

## **MANAGING CONFLICT OF INTEREST**

### **POLICY**

**[Version 4]**

March 2017 NOTE: This policy will be subject to review in 2017/18 as part of the partnership work between North East Hampshire and Farnham CCG, South East Hampshire CCG, Fareham and Gosport CCG, and North Hampshire CCG.

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# Conflicts of Interest Policy

## 1. Introduction

- 1.1. Managing conflicts of interest appropriately is essential for protecting the integrity of NHS North East Hampshire & Farnham Clinical Commissioning Group from perceptions of wrongdoing or impropriety. The CCG must meet the highest level of transparency to demonstrate that conflicts of interest are managed in a way that does not undermine the probity and accountability of the CCG.
- 1.2. This policy sets out the approach that the CCG will implement to identify, manage and record any potential or actual conflicts of interests that may arise in connection with the commissioning of healthcare for the population of north east Hampshire and Farnham.
- 1.3. This policy is issued in accordance with statutory guidance under Sections 14O and 14Z8 of the National Health Service Act 2006 (as amended by the Health and Social care Act 2012). The 2006 Act sets out clear requirements for CCGs to make arrangements for managing actual and potential conflicts of interests, to ensure they do not affect, or appear to affect, the integrity of the CCGs decision making processes.
- 1.4. These requirements are supplemented by procurement-specific requirements in the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013.
- 1.5. Furthermore, this policy has been drafted in accordance with requirements outlined in the NHS England Guidance on Managing Conflicts of Interest, published in June 2016.
- 1.6. This Policy draws on a range of guidance relating to Conflicts of Interests which includes:
  - Managing Conflicts of Interest: Revised Statutory Guidance for CCGs (NHS England, 2016)
  - GMC Guidelines: Financial and Commercial Arrangements and Conflicts of Interests (General Medical Council, 2013)
  - Managing Conflicts of Interests: A guide for NHS Commissioning Groups (NHS England, 2013)
  - Substantive guidance on the Procurement, Patient Choice and Competition Regulations (Monitor, 2013)
  - Standards for members of NHS Boards and CCG Governing Bodies in England (Professional Standards Authority, 2012)
  - Code of Conduct for NHS Managers (Department of Health, 2002)
  - The Nolan Principles (Committee on Standards in Public Life, 1995)
- 1.7. The policy should be read in conjunction with the following documents, which also set out guidelines and responsibilities for individuals in relation to conflicts of interest:
  - NHS North East Hampshire and Farnham CCG Constitution
  - Standing Orders, Scheme of Reservation & Delegation and Standing Financial Instructions
  - NHS North East Hampshire and Farnham CCG Gifts and Hospitality Policy

- 1.8 This Policy will be reviewed on an annual basis
- 1.9 An annual Conflicts of Interest Audit is included on the CCG's Internal Audit Plan. Findings from this audit will be reported to, and actions overseen by the CCG's Audit & Risk Committee.
- 1.10 The Governing Body is required to produce an Annual Governance Statement as a statement of assurance which explains the processes and procedures in place to enable the CCG carry out its functions effectively and in a controlled manner. This will include the findings of the Conflicts of Interest Internal Audit.

## **2. Scope of Policy**

- 2.1 This policy applies to all CCG members, staff (including temporary, agency or interim), officers, office holders, CCG Governing Body members and members of its committees and sub committees including General Practitioners and practice staff along with all groups relating to commissioning, contracting and procurement processes and where decision making is required by those members. These are collectively referred to as 'individuals' hereafter.
- 2.2 The CCG will ensure that all Contractors are aware of the contents of this policy if applicable.
- 2.3 Where an individual fails to comply with this policy disciplinary action may be taken in accordance with the CCG's Disciplinary Policy and its Constitution and a referral may be made to the Local Counter Fraud Service who may investigate the matter criminally in accordance with the Anti-Fraud and Bribery Policy.
- 2.4 The CCG's disciplinary policy is located on the staff intranet and on the CCG's website.

