

# POLICY DOCUMENT

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## Conflict of Interest Policy

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| Name of originator / author:              | Ket Chudasama, Director Performance & Corporate Affairs  |
| Name of responsible committee/individual: | Ket Chudasama, Director Performance & Corporate Affairs  |
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## 1. Background

- 1.1 In the current healthcare commissioning system, where providers are involved in commissioning decisions, there is an increased risk that decisions relating to how care is provided and by who, may be influenced by private interests. This may call into question the integrity and probity of the Clinical Commissioning Group (CCG).
- 1.2 CCGs manage conflicts of interest as part of their day-to-day activities. Effective handling of such conflicts is crucial for the maintenance of public trust in the commissioning system. Importantly, it also serves to give confidence to patients, providers, Parliament and taxpayers that CCG commissioning decisions are robust, fair, and transparent and offer value for money.
- 1.3 In May 2014, NHS England offered CCGs the opportunity to take on an increased responsibility for the commissioning of primary care – known as co-commissioning. Those CCGs who opt to do so will be able to commission care for their patients and populations in more coherent and joined-up ways. However, they are also exposing themselves to a greater risk of conflicts of interest, both real and perceived, especially if they are opting to take on delegated budgets and functions from NHS England
- 1.4 NHS England has published detailed guidance for CCGs on the discharge of their functions and requires each CCG to have regard to the guidance: [Managing Conflicts of Interest: Revised Statutory Guidance for CCGs 2017](#). This guidance builds on and incorporates relevant aspects of existing NHS England guidance, and supersedes previous versions.
- 1.5 West Leicestershire CCG recognises the importance of appropriately managing conflicts of interest with respect to how it conducts its business and how decisions are made. Although such conflicts of interest are inevitable, having processes to appropriately identify and manage them is essential to maintain the integrity of the NHS commissioning system and to protect the CCG, its employees and its member practices from allegations and perceptions of wrong-doing.
- 1.6 Since West Leicestershire CCG became Authorised in 2012, conflicts of interest have been managed in accordance with section 8 of our Constitution, which outlines the processes in place for effectively identifying and managing conflicts of interest.

## 2. Statutory Requirements

- 2.1 All CCGs have statutory requirements they must legally comply with regarding conflicts of interest. Section 14O of the National Health Service Act 2006, inserted by the Health & Social Care Act 2012, sets out that each CCG must:
  - Maintain one or more register of interest of: the members of the group, members of its governing body, members of its committees or sub-committees of its governing body, and its employees;
  - Publish, or make arrangements to ensure that members of the public have access to these registers on request;
  - Make arrangements to ensure individuals declare any conflict or potential conflict in relation to a decision to be made by the group, and record them in

- the registers as soon as they become aware of it, and within 28 days; and,
- Arrange (set out in their Constitution) for managing conflicts of interest, and potential conflicts of interest, in such a way as to ensure that they do not and do not appear to, affect the integrity of the CCG's decision-making processes.

Where a CCG has decided not to comply with statutory guidance, it must include reasons in its next annual self-certification statement.

2.2 The NHS (Procurement, Patient Choice and Competition) (no. 2) Regulations 2013 set out that commissioners must:

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

2.3 The Bribery Act 2010 created a number of bribery offences:

- Offering, promising, or giving a bribe to another person to perform a relevant 'function or activity' improperly, or to reward a person for the improper performance of such a function or activity;
- Requesting, agreeing to receive, or accepting a bribe to perform a function or activity improperly irrespective of whether the recipient of the bribe requests or receives it directly or through a third party, and irrespective of whether it is for the recipient's benefit.

A new corporate offence was also introduced:

- Failure of a commercial organisation to prevent bribery. This means that the CCG can be held responsible if it fails to enact adequate procedures to prevent bribery

It is vital that staff Members of the Board, members of the group, committee and sub-committee members, and staff (whether directly employed or not, temporary or permanent) comply with all aspects of this policy as not to do so could lay them open to allegations of fraud, bribery or corruption. If in any doubt as to whether a particular interest should be declared, individuals should take a cautious approach and do so.

2.4 Equality and diversity are at the heart of the CCG's values. Throughout the development of our policies and processes, we have given due regard to the need to:

- Reduce health inequalities in access and outcomes of healthcare services
- Integrate services where this might reduce health inequalities.

### **3. Policy Statement**

- 3.1 This policy sets out how West Leicestershire CCG, hereafter referred to as 'WLCCG' or 'the CCG', will manage any conflicts, potential conflicts, or perceived conflicts of interest arising from the business of the organisation.
- 3.2 This policy will guide the WLCCG Board in ensuring that robust health need assessments, consultation mechanisms, commissioning strategies and procurement procedures enable conflicts of interest to be identified and mitigated, in the best interests of patients and the public.
- 3.3 The policy will support all members and employees of WLCCG to:
- Act in accordance with the Nolan Principles of Public Life and the code of guidance set out by NHS England;
  - Enable clinicians and staff in commissioning roles to demonstrate that they are acting fairly and transparently and in the best interest of their patients and local populations;
  - Ensure that the CCG operates within the legal framework, but without being bound by over-prescriptive rules that risk stifling innovation;
  - Safeguard clinically led commissioning, whilst ensuring objective investment decisions;
  - Provide the public and providers with confidence in the probity, integrity and fairness of the CCG's decisions.
- 3.4 In addition to this, this policy sets out how the CCG will manage conflicts of interest arising from the co-commissioning of primary medical care services. This will include the procedures for decision-making in cases where GPs sitting on decision-making groups are actually or perceived to be conflicted.
- 3.5 Members of the Board, members of the group, committee and sub-committee members, and staff (whether directly employed or not, temporary or permanent) must comply with the CCG's policy on business conduct, including the requirements set out in this policy for managing conflicts of interest. This policy and the Constitution will be available on the CCG's website at [www.westleicestershireccg.nhs.uk](http://www.westleicestershireccg.nhs.uk). This document is also available on request from the Corporate Affairs Team at 55 Woodgate, Loughborough, LE11 2TZ.
- 3.6 This policy is in line with current national guidance and will be reviewed periodically to ensure it complies with any modifications to national guidance.

### **4. Scope of the Policy**

- 4.1 This policy applies to:
- The members of West Leicestershire CCG (practices)
  - The members of the West Leicestershire CCG Board;
  - The members of West Leicestershire CCG's committees, sub-committees;
  - The employees of West Leicestershire CCG (full and part time);

- Agency and seconded staff;
- Self-employed consultants or other individuals working for the CCG under a contract;
- Any staff on sessional or short term contracts; and
- Any students & trainees (including apprentices).

## 5. Legislative Framework

5.1 In line with section 14O of the Act, the CCG will manage conflicts of interest by:

- Maintaining an appropriate registers of interests for all Board members, members of the group, members of committees and sub-committees of the Board, and employees;
- Publish or make arrangements for the public to access these registers;
- Incorporating the declaration of interests into the CCG's Human Resources (HR) processes, which ensures the prompt declaration of interests by specified individuals during the recruitment process. These declarations are then entered into the relevant register;
- Ensuring that on an annual basis all registers of interest and the CCG's processes for managing declarations of interest is reviewed by the CCG's Audit Committee.

