



Stafford & Surrounds Clinical Commissioning Group

# Conflicts of Interest Policy

**Agreed at Governing Body**

Date: ..... 16 September 2013 .....

Signature: ..... *David - Maria - Hender* .....

Designation: ..... Chair, Stafford & Surrounds CCG .....

Review Date: ..... 16 September 2015 .....

## **Conflict of Interest Policy**

### **1. Introduction**

- 1.1 Managing conflicts of interest appropriately will be essential for protecting the integrity of the overall NHS commissioning system and to protect the Clinical Commissioning Group (CCG) and GP practices from any perceptions of wrongdoing.
- 1.2 This policy sets out the approach for NHS Stafford & Surrounds Clinical Commissioning Group (CCG) to identify, record and manage any potential or actual conflicts of interest.
- 1.3 This policy, which incorporates the NHS England guidance published in April 2013, applies to all members of the CCG's Governing Body, Committee and Sub-Committee members, members and all those involved in commissioning, contracting and procurement processes and decision-making.
- 1.4 As part of good employment practice, agency workers and temporary staff are required to abide by CCG policies and procedures, as appropriate, to ensure their health, safety and welfare whilst undertaking their work.

### **2. Purpose**

- 2.1 The CCG Governing Body has responsibility for all actions carried out by staff and committees and includes the stewardship of significant public resources and the commissioning of healthcare to the community. The Governing Body is, therefore, determined to ensure the organisation inspires confidence and trust amongst its patients, staff, partners, funders and suppliers by demonstrating integrity and avoiding potential or real situations of undue bias or influence in the decision-making of the CCG.
- 2.2 The conflict of interest policy respects the seven principles of public life promulgated by the Nolan Committee.
  - **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 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 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.
- 2.3 The Governing Body has a legal obligation to act in the best interests of the CCG, and in accordance with the CCG's Constitution, and to avoid situations where there may be a potential conflict of interest.
- 2.4 Conflicts of interest may arise where an individuals' personal, or a connected persons interests and/or loyalties 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 the public it was established to serve, and, or
  - risk the impression that the CCG has acted improperly.
- 2.5 It is not possible, or desirable, to define all instances in which an interest may be a real or perceived conflict. If in any doubt individuals should seek guidance from the Conflict of Interest Officer or Head of Governance, but may decide to declare when in doubt. It is the responsibility of each individual to use all available guidance in exercise their judgement in deciding whether to register any interests that may be construed as a conflict.
- 2.6 The aim of this policy is to protect both the organisation and the individuals involved from any appearance of impropriety and demonstrate transparency to the public and other interested parties.
- 2.7 If there is any doubt as to whether a conflict of interest can be managed or mitigated i.e. the conflict is so great that it would impede that member in his/her role within the CCG, then the overriding factor will be the reputation of the organisation.

### **3. Principles for Managing Conflicts of Interest**

- 3.1 Conflicts of interest will be managed by the CCG in line with the following underpinning principles:
- **Doing business properly**  
If the CCG get their needs assessments, consultation mechanisms, commissioning strategies and procurement procedures right from the outset, then conflicts of interest become much easier to identify, avoid or deal with, because the rationale for all decision-making will be transparent and clear and should withstand scrutiny.

- **Being proactive not reactive**  
The CCG will identify and minimise conflicts of interest at the earliest possible stage in the process and ensure appropriate action is taken. Rules should assume people will volunteer information about conflicts and will exclude themselves from decision making where they exist, but there should also be prompts and checks to reinforce this. This should include considering the actual or possible existence of conflicts of interest when electing or selecting individuals to join the Governing Body, and excluding individuals from this if these conflicts are too great. One way of doing this would be to require candidates for roles within the CCG to include a 'conflicts of interest statement' in their application prior to election or selection. The CCG will also need to ensure that members of the Governing Body, and others with influence over decision making, are properly inducted into their roles and understand their obligations to declare conflicts of interest.
- **Being balanced and proportionate**  
Policy and guidance is to be clear and robust and not overly prescriptive or restrictive. The intention should be to identify and manage conflicts of interest (not eliminate them) and their effect should be to protect and empower people by ensuring decision making is efficient as well as transparent and fair. Rules should not constrain people by making decision making overly complex or slow.