## **3. Aims and Objectives**

- 3.1 The aim of this policy is to protect both the organisation and individuals involved, from impropriety or any appearance of impropriety by setting out how the CCG will manage conflicts of interest to ensure there is confidence in the commissioning decisions made and to ensure the integrity of the clinicians involved with the work of the CCG.
- 3.2 Conflicts of interest may arise where an individual's personal interests, loyalties or those of a connected person (a relative or close friend) conflict with those of the CCG, or might be perceived to conflict with those of the CCG.
- 3.3 Such conflicts may create problems such as inhibiting free discussion which could result in decisions or actions being made that are not in the interests of the CCG, and risk giving the impression that the CCG has acted improperly.
- 3.4 The CCG Governing Body's responsibility includes the stewardship of significant public resources and the commissioning of health and social care services to the population of north east Hampshire and Farnham.

- 3.5 The CCG Governing Body is therefore determined to ensure the organisation inspires confidence and trust amongst its members, officers, office holders, staff, stakeholders, suppliers and the public by demonstrating integrity and avoiding any potential or real situations of undue bias or influence in the decision-making of the CCG.
- 3.6 This Policy applies principles of good governance and includes those set out in the following:
- The Seven Principles of Public Life (commonly known as the Nolan Principles);
  - The Good Governance Standards of Public Services (2004);
  - The Seven Key Principles of the NHS Constitution;
  - The Equality Act 2010.
  - The UK Corporate Governance Code
  - “Standards for members of NHS Boards and CCG governing bodies in England”

#### **4. Definition of a conflict of Interest**

- 4.1 A conflict of interest occurs where an individual’s ability to exercise judgement or act in a role is, or could be, impaired or otherwise influenced by, his or her involvement in another role or relationship. The individual does not need to exploit his or her position or obtain an actual benefit, financial or otherwise. A potential for competing interests and/or a perception of impaired judgement, or undue influence can also be a conflict of interest.
- 4.2 Conflicts can arise in a number of different ways; such as a direct financial gain or commercial advantage, an indirect financial interest (e.g. payment to a spouse) or a nonfinancial interest (e.g. kudos or reputation). Conflicts of loyalty may arise (e.g. in respect of an organisation of which the individual is a member or has an affiliation).
- 4.3 Conflicts can arise from personal or professional relationships with others, e.g. where the role or interest of a family member, friend or acquaintance may influence an individual’s judgement or actions, or could be perceived to do so.
- 4.4 For a commissioner, a conflict of interest may therefore arise when their judgements as a commissioner could be, or be perceived to be, unduly influenced and impaired by their own concerns and obligations as a provider. In the case of a GP involved in commissioning, an obvious example is the awareness of a new contract with a provider in which the individual GP has a financial stake. However, the same considerations and the approaches set out in this guidance apply when deciding whether to extend a contract.

Important things to remember are that:

- A perception of wrongdoing, 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.
- 4.5 All conflicts of Interest should be reported to the Head of Governance who in turn will inform the Chief Officer and CCG Chair.

## 5. Identifying Conflicts of Interests

5.1 A conflict of interest will include:

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

financial benefit. This could include, for example, where the individual is:	health.
<p><b>Indirect Interests</b></p> <p>This is where an individual has a close association with an individual who has a financial interest, a non-financial professional interest or a non-financial personal interest in a commissioning decision (as those categories are described above). For example, this should include:</p>	<ul style="list-style-type: none"> <li>• Spouse / partner;</li> <li>• Close relative e.g., parent, grandparent, child, grandchild or sibling;</li> <li>• Close friend;</li> <li>• Business partner.</li> </ul>

5.2 It is not possible to define all instances in which an interest may be a real or perceived conflict. However, if an individual is unsure as to whether an interest should be declared then advice should be sought from the Head of Governance, who will co-ordinate advice from the Chief Finance Officer, the Chair and consult the Lay Member for Audit and Governance (who hold the position of Conflicts of Interest Guardian), as required. If any doubt remains the individual concerned should assume that a potential conflict of interest exists.

### 5.3 Secondary Employment

5.3.1 All CCG members, Staff, CCG Governing Body members and members of the CCG committees and sub committees must ensure that any Secondary Employment is declared.

5.3.2 Additional work or employment is considered as 'secondary' even where the CCG may not be considered by an individual as their main or 'primary' employment or work. Individuals are not precluded from having secondary employment - however the CCG must be informed of such employment.

