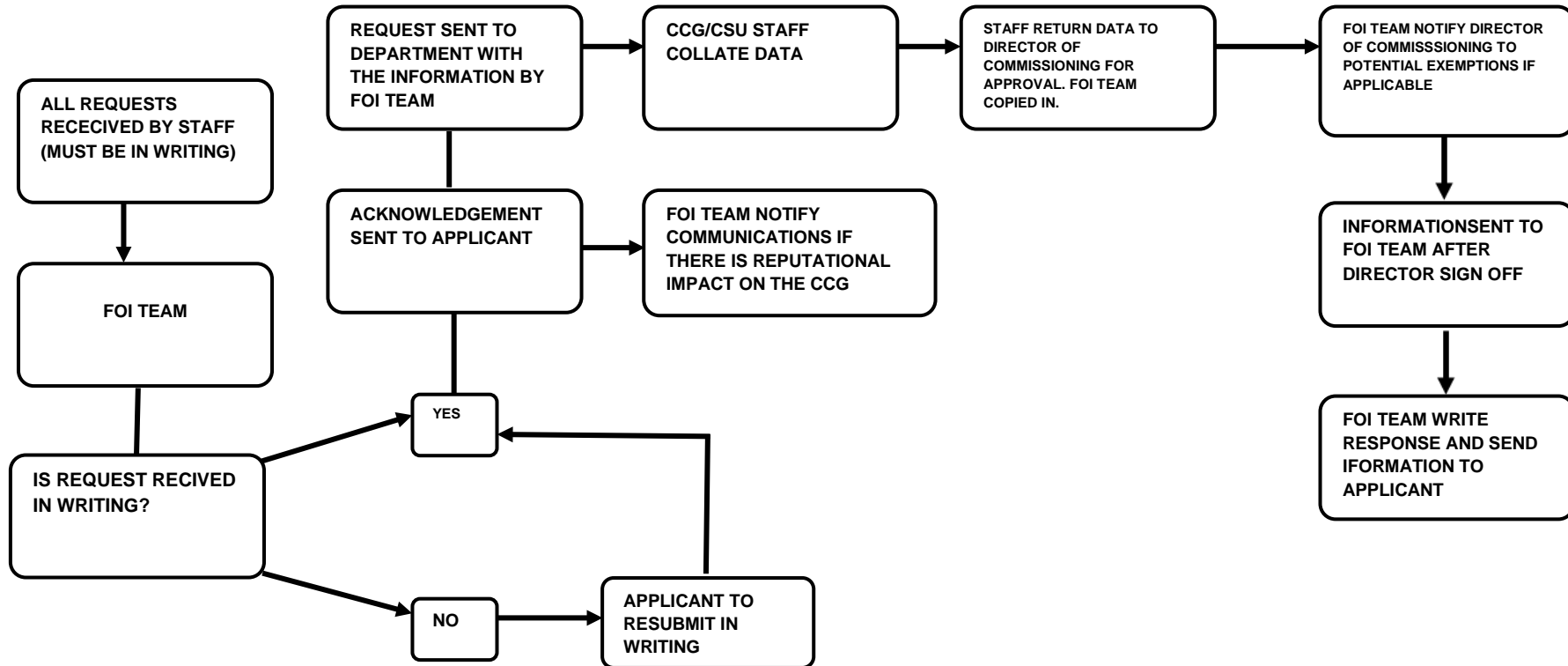
1. All new requests received must be sent to the FOI team who will log each request on the FOI spreadsheet. The FOI team will allocate a unique reference number and electronic folders are then to be set up for each request.
2. All applicants will be sent a standard FOI acknowledgment of receipt email within two working days of receipt of request.
3. All information requests received will be assessed to ascertain whether:
 - It is a valid Freedom of Information request
 - The request is clear. If not the applicant will be asked to clarify their request.
 - The estimate of time needed to comply with request will exceed the appropriate time limit. If this is the case, the applicant will be asked if they wish to redefine their request.
 - Part or all of the information requested falls under one of the exemptions contained within the Act
 - The information requested can be found on the CCG publication scheme or website.
 - The information been requested previously.
 - Which service area of the CCG is best placed to provide the information requested.
4. Once the FOI request has been assessed, it will be sent to the appropriate service lead of the relevant department to gather the information requested. The name of the applicant and their contact details will be removed prior to sending to ensure that the applicant's personal data is protected under the Data Protection Act. In some cases it will be necessary for these details to be disclosed to staff outside of the FOI department.
5. CCG staff will acknowledge to the FOI team that they have received the request. If the request is not relevant to their area or not for their team they will notify the FOI team immediately.
6. Requests that have a potential reputational impact on the CCG will be notified to the Director of Commissioning and Planning at Merton CCG and the communications team at South London Commissioning Support Unit.
7. Staff will have 12 working days in which to comply with requests. This allows time for queries, amendments, the application of exemptions where applicable, Director sign off and the drafting of the response by the FOI team. A reminder will be sent to staff by the FOI team if the information is not received back by the 12th working day. Further failure to respond to the request will be notified to the Director of that service and may be escalated to the Director of Commissioning and Planning and the Chief Officer.