5.2 Section 14O is supplemented by the procurement specific requirements set out in the National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013. In particular, regulation 6 requires the following of the CCG:

- The CCG must not award a contract for the provision of NHS health care services where conflicts, or potential conflicts, between the interests involved in commissioning such services and the interests involved in providing them affect, or appear to affect, the integrity of the award of that contract; and
- The CCG must keep a record of how it managed any such conflict in relation to NHS commissioning contracts it enters into.

## 6. Principles and General Safeguards

6.1 The general safeguards that will be needed to manage conflicts of interest will vary to some extent, depending on at what stage in the commissioning cycle decisions are being made. The following principles are integral to the commissioning of all services, including decisions on whether to continue to commission a service, such as by contract extension:

- **Doing business appropriately.** If commissioners get their needs assessments, consultation mechanisms, commissioning strategies and procurement procedures right from the outset, this will mean that conflicts of

interest will become much easier to identify, avoid and/or manage, because the rationale for all decision-making will be clear and transparent and should withstand scrutiny;

- **Being proactive, not reactive.** Commissioners should seek to identify and minimise the risk of conflicts of interest at the earliest possible opportunity, for instance by:
  - considering potential conflicts of interest when electing or selecting individuals to join the Board or other decision-making committees;
  - ensuring individuals receive proper induction and training so that they understand their obligations to declare conflicts of interest;
  - Establish and maintain registers of interests
- **Assuming that individuals will seek to act ethically and professionally, but may not always be sensitive to all conflicts of interest.** Rules should assume people will volunteer information about conflicts and, where necessary, exclude themselves from decision-making, but there should also be prompts and checks to reinforce this;
- **Being balanced and proportionate.** Rules should be clear and robust but not overly prescriptive or restrictive. They should ensure that decision-making is transparent and fair, but not constrain people by making it overly complex or cumbersome;
- **Openness.** Ensuring early engagement with patients, the public, clinicians and other stakeholders, including local Healthwatch and Health and Wellbeing Boards, in relation to proposed commissioning plans;
- **Responsiveness and best practice.** Ensuring that our commissioning intentions are based on local health needs and reflect evidence of best practice – securing ‘buy in’ from local stakeholders to the clinical case for change;
- **Transparency.** Documenting clearly the approach taken at every stage in the commissioning cycle so that a clear audit trail is evident;
- **Securing expert advice.** Ensuring that our plans take into account advice from appropriate health and social care professionals, e.g. through clinical senates and networks, and draw on commissioning support, for instance around formal consultations and for procurement processes;
- **Engaging with providers.** Early engagement with both incumbent and potential new providers over potential changes to the services commissioned for a local population;
- **Creating clear and transparent commissioning specifications** that reflect the depth of engagement and set out the basis on which any contract will be

awarded;

- **Following proper procurement processes and legal arrangements**, including even-handed approaches to providers;
- **Ensuring sound record-keeping, including up to date registers of interests**; and
- **A clear, recognised and easily enacted system for dispute resolution.**

6.2 These general processes and safeguards will apply at all stages of the commissioning process, but will be particularly important at key decision points, e.g., whether and how to go out to procurement of new or additional services.

## 7. What are Conflicts of Interest? – General

7.1 A conflict of interest occurs where an individual's ability to exercise judgment, 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, for a conflict of interest to occur.

7.2 “For the purposes of Regulation 6 [National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013], a conflict will arise where an individual's ability to exercise judgment or act in their role in the commissioning of services is impaired or influenced by their interests in the provision of those services.”

*Monitor - Substantive guidance on the Procurement, Patient Choice and Competition Regulations (December 2013)*

7.3 Conflicts of interest can arise in many situations, environments and forms of commissioning, with an increased risk in primary care commissioning, out-of-hours commissioning and involvement with integrated care organisations, as clinical commissioners may here find themselves in a position of being at once commissioner and provider of services.

Conflicts of interest can arise throughout the whole commissioning cycle from needs assessment, to procurement exercises, to contract monitoring.

Interests can be captured in four different categories:

- Financial interests:** This is where an individual may get direct financial benefits from the consequences of a commissioning decision. This could, for example, include being:
  - A director, including a non-executive director, or senior employee in a private company or public limited company or other organisation which is doing, or which is likely, or possibly seeking to do, business with health or social care organisations.
  - A shareholder (or similar ownership interests), a partner or owner of a private or not-for-profit company, business, partnership or consultancy

which is doing, or which is likely, or possibly seeking to do, business with health or social care organisations.

- A management consultant for a provider.

This could also include an individual being:

- In secondary employment;
- In receipt of secondary income from a provider;
- In receipt of a grant from a provider;
- In receipt of any payments (for example honoraria, one-off payments, day allowances or travel or subsistence) from a provider;
- In receipt of research funding, including grants that may be received by the individual or any organisation in which they have an interest or role; and
- Having a pension that is funded by a provider (where the value of this might be affected by the success or failure of the provider).

- ii. **Non-financial professional interests:** 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:

- An advocate for a particular group of patients;
- A GP with special interests e.g., in dermatology, acupuncture etc.
- A member of a particular specialist professional body (although routine GP membership of the RCGP, British Medical Association (BMA) or a medical defence organisation would not usually by itself amount to an interest which needed to be declared);
- An advisor for the Care Quality Commission (CQC) or the National Institute for Health and Care Excellence (NICE);
- A medical researcher. GPs and practice managers, who are members of the governing body or committees of the CCG, should declare details of their roles and responsibilities held within their GP practices.

- iii. **Non-financial personal interests:** 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 financial benefit.

This could include, for example, where the individual is:

- A voluntary sector champion for a provider;
- A volunteer for a provider;
- A member of a voluntary sector board or has any other position of authority in or connection with a voluntary sector organisation;
- Suffering from a particular condition requiring individually funded treatment;
- A member of a lobby or pressure group with an interest in health.

- iv. **Indirect interests:** This is where an individual has a close association with an individual who has a financial interest, a non-financial professional interest or a non-financial personal interest in a commissioning decision (as those categories are described above) for example, a:

- Spouse / partner
- Close relative e.g. parent, grandparent, child, grandchild or sibling;

- Close friend;
- Business partner. A declaration of interest for a “business partner” in a GP partnership should include all relevant collective interests of the partnership, and all interests of their fellow GP partners (which could be done by cross referring to the separate declarations made by those GP partners, rather than by repeating the same information verbatim). Whether an interest held by another person gives rise to a conflict of interests will depend upon the nature of the relationship between that person and the individual, and the role of the individual within the CCG.

7.4 The CCG acknowledges it as important that:

- Perception of wrong-doing, impaired judgment or undue influence may be as detrimental as it actually occurring;
- If there is any doubt, it is better to assume a conflict of interest and act appropriately rather than to ignore it; and
- It is not necessary for financial gain to be present for a conflict to exist.

## 8. Conflicts of Interest Guardian

8.1 To further strengthen scrutiny and transparency of CCGs’ decision-making processes, West Leicestershire CCG has appointed a Conflicts of Interest Guardian (akin to a Caldicott Guardian). This role is undertaken by the CCG audit chair, as the role already has a key role in conflicts of interest management. The Conflicts of Interest Guardian is supported by the CCG’s Director of Performance and Corporate Affairs and the Head of Corporate Governance, who has responsibility for the day-to-day management of conflicts of interest matters and queries. The CCG’s Head of Corporate Governance keeps the Conflicts of Interest Guardian well briefed on conflicts of interest matters and issues arising.