Secondary employment is defined as:

- Paid employment or work outside of the CCG
- Voluntary employment or work outside of the CCG
- Self-employment / Private Work
- Reservist occupations
- Bank/locum/agency work outside of the CCG

5.3.3 The CCG is aware that they will be secondary employer for most GPs.

- 5.3.4 Permission to engage in secondary employment must be sought from a line manager prior to commencing and will normally be granted if working hours for the Secondary Employment are conducted entirely outside of an individual's contracted hours of work. The CCG retains the right to refuse permission where it believes a conflict will arise which cannot be effectively managed.
- 5.3.5 Secondary employment should not be undertaken whilst on sick leave from the CCG unless prior permission has been obtained in writing from an individual's line manager following where necessary advice from Occupational Health. Failure to obtain prior permission may be classed as gross misconduct and lead to disciplinary action. Further information can be found in the CCG's Disciplinary Policy.

## **5.4 Privileged Information**

- 5.4.1 An individual must not use confidential information acquired in the pursuit of their role within the CCG to benefit them or another connected person.
- 5.4.2 Members of the CCG, Staff and the CCG Governing Body should take care not to provide any third party with a possible advantage by sharing privileged, personal or commercial information, or by providing information that may be commercially useful in advance of that information being made available publically (such as informing a potential supplier of an upcoming procurement in advance of other potential bidders), or any other information that is not otherwise available and in the public domain.

## **6. Roles and Responsibilities**

### **6.1 All CCG staff, contractors, officers and office holders**

It is the responsibility of all CCG staff, officers, office holders and CCG Governing Body members to:

- Familiarise themselves and comply with this policy;
- Ensure as line managers that employees are aware of the policy and processes to be followed for declaring interests. Line managers must consider any declarations of interest made by their employees and put in place mitigating arrangements in accordance with the policy. Where this is not clear, they should consult the Head of Governance.
- On appointment employees should declare any relevant interests or where there are no interests they should complete a "nil return" as applicable;
- Employees will be asked to update their interests on a six monthly basis to ensure that the Register of Interests remains accurate and up-to-date;
- At each CCG Governing Body meeting or relevant CCG meeting members are asked to advise the Chair of any changes to the Conflicts of Interest Register;
- Ensure that he / she does not place him / herself in a position where private interests and NHS duties might conflict.
- Avoid undertaking duties, remunerated or otherwise, outside of his / her employment with the CCG if there is any actual or potential conflict with, or prejudice of, the standards set out in this document;
- Take account of the CCG's Policies with regards to gifts and hospitality and whistleblowing procedures.

## **6.2 Chief Finance Officer**

Chief Finance Officer has overall responsibility for the following which will be discharged by the Head of Governance - to:

- Oversee the arrangements for the management of conflict of interest and advise the CCG Governing Body as required.
- Review this policy annually, or in light of changes in legislation / guidance published in relation to conflicts of interest and make recommendations to the CCG Governing Body for any required changes
- Ensure that the Register of Interest and Register of Procurement decisions is reviewed regularly, and updated as necessary.
- Ensure that for every interest declared, arrangements are in place to manage the conflicts of interests or potential conflict of interest, to ensure the integrity of the group's decisions making process.
- Ensure the Gifts and Hospitality Register is maintained and report to the Audit Committee at least annually on the register.
- Ensure the declarations of interest are published on the CCG website and made available on request.

## **6.3 Commissioning Leads and Procurement Leads**

6.3.1 Commissioning Leads and Procurement Leads and any staff leading on any relevant procurement within the CCG must ensure that bidders, contractors and direct service providers adhere to this policy, and that the service re-design and procurement processes used by the CCG reflect the procedures set out in this policy.

## **6.4 Chair of the Audit & Risk Committee/Conflicts of Interest Guardian**

6.4.1 The Chair of the Audit & Risk Committee has a lead role in ensuring that the CCG Governing Body and the wider CCG behaves with the utmost probity at all times. The Chair of Audit & Risk Committee oversees key elements of governance including the appropriate management of conflicts of interest.

6.4.2 The Chair of the Audit & Risk Committee will act as the Conflicts of Interest Guardian. The Conflicts of Interest Guardian should in collaboration with the Head of Governance:

- Act as a conduit for GP practice staff, members of the public and healthcare professionals who have any concerns with regards to conflicts of interest;
- Be a safe point of contact for employees or workers of the CCG to raise any concerns in relation to this policy;
- Support the rigorous application of conflict of interest principles and policies;
- Provide independent advice and judgment where there is any doubt about how to apply conflicts of interest policies and principles in an individual situation;
- Provide advice on minimising the risks of conflicts of interest.