#### **4. Declaring and Recording Interests**

- 4.1 The CCG requires all individuals to declare any relevant and material interests, and any gifts and hospitality offered and received in connection with their role in the CCG. Interests that may impact on the work of the Governing Body and should be declared include:
- any directorships of companies likely to be engaged with the business of the CCG
  - previous or current employment or consultancy positions
  - voluntary or remunerated positions, such as trusteeship, local authority positions, other public positions
  - investments in unlisted companies, partnerships and other forms of business, major shareholdings and beneficial interests
  - gifts or hospitality offered to you by external bodies and whether this was declined or accepted in the last twelve months
  - any other conflicts that are not covered by the above.
- 4.2 The CCG requires members, Governing Body members and all staff to make their declarations of interests using the form at Appendix 1. To be effective, the declaration of interests form must be completed prior to appointment, when any material changes occur and then updated at least annually.
- 4.3 Individuals requiring clarification on potential or actual interests should refer the matter to the Head of Governance or Conflict of Interest Officer for confidential guidance.
- 4.4 The CCG will keep a register of such interests which will be maintained by the Head of Governance and will be available for public inspection.

- 4.5 Interests and gifts will be recorded on the CCGs' Register of Interests and Register of Gifts and Hospitality, which will be maintained by the Head of Governance on behalf of the Accountable Officer.

The register will be accessible by the public and inspection of the register of Governing Body members' interests will be encouraged, as appropriate.

## **5. What conflicts does this policy cover?**

- 5.1 Each individual should declare an interest in the following circumstances:

- Direct financial interests
- Indirect financial interests
- Non-financial or personal interests
- Conflicts of loyalty

*Appendix 2* provides further information about these interests.

## **6. Managing conflicts of interest**

- 6.1 Committees, membership and individuals are required to complete the CCG's Management of Conflicts of Interest Checklist (*Appendix 3*) at the beginning of any project, initiative or decision making process, and review it during the process. This will provide clear evidence that at any stage in the process the integrity of those involved is maintained and will support the early identification of any actual or potential conflict.
- 6.2 All individuals are required to declare their interests in relation to any items on the agenda at the start of the each Governing Body or committee meeting. Where the conflict is material to the discussion of the meeting, that member shall withdraw from discussions pertaining to the agenda item, the conflict and action will be recorded in the minutes of the meeting and the Register of Interests updated accordingly.
- 6.3 It is the responsibility of the secretary to monitor quorum and advise the Chair accordingly to ensure it is maintained throughout the discussion and decision of the agenda item. Should the withdrawal of the conflicted individual(s) result in the loss of quorum, the item cannot be decided upon at that meeting.
- 6.4 Where permitted under the CCG's Constitution, the Governing Body has the power to waive restrictions on any clinical professional Governing Body member participating in Governing Body business, where to authorise such a conflict would be in the interests of the CCG. The application of a waiver can, therefore, be used in the following situations:
- i. a member of the Governing Body is a clinical professional providing healthcare services to the CCG that do not exceed the average for other practices; or
  - ii. where the Governing Body member has a pecuniary interest arising out of the delivery of some professional service on behalf of the CCG, and the conflict has been adjudged by the Chair and the Governance Lay Member not to bestow any greater pecuniary benefit to other professionals in a similar relationship with the CCG