8.2 The Conflicts of Interest Guardian (supported by the Head of Corporate Governance) acts as:

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

8.3 The CCG’s Conflict of Interest Guardian can be contacted directly at any time in person at the CCG’s office or via the following email address: [enquiries@westleicestershireccg.nhs.uk](mailto:enquiries@westleicestershireccg.nhs.uk).

## 9. What are conflicts of interest? – Primary Medical Care Co-Commissioning

9.1 In addition to the general conflicts outlined above, conflicts of interest may arise from the commissioning of primary medical care under the new co-commissioning arrangements. This is because GPs will be involved in commissioning decisions relating to GP practices in the CCG area. In the case of a GP involved in commissioning, an obvious example is the award of a new contract to a provider in which the individual GP has a financial stake.

9.2 Some of the more specific examples of perceived or actual conflicts that may arise with GPs sitting on decision-making groups for the co-commissioning of primary medical care are:

- An issue or decision relating to a decision-making GP's own practice;
- An issue or decision relating to a practice within the decision-making GP's locality/federation;
- Where there is a financial interest of the decision-making GP
- Where there is a personal or professional relationship between the decision-making GP and the GP/practice concerned
- An issue or decision relating to a decision-making GP's family member/relative/friend/colleague.

9.3 From 1<sup>st</sup> April 2015 West Leicestershire CCG took on delegated responsibilities for primary care commissioning, and has established the West Leicestershire CCG Primary Care Commissioning Committee which functions as a corporate decision making body.

9.4 The Primary Care Commissioning Committee has a lay chair and lay deputy chair.

## 10. Maintaining a Register of Interests

10.1 As previously stated, the CCG will maintain a register of interests for Board members, members of committees and sub-committees of the Board, and its employees. The CCG will publish registers for its decision-making staff, as determined by our Financial Scheme of Delegation and as per [NHS England guidance](#).

10.2 The CCG will make arrangements to ensure individuals declare any conflict or potential conflict in relation to a decision to be made by the group as soon as they become aware of it, and in any event within 28 days. The CCG will record the interest in the registers as soon as it becomes aware of it.

10.3 In line with national guidance, WLCCG requires that all Board members declare their interests using the Declaration Form in Appendix 1:

- Roles and responsibilities held within member practices

- Directorships, including non-executive directorships, held in private companies or PLCs
- Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the CCG
- Shareholdings (more than 5%) of companies in the field of health and social care
- Positions of authority in an organisation (e.g. charity 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
- Other specific interests
- Any other role or relationship which the public could perceive would impair or otherwise influence the individual's judgment or actions in their role within the CCG and/or with NHS England.

10.4 The CCG will need to ensure that, as a matter of course, declarations of interest are made and regularly confirmed or updated. This includes the following circumstances:

- **On appointment:**  
Applicants for any appointment to the CCG or its Board should be asked to declare any relevant interests. When an appointment is made, a formal declaration of interests should again be made and recorded.
- **At meetings:**  
All attendees should be asked to declare any interest they have in any agenda item before it is discussed or as soon as it becomes apparent. Even if an interest is declared in the register of interests, it should be declared in meetings where matters relating to that interest are discussed. Declarations of interest should be recorded in minutes of meetings.
- **Annually:**  
The CCG should have systems in place to satisfy itself on an annual basis that its register of interests is accurate and up to date.
- **On changing role or responsibility:**  
Where an individual changes role or responsibility within a CCG or its Board, 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.

## 11. Register of Gifts and Hospitality

11.1 West Leicestershire CCG has a Gifts, Hospitality and Sponsorship Policy and

maintains a register of gifts and hospitality for CCG employees and Members of the Governing Body. West Leicestershire CCG has robust processes to ensure that such individuals do not accept gifts or hospitality or other benefits, which might reasonably be seen to compromise their professional judgement or integrity.

11.2 All the individuals listed in 11.1 above need to consider the risks associated with accepting offers of gifts, hospitality and entertainment when undertaking activities for or on behalf of the CCG or their GP practice. This is especially important during procurement exercises, as the acceptance of gifts could give rise to real or perceived conflicts of interests, or accusations of unfair influence, collusion or canvassing.

## **12. Conflicts of Interest Decision-Making Framework for Board and sub-committees**

12.1 As previously stated, in the current healthcare commissioning system, where providers are involved in commissioning decisions, there is an increased risk that decisions relating to how care is provided and by who, may be influenced by private interests. As a result the CCG recognises the importance of appropriately managing conflicts of interest with respect to how it conducts its business and how decisions are made. Therefore the following decision-making framework has been produced which sets out the CCG's process for determining where conflicts of interest exist and how they should be managed. For example, where the relevant local GP federation has an interest in services commissioned by the CCG. The framework is as follows:

### ***Step 1 – Recognition of conflict and declaration***

- i. Members of the Board are required to declare a conflict of interest where they actually, potentially or are perceived to have an interest in the matter being discussed by the Board. Board Members are responsible for ensuring all conflicts of interest are recorded on the CCG's register of interests and in addition, all interests must be declared and recorded at the Board meeting (or other sub-group) and recorded in the minutes.

### ***Step 2 – Management of conflicts – Conflicts of Interest Screening Panel***

- i. The procedure that must be put in place for managing the potential or actual conflict of interest declared will be recommended to the Board by the Conflict of Interest Screening Panel. On a monthly basis the Conflict of Interest Screening Panel will review Board and committee agendas to ensure that conflicts of interest are identified and suitable management arrangements are made (see Appendix 2 for full Conflict of Interest Screening Panel Procedure).
- ii. The Panel shall review each agenda to determine:
  - Who is conflicted;
  - To what extent they are conflicted (by using the categories and matrix below);
  - What level of involvement can the individual have with the item/s concerned, i.e. to be present and involved, present and not involved or to absent themselves;

- If the Board or committee is required to make a decision, whether there will be any issues relating to its quorum as a result of the conflict of interest;
- Whether it is necessary to delegate any decision to the Procurement & Investment Committee (see Appendix 3 for Procurement & Investment Committee terms of reference).

12.2 In order to assess conflicts of interest, the Panel shall use the categories listed in Table 1 below along with an assessment of materiality as per the matrix provided below.