8. The information collated by staff will be returned to the Director of Commissioning and Planning and copied to the FOI team. The FOI team will consider the data against the original request and notify the Director of Commissioning if an exemption should be applied. The Director of Commissioning and Planning will have final say on the information to be provided and sign off the data, notifying the FOI team. The FOI team will use the data signed off by the Director of Commissioning and Planning to write the response. The response will then be sent to the applicant.
9. All final responses must be responded to within **20 working days**. If this is not possible, and before the deadline expires, a further communication must be sent to the applicant by the FOI Office advising of this along with an expected response date.
10. The FOI spreadsheet must be updated when a request is completed. Electronic responses are filed in the applicant's file within the FOI team folder for compliance and audit purposes. A paper copy may also be printed out and retained where this is considered necessary.
11. A quarterly report will be completed at the end of each quarter and presented to the Director of Commissioning and Planning and the Executive Management Team. This quarterly report will be completed a month in arrears after the end of the quarter.
12. All FOI requests will be recorded on a FOI electronic database where this exists by the FOI team.

Appendix 3: Process Flowchart

FREEDOM OF INFORMATION FLOWCHART

All FOI requests are subject to a 20 day deadline



Appendix 4: Protection of Freedoms Act 2012 Amendments

- Section 102 of the Protections of Freedoms Act 2012 adds new provisions to FOI regarding datasets. They are about the reuse of datasets that the CCG provides in response to a request or under a publication scheme. There is no new duty to provide and information in response to a FOI request that was not previously accessible.
- A dataset is a collection of factual information in electronic form to do with the services and functions of public authorities that is neither the product of analysis or interpretation, nor an official statistic and has not been materially altered.
- If the CCG provides information that constitutes a dataset and the applicant expresses a preference to receive the information in electronic form, the CCG must provide the information in a reusable form.
- If the dataset is relevant copyright work, the CCG must provide it under the terms of a specified licence. A relevant copyright work is one for which the CCG owns the copyright and the database rights.
- The CCG may charge a fee for communicating the information and a fee for making the dataset available for reuse. There are new fees regulations dealing with making the dataset available for reuse.
- Under the publication scheme, the CCG is obliged to publish datasets that have been requested and any updated versions it holds unless it is satisfied that it is not appropriate to do so.
- When dealing with a request involving a dataset, the CCG should first consider whether the information is exempt from disclosure under any FOI exemption. Particular care should be taken to ensure that personal data is not disclosed.

Appendix 5: The Exemptions

Exemptions & Provisions

Although the CCG will try to comply with all requests for information there are a number of exemptions and provisions within the Act that can be considered. The exemptions are split into two main categories:

Absolute Exemptions - where the public interest test* does not apply.

- s21 Information reasonably accessible to the applicant by other means
- s23 Information supplied by or relating to security bodies
- s32 Information contained in court records
- s34 Parliamentary privilege (currently under review)
- s36 Effective conduct of public affairs
- s40 Personal information (on occasion may also be a qualified exemption)
- s41 Information provided in confidence
- s44 Prohibitions on disclosure

Qualified Exemptions - where the public interest test* applies.

- s22 Information intended for future publication
- s24 The national security exemption
- s26 Defence
- s27 International relations
- s28 Relations within the UK
- s29 Economy
- s30 Investigations
- s31 Law enforcement
- s33 Public audit
- s35 Government policy formulation
- s37 Communication with Her Majesty and the awarding of honours
- s39 Environmental information (falls under EIR)
- s40 Personal information (majority would fall under an absolute exemption)
- s42 Legal professional privilege
- s43 Defined areas of commercial interest

In addition the following provisions allow refusal of a request:

- s12 Where the cost of collating the evidence is excessive
- s14 Repeated or vexatious requests

***The public interest test requires weighing the public interest considerations in favour of release against the public interest in withholding the information. Where the interests are evenly balanced the ICO would usually expect the information to be released.**