- 6.5 Where the Chair and the Governance Lay Member have approved the use of the waiver, the Chair must have discussed it with the Accountable Officer before the meeting. In such circumstances where the waiver is used, the Governing Body member:
- must disclose his/her interest as soon as practicable at the start of the meeting
  - may participate in the discussion of the matter under consideration; but
  - must not vote on the subject under discussion.
- 6.6 The minutes of the meeting will formally record that the waiver has been used, and that this policy and the governing document provisions have been observed in managing that authorised conflict. Where a member has withdrawn from the meeting for a particular item, the secretary will ensure that the minutes for that member do not contain such information that may compound the potential conflict, but do not unnecessarily disadvantage the member in their performance of their functions and legal responsibilities.
- 6.7 If during the course of a meeting a conflict of interest is established, the member concerned should notify the Chair of the meeting immediately. A decision will then be made by the Chair on whether they should withdraw from the meeting and play no part in the relevant discussion or decision and this should be recorded in the minutes. The Chair will identify at which point the member of the meeting with the conflict of interests may re-join the meeting, and this will also be recorded in the minutes. If a decision is made not to withdraw, this should be agreed and recorded in the minutes.
- 6.8 If, after the meeting, a member realises that they have contributed to a discussion in which they had an interest, they must notify the Chair of the meeting at the earliest opportunity and, if there is time, the interest will be noted in the minutes, otherwise it will be raised as a matter arising at the next meeting.
- 6.9 It is the responsibility of the Chair to ensure that interests are formally recorded in the minutes and reported to the Head of Governance for logging.

## **7. Declaration of interests in relation to procurement**

- 7.1 Where a relevant and material interest or position of influence exists in the context of the specification for, or award of, a contract the committee member will be expected:
- i. To declare the interest;
  - ii. Ensure that the interest is recorded in the register;
  - iii. Withdraw from all discussion on the specification or award;
  - iv. Not have a vote in relation to the specification or award.
- 7.2 Members will be expected to declare any interest early in any procurement process if they are to be a potential bidder in that process. Failure to do this could result in the procurement process being declared invalid and possible suspension of the relevant member from the CCG.

- 7.3 Potential conflicts will vary to some degree depending on the way in which a service is being commissioned e.g. Where the CCG is commissioning a service through Competitive Tender (i.e. seeking to identify the best provider or set of providers for a service) a conflict of interest may arise where GP practices or other providers in which CCG members have an interest are amongst those bidding. Where the CCG is commissioning a service through Any Qualified Provider (AQP) a conflict could arise where one or more GP practices (or other providers in which CCG members have an interest) are amongst the qualified providers from whom patients can choose.

*Appendix 4* provides further guidance from the GMC.

## **8. Decisions taken where a governing body member has an interest**

- 8.1 In the event of the Governing Body having to decide upon a question in which a Governing Body member has an interest, all decisions will be made by vote, 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 Governing Body 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.
- 8.2 All decisions under a conflict of interest will be recorded 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 actions taken to manage the conflict
  - use of the waiver and reasons for its implementation
- 8.3 Where a Governing Body member benefits from the decision, this will be reported in the annual report and accounts, as a matter of best practice.
- 8.4 All payments or benefits in kind to Governing Body members will be reported in the CCG's annual report and accounts, with amounts for each Governing Body member listed for the year in question.
- 8.5 Independent external mediation will be used where conflicts cannot be resolved through the usual procedures.

## **9. Managing contracts**

- 9.1 Where an individual has identified a conflict of interest (as per the definition at section 6) they must not be involved in procuring, tendering, managing or monitoring a contract in which they have an interest. Monitoring arrangements for such contracts will include provisions for an independent challenge of bills and invoices, and termination of the contract if the relationship is unsatisfactory.

## **10. Breaches of the policy**

- 10.1 Breaches of the policy may result in the Governing Body member or individual being removed from office in line with the CCG's Constitution and/or reported to their relevant professional body.

**NHS STAFFORD & SURROUNDS CLINICAL COMMISSIONING GROUP  
DECLARATION OF INTERESTS 2013/14**

<b>Name &amp; Job Title</b>	<b>Signature</b>
<b>Practice Name (if applicable)</b>	<b>Date</b>

**Please tick the appropriate box below:**

Governing Body Member	<input type="checkbox"/>	Membership Board Member	<input type="checkbox"/>	CCG Employee	<input type="checkbox"/>
GP (including salaried GP's)	<input type="checkbox"/>	Business Partner	<input type="checkbox"/>	Practice Manager	<input type="checkbox"/>

Please provide the following information. If you have no interest to declare would you please indicate by stating 'NIL'.