## **6.5 General Practitioners (GPs)**

6.5.1 The CCG will ensure that any GPs with a responsibility for or involvement in commissioning of services must:

- Satisfy themselves that all decisions made are open, fair and transparent and comply with legislation.
- Keep up to date and follow the guidance and codes of practice that govern the commissioning of services.
- Formally declare at the beginning of each meeting, any interest that they, or someone close to them, including their business partner, or their employer has in a provider company.
- Take steps to manage any conflict between their duties as a GP and their commissioning responsibilities, for example by excluding themselves from the decision making process and any subsequent monitoring arrangements.

## **6.6 Lay Members**

- 6.6.1 Lay members play a critical role in CCGs, providing scrutiny, challenge and an independent voice in support of robust and transparent decision-making and management of conflicts of interest. They Chair a number of committees of the CCG including Audit & Risk Committee and Delegated Primary Care Commissioning Committee.
- 6.6.2 In keeping with the NHS England Revised Guidance, NHS North East Hampshire & Farnham CCG have appointed four lay members, all of whom are voting members of the CCG's Governing Body.

## **6.7 Delegated Primary Care Commissioning Committee Chair**

- 6.7.1 The Chair of the Delegated Primary Care Commissioning Committee is a lay member of the Governing Body. As determined by the NHS England Guidance, the Chair of the Audit & Risk Committee, also the Conflict of Interest Guardian is a member of this committee. This is to ensure that there is separation between the CCG functions and that delegated by NHS England in the commissioning of primary care undertaken by the CCG on its behalf.

## **7. Application for Appointment or Election/ appointment to the CCG**

- 7.1 Individuals will be required to declare any relevant interests as part of the process for:
- Lay member appointments to the Governing Body;
  - Other appointments of external individuals to the Governing Body, its committees, and other working or project groups;
  - General medical practitioners, practice nurses and practice managers standing for election to the Governing Body; and
  - All staff and individuals contracted to work at a senior level within the CCG.
- 7.2 The purpose of such declarations will be to enable the CCG Governing Body and its committees to determine on a case by case basis, whether any of the declared interests are such that they could not be managed under this policy. This may mean that the individual should be excluded from being appointed to the CCG Governing Body or to a committee or subcommittee of the CCG as the declared interest is so

related to a significant area of the business that the individual would be prevented from making a full and proper contribution to the CCG.

- 7.3 Any individual who has a material interest in an organisation that provides or is likely to provide substantial business to the CCG (either as a provider of healthcare or commissioning support services) shall not be appointed as an appointed voting member of the CCG Governing Body if the nature of their interest is such that they are likely to exclude themselves from decision-making on so regular a basis that it significantly limits their ability to effectively operate as a CCG Governing Body member.

## **8. Declarations on changing role, or any other change of circumstances**

- 8.1 When an individual changes role or responsibility within the CCG, or its Governing Body, such changes to the individual's interests should be declared immediately.
- 8.2 Whenever an individual's circumstances change in a way that affects the CCG or sets up a new business or relationship, a further declaration would need to be made to reflect the change in circumstances. This could involve a conflict of interest ceasing to exist or a new one materialising.

## **9 Registers**

### **Registers of Interests**

- 9.1 The CCG will maintain registers of declared interests which will be published on the CCG's website. Registers will be held for the following: (Template at Annex B)
- All CCG employees
  - Members of the Governing Body
  - Members of the CCG (practices)
  - Members of the Governing Body Sub-Committees
  - All interim/agency/consultant/off payroll individuals
- 9.2 The Registers will be maintained and regularly updated by the Head of Governance and the Governance Team.
- 9.3 The CCG will record all nil returns on the registers of interests.
- 9.4 When interests are entered onto the registers sufficient information about the nature of the interest and the details of those holding the interest will be recorded, as will details of deliberations and subsequent decisions about how to manage any conflicts which may be identified.
- 9.5 The CCG will ensure that, when members declare interests, this includes the interests of all relevant individuals within their own organisations (e.g. partners in a GP Practice), who have a relationship with the CCG and who would potentially be in a position to benefit from decisions made by the CCG.
- 9.6 The CCG will ensure that declarations of interest are made and regularly confirmed or updated. This includes the following:

- On appointment: applicants for any appointment to the CCG or its CCG Governing Body should be asked to declare any relevant interests as part of the election/recruitment process. When an appointment is made, a formal declaration of interests should be made and recorded.
- Regular intervals: all members of the CCG Governing Body must review their declarations contained in the Registers of Interests on at least a quarterly basis all other staff will need to do so every six months.
- At meetings: all members and regular attendees should be asked under a standing item on the agenda of the meeting, to declare any interest they have in any agenda item before it is discussed or as soon as it becomes apparent. Declarations of interest made should be recorded in the minutes of the meeting.
- On changing role or responsibility: where an individual changes role or responsibility within the CCG or its Governing Body, any change to the individual's interests should be declared.
- On any other change of circumstances: wherever an individual's circumstances change in a way that affects the individual's interests (e.g. where an individual takes on a new role outside the CCG or sets up a new business or relationship), a further declaration should be made to reflect the change in circumstances. This could involve a conflict of interest ceasing to exist or a new one materialising.

- 9.7 In keeping with regulations, individuals who have a conflict should declare these as soon as they become aware of any actual or potential conflict.
- 9.8 The declaration of interest form (Appendix 2) should be completed, signed and sent to the Head of Governance.
- 9.9 Where an individual is unable to provide a declaration in writing, e.g. if a conflict becomes apparent in the course of a meeting, they will make an oral declaration witnessed by other committee members, which will be recorded in the minutes of the meeting, and complete a written declaration form as soon as possible thereafter but no later than 28 days. If the individual, for any reason, has difficulty making a declaration in writing then they should contact the Head of Governance for further guidance.
- 9.10 If an individual fails to declare an interest or the full details of an interest, this may result in disciplinary action being undertaken. Also, a referral may be made to the Local Counter Fraud Service who may investigate the matter criminally in accordance with the Anti-Fraud and Bribery Policy.

## **10. Managing Conflicts of Interests during Meetings**

- 10.1 Where an individual, employee or person providing services to the CCG attending a meeting is aware of an interest which has not been declared, he or she will declare this immediately at the start of the meeting. This applies to both members and regular attendees.
- 10.2 Where an individual, employee or person providing services to the CCG is attending a meeting is aware of an interest that has previously been declared in relation to the scheduled or likely business of the meeting, the individual will bring this to the

attention of the Chair of the meeting, together with details of arrangements which have been confirmed for the management of the conflict of interest or potential conflict of interest.

- 10.3 The Chair of the meeting will determine how the conflict should be managed, and will inform the individual of the decision which may include withholding confidential papers. Where no arrangements have been confirmed, the Chair of the meeting may require the individual to withdraw from the meeting or part of it. The individual will then comply with these arrangements, which must be formally recorded in the minutes of the meeting.
- 10.4 Where the Chair of any meeting of any group including committees or sub-committees of the CCG Governing Body has a personal interest, previously declared or otherwise, in relation to the scheduled or likely business of the meeting, he or she must make a declaration and the deputy Chair will act as Chair for the relevant part of the meeting in keeping with the Standing Orders.
- 10.5 Where arrangements have been confirmed for the management of the conflict of interest or potential conflict of interest in relation to the Chair, the meeting must ensure these are followed.
- 10.6 Where no arrangements have been confirmed, the Deputy Chair may require the Chair to withdraw from the full meeting or part of it. Where there is no Deputy Chair, the members of the meeting will select one. Declarations of interests, and the arrangements agreed to manage them, will be recorded formally in the minutes of the meeting.
- 10.7 If more than 50% of the members of a meeting are required to withdraw from a meeting or part of it, owing to the arrangements agreed for the management of conflicts of interests or potential conflicts of interests, the Chair (or Deputy Chair) will determine whether or not the discussion can proceed. In making this decision, the Chair will consider whether the meeting is quorate.
- 10.8 Where the meeting is not quorate, discussions may take place but any decisions will be deferred until such time as a quorum can be convened. Where a quorum cannot be convened from the membership of the meeting, owing to the arrangements for managing conflicts of interest or potential conflicts of interests the Chair may adjourn the meeting to permit the co- option of additional members.