Table 1.

|            |  |
|------------|--|
| Category 1 | A Financial interest: This is where an individual may get direct financial benefits from the consequences of a commissioning decision.   |
| Category 2 | A Non-financial professional interest: 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. |
| Category 3 | A Non-financial personal interest: 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 financial benefit  |
| Category 4 | An Indirect interest: 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  |

Materiality Matrix

|                                     |                                 |  |  |                             |                           |
|-------------------------------------|---------------------------------|--|--|-----------------------------|---------------------------|
| Implications Reputational/Financial |                                 |  |  |                             |                           |
|                                     |                                 |  |  |                             |                           |
|                                     |                                 |  |  |                             |                           |
|                                     |                                 |  |  |                             |                           |
|                                     |                                 |  |  |                             |                           |
|                                     |                                 |  |  |                             |                           |
|                                     | Non-financial personal interest | Indirect non-financial professional interest | Direct financial professional interest | Indirect financial interest | Direct financial interest |

### ***Step 3 – Delegation of decision-making by the Board to the Procurement & Investment Committee***

- i. Where decisions on a particular matter which would ordinarily be made by the Board cannot be made by the Board, due to conflicts of interest affecting quorum, then decisions must be formally delegated to the Procurement & Investment Committee as recommended to, and approved by the Board (see Appendix 3 for Procurement & Investment Committee terms of reference).
- ii. Such decisions may include for example the decision to approve a specification for services in which the GP members have an interest (by virtue of the GP Federation potentially being able to provide those services), or the final decision to award a contract following a procurement process in which the GP members have an interest (by virtue of the GP Federation bidding for the contract or being a potential bidder for a contract).
- iii. Where the Conflict of Interest Screening Panel has made a recommendation to the Board for an item to be delegated to the Procurement & Investment Committee, the Board will be asked to approve this recommendation. Details of the Board discussion and final decision on the recommendation must be recorded within the Board minutes.

### **13. When a conflict of interest arises during a meeting which has not previously been declared**

- 13.1 If, during the course of a meeting, an interest arises which has not been previously declared, a declaration must be made by the member, specifying the agenda item the potential conflict of interest relates to, and detailing the nature of that conflict. This will be recorded in the minutes.
- 13.2 The chair of the meeting has responsibility for deciding whether there is a conflict of interest and the appropriate course of corresponding action. In making such decisions, the chair may wish to consult the Director Performance & Corporate Affairs, who has responsibility for issues relating to conflicts of interest. All decisions, and details of how any conflict of interest issue has been managed, should be recorded in the minutes of the meeting and published in the registers.
- 13.3 The Director Performance & Corporate Affairs will ensure that following the meeting the conflict of interest is recorded on the appropriate register of interests and that the individual concerned is reminded of their obligations to declare any actual or potential conflicts of interest as soon as they become aware of them.

### **14. When the chair/deputy chair of a meeting is conflicted**

- 14.1 Where the chair/deputy chair of any meeting of the CCG, including sub-committees, has a personal interest, previously declared or otherwise, in relation to the scheduled or likely business of the meeting, they must make a declaration and the vice-chair will act as chair for the relevant part of the meeting. Where arrangements have been confirmed for the management of the conflict of interests or potential conflicts of

interests in relation to the chair, the meeting must ensure these are followed. Where no arrangements have been confirmed, the vice-chair may require the chair to withdraw from the meeting or part of it. In the event the designated vice-chair is unavailable, the members of the meeting will select a substitute.

14.2 Any declarations of interests, and arrangements agreed, in any meeting of the CCG, its committees or sub-groups, or the Board, will be recorded in the relevant minutes.

## **15. Managing Conflicts of Interest: contractors and people who provide services to the CCG**

15.1 Anyone seeking information in relation to a procurement, or participating in a 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 any relevant conflict or potential conflict of interest (Appendix 5).

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

## **16. Register of Procurement Decisions**

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

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

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

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

- Ensuring that both registers are available in a prominent place on the CCG's website; and
- Making both registers available upon request for inspection at the CCG headquarters.

## **17. Procurement Issues**

17.1 The CCG recognises that conflicts and potential conflicts of interest may arise during a procurement exercise. Examples of this could be through a competitive tender

process, Any Qualified Provider, or in the context of co-commissioning e.g. decision-making GPs commissioning primary medical care.

- 17.2 In order to provide assurance to the public that the CCG adheres to the Procurement, Patient Choice and Competition Regulations, good practice, and that it does not engage in any anti-competitive behaviour, the CCG will address factors outlined in Appendix 4 – which is a template that will be used by the CCG whenever it is commissioning services from GP Practices or any other organisation that GPs may have a financial interest in.
- 17.3 The CCG will use Appendix 4 as outlined above in order to provide further assurances as follows:
- that the CCG is seeking and encouraging scrutiny of its decision-making process;
  - to Health and Wellbeing Boards, local Healthwatch and to local communities that the proposed service meets local needs and priorities; it will enable them to raise questions if they have concerns about the approach being taken;
  - to the audit committee and, where necessary, external auditors, that a robust process has been followed in deciding to commission the service, in selecting the appropriate procurement route, and in addressing potential conflicts; and
  - To NHS England in their role as assurers of the co-commissioning arrangements.

## **18. Designing Service Requirements**

- 18.1 It is good practice to engage relevant providers, especially clinicians, in confirming that the design of service specifications will meet patient need. Such engagement, done transparently and fairly, is legal. However, 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.
- 18.2 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 process by which these outcomes are to be achieved. As well as supporting innovation, this helps prevent bias towards particular providers in the specification of services.
- 18.3 Such engagement should follow the three main principles of procurement law, namely equal treatment, non-discrimination and transparency. This includes ensuring that the same information is given to all.
- 18.4 Other steps include:
- Advertise the fact that a service design/re-design exercise is taking place widely and invite comments from any potential providers and other interested parties (ensuring a record is kept of all interactions);

- As the service design develops, engage with a wide range of providers on an on-going basis to seek comments on the proposed design, e.g. via the CCG's website or via workshops with interested parties;
- Use engagement to help shape the requirement to meet patient need but take care not to gear the requirement in favour of any particular provider(s);
- If appropriate, engage the advice of an independent clinical adviser on the design of the service;
- Be transparent about procedures;
- Ensure at all stages that potential providers are aware of how the service will be commissioned; and
- Maintain commercial confidentiality of information received from providers.

18.5 When engaging providers on service design, the CCG will bear in mind that they have ultimate responsibility for service design and for selecting the provider of services. Monitor has issued guidance on the use of provider boards in service design.

18.6 The CCG will also need to ensure that it has systems in place for managing conflicts of interest on an on-going basis, for instance, by monitoring a contract that has been awarded to a provider in which an individual commissioner has a stake.

## **19. Reviewing Governance and Decision Making Processes**

19.1 The CCG will keep under review its governance arrangements for managing conflicts of interest to ensure that they reflect current guidance and are appropriate, particularly in relation to any co-commissioning roles. This will include consideration of the following:

- The make-up of the Board, committees and sub-committees;
- Whether there are sufficient management and internal controls to detect breaches of the CCG's conflicts of interest policy, including appropriate external oversight and adequate provision for whistleblowing, of which the CCG has a separate Whistleblowing Policy (procedures set out within the Fraud, Corruption and Bribery Policy should be followed where fraud, bribery or corruption is suspected); and
- How non-compliance with policies and procedures relating to conflicts of interest has been managed, as well as actions taken to address non-compliance, which will be escalated to the Audit Committee for an incident review.