1-6 below apply to you, your spouse, relatives, etc.

- 1) Directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies).

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- 2) Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.

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- 3) Majority or controlling shareholdings in organisations likely or possibly seeking to do business with the NHS

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- 4) A position of authority in a charity or voluntary body in the field of health and social care

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- 5) Any connection with a voluntary or other body contracting for NHS services

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- 6) Any other interests which may be of relevance to the Clinical Commissioning Group/NHS

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### Description of Types of Interest

- *Direct financial interests*

A direct conflict of interest arises when an individual involved in taking or influencing the decisions of the organisation could receive a direct financial benefit as a result of the decisions being taken. This may arise as a result of holding an office or shares in a private company or business, or a charity or voluntary organisation that may do business with the NHS.

- *Indirect financial interests*

Indirect financial interest arises when a close relative of a director or other key person benefits from a decision of the organisation. As healthcare providers as well as commissioners, individual healthcare professionals sitting on the CCG's Governing Body of (and their family members or business partners) may have commercial interests in organisations that their commissioning group is already purchasing from that could potentially bid/offer to provide services that the group might procure and fund.

- *Non-financial or personal interests*

These occur where directors or other key persons receive no financial benefit, but are influenced by external factors such as gaining some other intangible benefit or kudos, for example, through awarding contracts to friends or personal business contacts. Even if the individuals leading a CCG do not have commercial or other direct interests in particular services or providers, they are likely to have long-standing professional relationships with colleagues to whom they may have allegiances as peers, and with whom they have developed particular ways of working over a period of time.

- *Conflicts of loyalty*

Decision-makers may have competing loyalties between the organisation to which they owe a primary duty and some other person or entity. For healthcare professionals, this could include loyalties to a particular professional body, society or special interest group, and could involve an interest in a particular condition or treatment due to an individual's own experience or that of a family member

**Managing Conflicts of Interest Checklist**

**Template to be used when commissioning services from GP practices, including provider consortia, or organisations in which GPs have a financial interest**

<b>Service</b>	
<b>Question</b>	<b>Comment/Evidence</b>
<b>Questions for all three procurement routes</b>	
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? How does the proposal support the priorities in the relevant joint health and wellbeing strategy?	
What are the proposals for monitoring the quality of 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? <sup>1</sup>	

<b>Service</b>	
<b>Question</b>	<b>Comment/Evidence</b>
<b>Questions for all three procurement routes</b>	
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?	

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

<b>Additional question for AQP only (where GP practices are likely to be qualified providers)</b>	
How will you ensure that patients are aware of the full range of qualified providers from whom they can choose?	

<b>Additional question for single tenders from GP providers</b>	
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?	

### **GMC Guidance**

Guidance within the GMC's core guidance Good Medical Practice (2006) and reiterated in its document Conflicts of Interest (2008) indicates, in such cases, that:

1. *You must act in your patients best interests when making referrals and when providing or arranging treatment of care. You must not ask for or accept any inducement, gift or hospitality which may affect or be seen to affect the way you prescribe, treat or refer patients. You must not offer such inducements to colleagues.*
2. *If you have financial or commercial interest in organisations providing healthcare or in a pharmaceutical or other biomedical companies, these interests must not affect the way you prescribe for, treat or refer patients.*
3. *If you have a financial or commercial interest in an organisation to which you plan to refer a patient for treatment or investigation, you must also tell the patient about your interest. When treating NHS patients you must also tell the healthcare provider.*

The GMC also provides the following general guidance:

4. *You may wish to note on the patient's record when an unavoidable conflict of interest arises; and*
5. *If you have a financial interest in an institution and are working under an NHS employers' policy you should satisfy yourself, or seek other assurance from your employing or contracting body, that systems are in place to ensure transparency and to avoid, or minimise the effects of, conflicts of interest. You must follow the procedures governing the schemes.*