## **11. Managing conflicts of interest where all/or most GPs have an interest**

- 11.1 Where certain members of the CCG have a material interest, the Chair of the meeting has ultimate responsibility for deciding the appropriate course of action in order to manage the conflict of interest. This may include the exclusion from relevant parts of the meeting. Where the member is permitted to remain for the discussion, they must not participate in the decision-making itself.
- 11.2 In cases 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 Practitioner (AQP) framework, the CCG:

- May refer the decision to the CCG 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 CCG Governing Body as detailed in the CCG's Standing Orders.
- Shall consider co-opting individuals from a Health and Wellbeing Board or from another CCG onto the Governing Body, or inviting the Health and Wellbeing Board or another CCG to review the proposal, to provide additional scrutiny, although such individuals would only have authority to participate in decision making where this provision exists within the CCG's constitution;
- May Co-opt other relevant non conflicted members;

## **12. Managing conflicts of interest for Provider GPs**

- 12.1 The CCG may commission primary care services, including incentive schemes, from General Practices. If a practice, or group of practices, provides a service, the CCG will need to demonstrate to the Audit and Risk Committee (and to the external and internal auditors) that the service:
- Clearly meets local health needs, and has been planned appropriately;
  - goes beyond the scope of the General Medical Services (GMS)/Personal Medical Services (PMS) contract;
  - offers best value for money; and
  - has been commissioned via the appropriate procurement process as set out in the CCG's Financial policies.
- 12.2 A General Practice or group of practices may belong to a provider consortium in which GPs have a financial interest.
- 12.3 Where General Practices including provider consortia or organisations in which GPs have a financial interest are potential providers of CCG-commissioned services, the CCG will seek to assure itself of the factors set out in and to use the NHS England's Code of Conduct for managing conflicts of interest and the procurement should be approved by the appropriate Committee.

## **13. Register of Procurement Decisions**

- 13.1 The CCG recognises that particular care must be exercised when procuring services including the commissioning of services from GP practices. For that reason, this policy includes reference to the Procurement Template developed by NHS England which must be completed in each case where GP practices, consortia or organisations in which GPs have a financial interest are, or may be a tenderer. The Procurement Template is attached as Appendix 6
- 13.2 The CCG is prohibited by law from awarding any contract where the integrity of the procurement process or the award has been, or appears to have been, affected by a conflict of interest. Further information can be found in section '*Managing Conflicts of Interest during Procurement*' See section 14.
- 13.3 The CCG's register of procurement decisions, which will be completed and held by the Governance Team, will include;

- Details of any decisions made;
- Who was involved in the effective decision making process (i.e. CCG Governing Body or Committee members and others with decision-making responsibility); and
- A summary of any conflicts of interest in relation to the decision and how this was managed.

13.4 The Register will be updated whenever a procurement decision is made.

13.5 The Register will form part of the CCG's annual accounts and will thus be reviewed by external auditors.

## **14. Managing Conflicts of Interest during Procurement**

14.1 The CCG recognises the importance of making decisions about the services it procures in a way that does not call into question the motives behind the procurement decisions that have been made. The CCG will ensure that they recognise and manage conflicts or potential conflicts of interest that may arise in relation to procurement.

14.2 Anyone participating in the procurement, or otherwise engaging with the CCG, in relation to the provision of services or facilities, will be required to make a declaration of interest which will include nil returns. This includes those who will take part in any tender evaluation or decision making with regards to the award of a contract. Where these functions are undertaken by the CSU, declarations from CSU employees involved in the process should also be obtained and made available to the CCG.

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

The Regulations set out that commissioners must:

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

14.4 Potential conflicts will vary to some degree depending on the way in which a service is being commissioned e.g.:

- Competitive Tender - Where a 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.
- Any Qualified Provider - Where the CCG is commissioning a service through an AQP contract, 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.

- Single tender - Where the CCG is procuring services from a GP practice where there are no other capable providers, i.e. this is the appropriate procurement route and the proposed service goes beyond the scope of the services provided by GP practices under their GP contract.
- 14.5 The CCGs will ensure that details of all contracts, including the contract value, are published on its website as soon as contracts are agreed. Where the CCG decides to commission services through Any Qualified Provider (AQP), it should publish on its website the type of services they are commissioning and the agreed price for each service. Further, the CCG will ensure that such details are also set out in its annual report. Further information can be obtained from the CCG's Procurement Policy.
- 14.6 South of England Procurement Services are responsible for managing a number of procurements for the CCG. Where an individual is requested to assist in any part of the procurement process, they will be required to complete a declaration of interest form. This is managed by South of England Procurement Services.