## **20. Conduct expected of individuals involved in the CCG**

- 20.1 The conduct expected of individuals involved in the CCG is fully documented in the CCG's Constitution under section 8.
- 20.2 Staff (whether directly employed or not, temporary or permanent), Board members, members of the CCG, committee members, sub-committee members and members of other working groups will at all times comply with this policy and the Constitution and be aware of their responsibilities as outlined in it. They should act in good faith and in the interests of the CCG and should follow the Seven Principles of Public Life, set out by the Committee on Standards in Public Life (the Nolan Principles); these Principles are incorporated into the CCG's Constitution at Appendix F.
- 20.3 In any transaction undertaken in support of the CCG's exercise of its commissioning functions (including conversations between two or more individuals, emails, correspondence and any other form of communication), individuals must ensure, where they are aware of an interest, that they conform to the arrangements confirmed for the management of that interest. Where an individual has not had confirmation of arrangements for managing the interest, they must declare their interest at the earliest possible opportunity in the course of that transaction, and declare that interest as soon as possible thereafter. The individual must also inform either their line manager (in the case of staff), or the Director Performance & Corporate Affairs of the transaction.
- 20.4 The Director Performance & Corporate Affairs will take such steps as deemed appropriate, and request information deemed appropriate from individuals, to ensure that all conflicts of interest and potential conflicts of interest are declared.

## **21. The role of the Corporate Affairs Team**

- 21.1 The Corporate Affairs Team will:
- Provide administrative support to the Conflict of Interest Screening Panel and Procurement & Investment Committee;
  - Receive declarations of interests from all new members and employees of the CCG and Board;
  - Update the registers of interests accordingly and ensure they are publicly available;
  - Ensure declarations of interest are taken as a standing item at every CCG Board, committee and sub-committee meeting and that they are recorded in the relevant minutes.

## **22. Non-Compliance**

- 22.1 Individuals must recognise their responsibilities with regard to declaring conflicts of interest, and be proactive in declaring and maintaining their personal entries in any register. 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 or removal from office.

22.2 As well as actions to address non-compliance, the Director Performance & Corporate Affairs will escalate any concerns to the Audit Committee in order for an incident review to be conducted.

22.3 Any instances where fraud, bribery and/or corruption is suspected will be investigated by the CCG's Counter Fraud Specialist and may lead to criminal prosecution.

## **23. Raising Concerns and Breaches**

23.1 It is the duty of every employee of West Leicestershire CCG, governing body member, committee or sub-committee member and GP practice member to speak up about genuine concerns in relation to the administration of the CCG's policy on conflicts of interest management, and to report these concerns.

23.2 Individuals should not ignore their suspicions or investigate themselves, but rather speak to the designated CCG point of contacts for these matters, the Director Performance & Corporate Affairs and Head of Corporate Governance.

23.3 Any non-compliance with this policy should be reported in accordance with the terms below.

23.4 Effective management of conflicts of interest requires an environment and culture where individuals feel supported and confident in declaring relevant information, including notifying any actual or suspected breaches of the rules.

Anonymised details of breaches will be published on the CCG's website for the purpose of learning and development.

## **24. Reporting breaches**

24.1 West Leicestershire CCG has a clear process for managing breaches of this conflicts of interest policy. The process is set out within the WLCCG Conflicts of Interest Guidance at Appendix 7 to this policy and includes information on:

- How the breach should be recorded;
- How it should be investigated;
- The governance arrangements and reporting mechanisms;
- How this policy links to whistleblowing and HR policies;
- Who to notify at NHS England and when to do so

## **25. Monitoring**

25.1 This policy will be reviewed annually by the Audit Committee.

25.2 An Internal Audit of how Conflict of Interest is handled in the CCG is undertaken annually.

25.3 The Audit Committee will review all registers of interests on an annual basis and take any action necessary highlighted by the review.

## **26. Reporting**

26.1 An annual report on the management of Conflicts of Interest will be presented to the Audit Committee.

## **27. Training and Raising Awareness**

27.1 The CCG will ensure that all members and employees are aware of this policy. The following steps will be taken to raise awareness:

- Policy will be introduced to new starters (employees and members) and will be included within the induction material and as part of development programme for new Board members. This will include completion of training packages, summary guides and other training provided by NHS England;
- Annual reminders of the policy via internal communication methods and publication on the CCG's website and intranet;
- Regular reminders sent to all members to update declaration forms; and
- Staff and members should also refer to their respective professional codes of conduct relating to the declaration of conflicts of interest.

## **28. Equality & Diversity Statement**

28.1 WLCCG is committed to equality of opportunity for its employees and members and does not unlawfully discriminate on the basis of their "protected characteristics" as defined in the Equality Act 2010 - age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. An Equality Impact Assessment has been completed for this policy.

## Appendix 1: Template Declaration of interests for CCG members and employees

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

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

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

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

|  |
|--|
|  |
|--|

**Signed:**

**Date:**

**Signed:**                      **Position:**  
**(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>

## Types of interest

| Type of Interest                            | Description   |
|---|---|
| <b>Financial Interests</b>                  | <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 (see paragraph 56 to 57);</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> |
| <b>Non-Financial Professional Interests</b> | <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>   |
| <b>Non-Financial Personal Interests</b>     | <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 financial benefit. This could include, for example, where the individual is:</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 health.</li> </ul>   |
| <b>Indirect Interests</b>                   | <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</p>  |

| Type of Interest | Description   |
|------------------|---|
|                  | <p>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> |

## **Appendix 2 – Conflicts of Interest Screening Panel Procedure**

### **1. Role and Remit of the Conflict of Interest Screening Panel**

- 1.1 The Conflict of Interest (Col) Screening Panel is established in accordance with West Leicestershire Clinical Commissioning Group's Constitution section 8.2.2, (the CCG Constitution) to make arrangements to manage conflicts and potential conflicts of interest to ensure that decisions made by the CCG will be taken and seen to be taken without the influence of external or private interest.
- 1.2 It shall be the responsibility of the Col Screening Panel to ensure that any actual or perceived conflicts of interest are managed effectively in an open and transparent way.
- 1.3 The Col Screening Panel is an advisory body to the Board. The Panel (Chair or Member) will make its recommendations to the Board regarding the management of each conflict. Such recommendations are to be approved by the Board and such recommendations and approvals shall be recorded in the meeting minutes.

### **2. Conduct of the Panel**

- 2.1 The Col Panel shall follow all applicable national guidance relating to the management of Conflicts of Interest and procurement of healthcare services, and this will be supported by an appropriate training package.
- 2.2 All members and attendees of the Panel shall be required to follow the Code of Business Conduct and Nolan Principles as articulated in the Constitution.
- 2.3 Panel members shall declare their own interests to the business at each meeting with such notice as to allow time for substitution where required.

### **3. Membership**

- 3.1 The Col shall comprise the following members:
  - Chair - Board Lay Member, normally Lay Member for Audit & Governance, however, in their absence another Lay Member may be asked to deputise
  - CCG Deputy Chair (clinician) (or suitably qualified nominated deputy, which must be another GP Board Member)
  - The Chief Finance Officer (or suitably qualified nominated deputy)
  - The Director Performance & Corporate Affairs (or suitably qualified nominated deputy)
- 3.2 In Attendance:
  - Other members of CCG teams where relevant.

## **4. Quoracy**

- 4.1 The quorum necessary for the conduct of business shall be the chair or their deputy, 1 non-GP member of the Board and 1 clinician. Where a voting member has nominated a suitably qualified deputy, they will be entitled to vote.

## **5. Principles**

- 5.1 When assessing actual, perceived, or potential conflicts of interest, the Panel shall adhere to the following principles:
- As a clinically led organisation, clinical input must be evident throughout the entire process of decision-making. This includes establishing strategy, planning, service specification, procurement, decision-making and execution;
  - Clinicians must always be involved in discussions strategic and planning unless not appropriate
  - Clinicians must always be involved in decision making unless not appropriate
  - Individuals concerned are responsible for declaring any actual, perceived, or potential conflict of interest;
  - Where there is doubt as to a Col, the Panel and members shall err on the side of caution and proceed as though there is a Col;
  - The Panel shall uphold the principles of good governance as set out in the Constitution at all times.

## **6. Screening Process**

- 6.1 The Col Screening Panel will review Board and Board committee agendas to ensure Cols are identified and suitable management arrangements are made.
- 6.2 The Panel shall review each agenda to determine:
1. Who is conflicted;
  2. To what extent they are conflicted (by using the categories and matrix below as a guide);
  3. What level of involvement can the individual have with the item/s concerned, i.e. to be present and involved, present and not involved or to absent themselves;
  4. If the Board or committee is required to make a decision, whether there will be any issues relating to its quorum as a result of the Col;
  5. Whether it is necessary to delegate any decision to the "Procurement & Investment Committee".
- 6.3 In order to assess Cols the Panel shall use the categories listed in Table 1 below along with an assessment of materiality as per the matrix provided, which will be used as a guide.
- 6.4 Each declaration of interest on the CCG's Register of Interest shall be categorised as per Table 1, below. If during the Panel's assessment of the agenda it is identified that an actual, perceived, or potential Col has not been

formally declared and categorised, the Panel will contact the member to clarify the Col and seek an updated or new declaration from them. Following the updated declaration, the Panel will recommend appropriate management arrangements for handling the conflict.

- 6.5 In addition to using the categories the Panel shall assess the level of materiality that exists for each conflict by referring to the matrix as a guide. By assessing both the category and materiality of each conflict, the Panel will be able to objectively apply judgement to the appropriate management arrangements that are required for each conflict.

Table 1.

|            |  |
|------------|--|
| Category 1 | A Financial interest: This is where an individual may get direct financial benefits from the consequences of a commissioning decision.   |
| Category 2 | A Non-financial professional interest: 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. |
| Category 3 | A Non-financial personal interest: 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 financial benefit  |
| Category 4 | An Indirect interest: 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  |

Materiality Matrix

|                                     |                                 |  |  |                             |                           |
|-------------------------------------|---------------------------------|--|--|-----------------------------|---------------------------|
| Implications Reputational/Financial |                                 |  |  |                             |                           |
|                                     |                                 |  |  |                             |                           |
|                                     |                                 |  |  |                             |                           |
|                                     |                                 |  |  |                             |                           |
|                                     |                                 |  |  |                             |                           |
|                                     | Non-financial personal interest | Indirect non-financial professional interest | Direct financial professional interest | Indirect financial interest | Direct financial interest |

- 6.6 For each conflict identified and discussed by the Panel, the Panel shall complete the provided template to record:
- The category that the conflict falls into (as per Table 1)
  - The materiality of the conflict – using the matrix as a guide
  - The Panel's recommendations to the Board regarding management of the conflict
  - The Panel's justification for the course of action it recommends for the conflict.
- 6.7 This template will be kept as a record for audit purposes.

## **7. Possible Outcomes of the Screening Process**

- 7.1 Where the Panel determines that an interest is significant, for example, a direct pecuniary interest (category 1) involving a significant contract (using the materiality matrix), then the individual should not take part in either the discussion or decision for that item. An example of this is where a local GP Federation has an interest in services being commissioned by the CCG and the materiality is high.
- 7.2 Alternatively, there may be circumstances where the Panel judges it appropriate for the individual concerned to attend the meeting and contribute in the discussion having declared an interest, but not to participate in any decision-making resulting from such discussion (i.e. not having a vote in relation to the decision). An example of this could be a direct pecuniary interest (category 1) but with low materiality.
- 7.3 There will be circumstances where individuals have declared a Col that is not significant enough for them to have to withdraw from either the discussion or decision. The Panel's justification for this decision shall be recorded as per section 6.6 above.

## **7. Delegation to the Procurement & Investment Committee**

- 7.1 Where decisions on a matter cannot be made by the Board or committee due to conflicts of interest affecting the quorum, such decisions shall be delegated by the Board or committee, following a recommendation from the Panel, to the Procurement & Investment Committee.
- 7.2 Such decisions may include, for example, to approve a specification for services in which the GP members have an interest (by virtue of the GP Federation potentially being able to provide those services); or, the final decision to award a contract following a procurement process in which the GP members have an interest (by virtue of the GP Federation bidding for the contract or being a potential bidder for a contract).
- 7.3 The Panel Chair (or Panel Member if the Chair is not present) shall outline and discuss the reasons for the panel's recommendation with the Board or committee prior to the item being delegated to the Procurement & Investment Committee by the Board.
- 7.4 Clinical input in the Procurement & Investment Committee shall be sought by using either non-conflicted out-of-area GPs with comparable experience, or by using non-conflicted WLCCG Member Practice GPs.

## Terms of Reference

Procurement and Investment Committee

| Version Tracking |               |  |        |                 |
|------------------|---------------|--|--------|-----------------|
| Version          | Date          | Revision Description   | Editor | Approval Status |
| 0.1              |               |  |        | Draft           |
| 0.2              |               | Updated to reflect DAC Beachcroft advice                           | GS     | Draft           |
| 1.0              | 13 Oct 2015   | Approved by Board  | GS     | Approved        |
| 1.1              | November 2017 | Updated job title of Director of Performance and Corporate Affairs |        | Approved        |
| 1.2              | 10 July 2018  | Approved by Board  | LG     | Approved        |

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## **1. CONSTITUTION**

- 1.1 The Procurement and Investment (P&I) Committee is a duly authorised committee of the West Leicestershire Clinical Commissioning Group (the CCG).

## **2. PURPOSE**

- 2.1 The purpose of the P&I Committee is to consider procurement and investment decisions where the Board of the CCG or its committees is unable to do so due to conflicts of interest and/or where quoracy affects decision making.
- 2.2 Where the Board or committee is of the view that decisions on a particular matter should not be made by the Board as result of potential conflicts of interest, the Board/committee may delegate such decision-making to the P&I Committee.
- 2.3 Such decisions may include approving a specification for services in which the GP members have an interest (by virtue of the GP Federation potentially being able to provide those services), or the decision to award a contract following a procurement process in which the GP members have an interest (by virtue of the GP Federation bidding for the contract).
- 2.4 Commissioning decisions will tend to have both clinical and financial elements. The P&I Committee must consider (but is not limited to) the financial element to the decision, whilst ensuring that adequate GP input to the decision is considered.
- 2.5 The delegating Board/committee must set a clear scope for each decision to be considered by the P&I Committee. The Committee is not however restricted in relation to information taken into account when coming to their decisions (for example, see paragraph 4.1.2 below).

## **3. AUTHORITY**

- 3.1 The Committee shall operate within the Corporate Governance Framework (i.e. The Constitution, Standing Orders, Standing Financial Instructions, and Scheme of Delegation & Reservation) of the CCG.
- 3.2 The Committee is authorised by the Board to undertake the duties set out in these terms of reference.