## **15. Designing services and conflicts of interests**

- 15.1 The CCG recognises the benefits to be gained from engagement with relevant providers, especially clinicians, in confirming the design of service specifications. However, the CCG also recognises that conflicts of interest can occur if a commissioner engages selectively with only certain providers (be they incumbent or potential new providers) in developing a service specification for a contract for which they may later bid for in a competitive process.
- 15.2 The same difficulty could arise in developing a specification for a service that is to be commissioned using the 'Any Qualified Provider' process, for example where there is not a competitive procurement but patients can instead choose from any qualified provider that wishes to provide the service and can meet NHS standards and prices.
- 15.3 The CCG will seek, as far as possible, to specify the outcomes that they wish to see delivered through a new service, rather than the way in which these outcomes are to be achieved. As well as supporting innovation, this helps prevent bias towards particular providers in the specification of services.
- 15.4 The CCG will seek to follow the principles set out in the Office of Government Commerce (OGC) guidance on pre-procurement engagement with potential bidders, in engaging with potential providers when designing service specifications.
- 15.5 The CCG will consider the following points when engaging with potential service providers:
- Use engagement to help shape the requirement but take care not to gear the requirement in favour of any particular provider(s).
  - Ensure at all stages that potential providers are aware of how the service will be commissioned, e.g. through competitive procurement or through the 'Any qualified provider' process.
  - Work with participants on an equal basis, e.g. ensure openness of access to employees and information.

- Be transparent about procedures.
- Maintain commercial confidentiality of information received from providers.

15.5 The CCG shall use engagement with potential providers to:

- Frame the requirement;
- Focus on desired outcomes rather than specific solutions; and
- Consider a range of options for how a service is specified.

15.6 Other practical steps the CCG may also consider using shall include:

- Advertising widely the fact that a service design/re-design exercise is taking place and inviting comments from any potential providers and other interested parties (ensuring a record is kept of all interactions) – i.e. do not be selective in who works on the service specifications unless it is clear conflicts will not occur.
- As the service design develops, engaging with a wide range of providers on an ongoing basis to seek comments on the proposed design, e.g. via the CCG's website or workshops with interested parties.
- If appropriate, engaging the advice of an independent clinical adviser on the design of the service.
- When specifying the service, specifying desired (clinical and other) outcomes instead of specific inputs.

15.7 Where an individual has declared a relevant and material interest or position in the context of the specification for, or award of, a contract the individual concerned will be expected to act in accordance with the arrangements for the management of conflicts of interest outlined in this policy and may be excluded from the decision making process in relation to the relevant specification or award

## **16. Failure to disclose/declare and management of breaches**

16.1 The CCG takes seriously the failure to disclose such information as required by this policy.

16.2 It is an offence under the Fraud Act 2006 for personnel to fail to disclose information to the CCG in order to make a gain for themselves or another, or to cause a loss or expose the organisation to a loss. Therefore, if an individual becomes aware that someone has failed to disclose relevant and material information, they should raise the matter in the first instance with the Chief Finance Officer and the Conflicts of Interest Guardian - all such notifications will be dealt with in the strictest confidence in accordance with the other CCG's policies (including the Whistleblowing Policy) . The Anti-Fraud and Corruption Policy will be consulted and an appropriate referral made to the Local Counter Fraud Specialist where applicable.

16.3 Anyone with any concerns regarding another individual's failure to declare an interest can also be reported directly to the Local Counter Fraud Service.

- 16.4 Breaches of this policy may result in an individual being removed from office in line with the CCG's Constitution. A contractor may be prevented from obtaining further work with the CCG or an employee may face disciplinary action and dismissal.
- 16.5 All breaches will be anonymised, recorded and published on the CCG's website along with any outcomes/actions. NHS England will be notified of any breaches, as appropriate.