## **4. DUTIES**

- 4.1 The Committee undertake the following duties:
- 4.1.1 It is the duty of the Committee to make procurement and investment decisions as and when the Board/committee refers these to it. In so doing, the Committee shall:
- 4.1.2 Have due regard for:
- 4.1.2.1 Applicable procurement legislation and national guidance;
- 4.1.2.2 The strategy, aims, and objectives of the CCG;
- 4.1.2.3 Clinical leadership and input;
- 4.1.2.4 CCG and LLR commissioning arrangements
- 4.1.3 Consider all options on merit as defined in procurement documentation such as Invitations to Tender;
- 4.1.4 Where it is felt necessary by the P&I Committee, for example where in extraordinary circumstances the Committee is unable to make a decision or where clarification of the scope for the decision is required, the Committee may refer a matter back to the Board/committee with clear recommendations for next steps and further delegation if required.

## **5. REPORTING**

- 5.1 The P&I Committee shall report to the delegating Board/committee by summary written report to the next available meeting following each Committee meeting.

## **6. MEMBERSHIP**

- 6.1 The P&I Committee shall comprise the following members:
- 6.1.1 A chair who is an independent lay member of the Board;
  - 6.1.2 A deputy chair who is also an independent lay member of the Board;
  - 6.1.3 Two non-conflicted GPs (see below);
  - 6.1.4 The Registered Nurse (or suitably qualified nominated deputy);
  - 6.1.5 The Accountable Officer (or suitably qualified nominated deputy)
  - 6.1.6 The Chief Finance Officer (or suitably qualified nominated deputy)
  - 6.1.7 The Director of Performance and Corporate Affairs (or suitably qualified nominated deputy)

## **7. QUORUM AND VOTING**

- 7.1 The quorum necessary for the conduct of business shall be the chair or their deputy, three non-GP members of the Board, and one GP member. Where a voting member has nominated a suitably qualified deputy, they will be entitled to vote.
- 7.2 This quorum provides for an 'independent' majority. The GP member should be a non-conflicted GP from either the CCG or from outside of the CCG's area (but from an area which is demographically similar to that of the CCG) as a full voting member of the Committee. The inclusion of this GP member would provide appropriate clinical input at GP level.
- 7.3 Decisions will be made by consensus whenever possible. Where this is not possible, a decision put to a vote at a meeting of the Committee shall be determined by simple majority of the voting members present.
- 7.4 In the case of an equal number of votes for and against any motion or resolution, the Chair of the Committee shall have a second and casting vote.

## **8. GROUNDS FOR OBJECTION**

- 8.1 Should the Board/committee wish to dispute a decision made by the Committee, the Board will meet to determine their concerns. These concerns will be considered at a special meeting of the P&I Committee where the Committee will consider any valid objection (see paragraph 8.2 below) to the decision. The Clinical Chair of the Board may attend the special committee meeting. The Committee may invite/request any person to attend such a meeting to provide information. The P&I Committee will consider all information and make a further decision on the item subject to objection.
- 8.2 Reasonable grounds for objection include:
- 8.2.1 Factual error in the materials submitted for decision;
  - 8.2.2 Factually incomplete or inaccurate interpretation of key facts or figures by the Committee.
  - 8.2.3 Where an item requires a very high level of clinical engagement, and the information considered by the Committee requires update from a delivery perspective

- 8.3 Alternatively, the P&I Committee may appoint an independent arbiter (of appropriate experience and standing e.g. the Chair of another CCG) for the purpose of considering challenges or objections.

## **9. SECRETARIAT SERVICES**

- 9.1 The Director of Performance and Corporate Affairs (the Secretary) shall act as Secretary to the Committee.

### **9.2 Notice and Conduct of Meetings – The Secretary shall:**

- 9.2.1 Call meetings of the Committee at the request of the Conflicts of Interest Screening Panel and subsequent approval of the Board/relevant committee, or following discussion at the direct request of the Board/committee

- 9.3 The agenda shall be agreed by the Chair of the Committee in consultation with the Secretary.

- 9.4 Unless otherwise agreed, notice of each meeting confirming the venue, time and date, together with an agenda of items to be discussed, shall be available to each member of the Committee, and where appropriate, other persons required to attend, no later than five [5] working days before the date of the meeting.

- 9.5 Supporting papers shall be provided to members and to other attendees as appropriate, at the same time (i.e. no later than three [3] working days before the date of the meeting).

- 9.6 The Chair may call extraordinary meetings in the event of urgent business with no prior notice.

### **9.7 Minutes of Meetings – The Secretary shall:**

- 9.7.1 Minute the proceedings and resolutions of the Committee, including the names of members present and others in attendance;

- 9.7.2 Maintain and monitor a log of agreed actions and performance-manage each action to completion;

- 9.7.3 Make available the Minutes of meetings and the Log of Actions in draft format no later than three [3] working days after the date of the meeting.

## **10. PROCEDURAL DOCUMENTS AND CORPORATE RECORD KEEPING**

- 10.1 The Committee shall:

- 10.1.1 Prepare, review and approve procedural documents (strategies, policies, protocols and procedures) as set out in the Procedural Document Framework i.e. Policy for Polices;

- 10.1.2 Maintain the corporate records and evidence required to demonstrate how it has discharged its duties to the CCG; and,

- 10.1.3 Pursue gaps in evidence and assurance to demonstrate the successful achievement of the Committee's objectives.

## **11. FREQUENCY OF MEETINGS**

- 11.1 The Committee shall meet at least four [4] times a year and at such other times as the Board shall require.

**12. REVIEW OF TERMS OF REFERENCE**

- 12.1 At least once a year, the Committee shall review its own constitution, performance, and terms of reference to ensure it is operating at maximum effectiveness and recommend any changes it considers necessary to the Board for approval.

**Last Review: July 2018**

**Next Review: By July 2019**

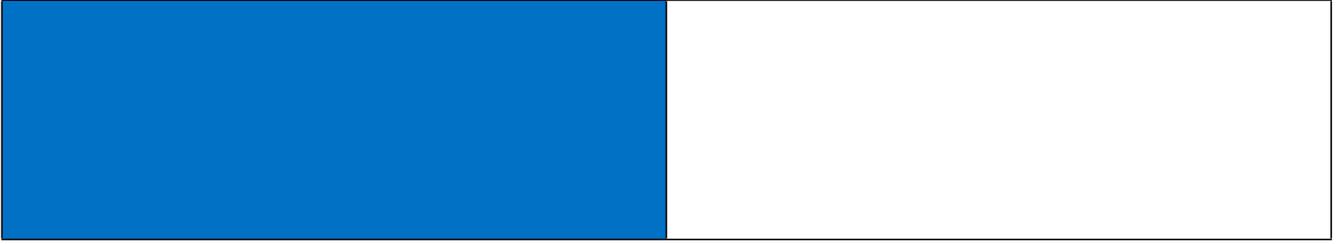


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|   |  |
|---|--|
| <b>Additional question when qualifying a provider on a list or framework or pre selection for tender (including but not limited to any qualified provider) or direct award (for services where national tariffs do not apply)</b> |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

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

|  |  |
|--|--|
| <b>Additional questions for proposed direct awards to GP providers</b> |  |
|  |  |
|  |  |