## **17. Bribery Act 2010**

- 17.1 The Bribery Act 2010 came into force on 1st July 2011 and repeals, in their entirety, the Prevention of Corruption Acts 1906 to 1916 and the common law offence of Bribery. It creates three relevant offences of bribing another person, being bribed and the failure of commercial organisations to prevent bribery.
- 17.2 The Bribery Act also covers persons who have an association with an organisation. An associated person is not just limited to CCG staff, office holder or board members, but any person, company other organisation or legal entity that performs a service in the CCG's name, represents the CCG in an official capacity, acts on behalf of the CCG or in the place of other CCG staff or representatives.
- 17.3 Office holders, officers, Staff, Members, Committee and Sub-committee members, members of the CCG Governing Body (and its committees) and associated persons should be aware that in committing an act of bribery they may be subject to a penalty of up to ten years' imprisonment, a fine, or both. They may also expose the CCG to a conviction punishable with an unlimited fine.
- 17.4 All individuals working for, with, or on behalf of the CCG should also be aware that a breach of this Act, or of this guidance, renders them liable to disciplinary action by the CCG whether or not the breach leads to prosecution. Where a material breach of this guidance is found to have occurred, the likely sanction will be dismissal.
- 17.5 In short, the offences cover the offering, promising or giving of a financial or other advantage and the requesting, agreeing to receive or accepting of a financial or other advantage where the overall intention of such an action is to bring about an improper performance of a relevant function or activity.
- 17.6 Anyone suspecting bribery or corruption should report the matter to the CCG's Local Counter Fraud Specialist, or to NHS Protect, in confidence, in accordance with the CCG's Local Fraud and Corruption Policy.

## **18. Gifts & Hospitality**

- 18.1 Gifts and hospitality can be perceived as bribery. In order to improve transparency regarding gifts or hospitality received by staff, the Gifts & Hospitality Register will be published on the CCG website in accordance with the CCG's Gifts & Hospitality Policy. Attached are templates (Appendix 3 & 4) detailing information contained in declaring gift and hospitality and the register of gifts and hospitality.

## Appendix 1 Declaration of Interests template

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

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

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

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

--

Signed:

Date:

Signed: Position:  
(Line Manager or Senior CCG Manager)

Date:

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





**Appendix 4 Gifts and Hospitalities Register template**

Name	Position	Date of Offer	Declined or Accepted?	Date of Receipt (if applicable)	Details of Gift/ Hospitality	Estimated Value	Supplier/ Offeror Name and Nature of business	Reason for Accepting or Declining

**Appendix 5 – Template to record interests during the meeting**

Meeting	Date of Meeting	Chairperson name	Secretariat name	Name of person declaring interest	Agenda item	Details of interest declared	Action taken

**Annex 6: Procurement Checklist**

<b>Service:</b>	
<b>Question</b>	<b>Comment / Evidence</b>
1. How does the proposal deliver good or improved outcomes and value for money – what are the estimated costs and the estimated benefits? How does it reflect the CCG’s proposed commissioning priorities? How does it comply with the CCG’s commissioning obligations?	
2. How have you involved the public in the decision to commission this service?	
3. What range of health professionals have been involved in designing the proposed service?	
4. What range of potential providers have been involved in considering the proposals.	
5. 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).	
6. What are the proposals for monitoring the quality of the service?	
7. What systems will there be to monitor and publish data on referral patterns?	
8. Have all conflicts and potential conflicts of interests been properly declared and entered in registers.	

<p><b>9. In respect of every conflict or potential conflict, you must record how you have managed that conflict or potential conflict. Has the management of all conflicts been recorded with a brief explanation of how they have been managed.</b></p>	
<p><b>10. Why have you chosen this procurement route e.g. single action tender ?</b></p>	
<p><b>11. What additional external involvement will there be in scrutinising the proposed decisions</b></p>	
<p><b>12. How will the CCG make its final commissioning decision in ways that preserve the integrity of the decision making process and award any contract.</b></p>	
<p>Additional questions when qualifying a provider on a list or framework or pre-selection for tender (including but not limited to any qualified provider) or direct award (for services where national tariffs do not apply)</p>	
<p><b>13. Have you determined a fair price for the service</b></p>	
<p>Additional questions when qualifying a provider on a list or framework or pre-selection for tender (including but not limited to any qualified provider) where the GP practices are likely to be qualified providers</p>	
<p><b>14. How will you ensure that patients are aware of the full range of qualified providers from whom they can choose.</b></p>	
<p>Additional questions for proposed direct awards to GP providers.</p>	
<p><b>15. What steps have been taken to demonstrate that the services to which the contract relates are capable of being provided by only one provider.</b></p>	
<p><b>16. In what ways does the proposed service go above and beyond what</b></p>	

GP practices should be expected to provide under the GP contract.	
17. What assurance 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.	