## Appendix 5 - Declaration of conflict of interests for bidders/contractors template

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

|                                |  |
|--------------------------------|--|
| <b>Name of Relevant Person</b> | <i>[complete for all Relevant Persons]</i> |
| <b>Interests</b>               |  |

|                         |                |  |
|-------------------------|----------------|--|
| <b>Type of Interest</b> | <b>Details</b> | <b>Personal interest or that of a family member, close friend or other acquaintance?</b> |
|                         |                |  |

| Type of Interest   | Details | Personal interest or that of a family member, close friend or other acquaintance? |
|--|---------|---|
| <b>Provision of services or other work for the CCG or NHS England</b>  |         |   |
| <b>Provision of services or other work for any other potential bidder in respect of this project or procurement process</b>  |         |   |
| <b>Any other connection with the CCG or NHS England, whether personal or professional, which the public could perceive may impair or otherwise influence the CCG's or any of its members' or employees' judgements, decisions or actions</b> |         |   |

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

Signed:

Print name:

On behalf of:

Date:

## Appendix 6 – West Leicestershire Conflicts of Interest Guidance (Including process for reporting breaches)

### Conflicts of Interest Guidance for WLCCG Staff

In line with WLCCG's constitution, all potential conflicts of interest must be declared and recorded as a matter of course. This applies to Board members, members of sub-committees, all members of the CCG (i.e. each practice) and all staff employed by the CCG. Please see below the relevant clauses from WLCCG's constitution.

Should you need to declare a potential conflict of interest then this can be done via email or verbally to the Director Performance & Corporate Affairs, the Head of Corporate Governance or the Corporate Affairs Officer.

#### Conflicts of Interest

Section 14O of the National Health Service Act (2006), as amended by the Health and Social Care Act (2012), requires the Group to make arrangements for the management of conflicts and potential conflicts of interest to ensure that decisions made by the Group will be taken and seen to be taken without any possibility of the influence of external or private interest.

Where an employee, an individual contracted to work on behalf of the Group, Group member, member of the governing body, or a member of a committee or a sub-group of the Group, has an interest, or becomes aware of an interest which could lead to a conflict of interests, that must be considered as a potential conflict, and is subject to the provisions of the Conflicts of Interest Policy.

A conflict of interest will include

**Financial interests:** This is where an individual may get direct financial benefits from the consequences of a commissioning decision. This could, for example, include being:

- A director, including a non-executive director, or senior employee in a private company or public limited company or other organisation which is doing, or which is likely, or possibly seeking to do, business with health or social care organisations.
- A shareholder (or similar ownership interests), a partner or owner of a private or not-for-profit company, business, partnership or consultancy which is doing, or which is likely, or possibly seeking to do, business with health or social care organisations.
- A management consultant for a provider. This could also include an individual being:
  - In secondary employment;
  - In receipt of secondary income from a provider;
  - In receipt of a grant from a provider;
  - In receipt of any payments (for example honoraria, one-off payments, day allowances or travel or subsistence) from a provider;

- In receipt of research funding, including grants that may be received by the individual or any organisation in which they have an interest or role; and
- Having a pension that is funded by a provider (where the value of this might be affected by the success or failure of the provider).

**Non-financial professional interests:** 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:

- An advocate for a particular group of patients;
- A GP with special interests e.g., in dermatology, acupuncture etc.
- A member of a particular specialist professional body (although routine GP membership of the RCGP, British Medical Association (BMA) or a medical defence organisation would not usually by itself amount to an interest which needed to be declared);
- An advisor for the Care Quality Commission (CQC) or the National Institute for Health and Care Excellence (NICE);
- A medical researcher. GPs and practice managers, who are members of the governing body or committees of the CCG, should declare details of their roles and responsibilities held within their GP practices.

**Non-financial personal interests:** 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 financial benefit. This could include, for example, where the individual is:

- A voluntary sector champion for a provider;
- A volunteer for a provider;
- A member of a voluntary sector board or has any other position of authority in or connection with a voluntary sector organisation;
- Suffering from a particular condition requiring individually funded treatment (usually funded under an Individual Funding Request);
- A member of a lobby or pressure group with an interest in health.

**Indirect interests:** This is where an individual has a close association with an individual who has a financial interest, a non-financial professional interest or a non-financial personal interest in a commissioning decision (as those categories are described above) for example, a:

- Spouse / partner
- Close relative e.g., parent, grandparent, child, grandchild or sibling;
- Close friend;
- Business partner.

A declaration of interest for a “business partner” in a GP partnership should include all relevant collective interests of the partnership, and all interests of their fellow GP partners (which could be done by cross referring to the separate declarations made by those GP partners, rather than by repeating the same information verbatim).

Whether an interest held by another person gives rise to a conflict of interests will depend upon the nature of the relationship between that person and the individual, and the role of the individual within the CCG.

If in doubt, the individual concerned should assume that a potential conflict of interest exists.

### **Declaring and Registering Interests**

The Group will maintain one or more registers of the interests of

- a) The members of its governing body
- b) The members of committees, sub-committees or sub-groups of its governing body
- c) Its employees, and individuals contracted to work on behalf of the Group
- d) Members of the CCG (i.e. each practice)

The registers will be published on the Group's website at [www.westleicestershireccg.nhs.uk](http://www.westleicestershireccg.nhs.uk) and made available for inspection, by appointment, at the administrative offices at 55 Woodgate, Loughborough, LE11 2TZ.

The register containing employee declarations of interest is published in summary form only (i.e. with names and identifying detail removed)

Individuals are required to declare any interest that they have, in relation to a decision to be made in the exercise of the commissioning functions of the Group, in writing to the governing body, as soon as they are aware of it, and in any event no later than 28 days after becoming aware. Individuals are required to complete a declaration on joining the organisation, every six months, and on changing role within the organisation

Where an individual is unable to provide a declaration in writing, for example, if a conflict becomes apparent in the course of a meeting, they will make an oral declaration before witnesses, and provide a written declaration as soon as possible thereafter.

The audit committee will ensure that all registers of interest are reviewed regularly, and updated as necessary.

### **Managing Conflicts of Interest: general**

Individual members of the Group, the governing body, committees or sub-groups of its governing body, staff and members of the CCG (i.e. each practice) must comply with the arrangements determined by the Group for managing conflicts or potential conflicts of interest.

The Director Performance & Corporate Affairs and Head of Corporate Governance will ensure that for every interest declared, either in writing or by oral declaration, arrangements

are in place to manage the conflict of interests or potential conflict of interests, in order to ensure the integrity of the Group's decision making processes.

Arrangements for the management of conflicts of interest are to be determined by the Director Performance & Corporate Affairs and will include the requirement to put in writing to the relevant individual arrangements for managing the conflict of interests or potential conflicts of interests, within a week of declaration. The arrangements will confirm the following:

- a) when an individual should withdraw from a specified activity, on a temporary or permanent basis
- b) monitoring of the specified activity undertaken by the individual, either by a line manager, colleague or other designated individual

Where an interest has been declared, either in writing or by oral declaration, the declarer should ensure that before participating in any activity connected with the Group's exercise of its commissioning functions, they have received confirmation of the arrangements to manage the conflict of interest or potential conflict of interest from the Director Performance & Corporate Affairs.

Where an individual member, employee or an individual contracted to work on behalf of the Group is aware of an interest which:

- a) has not been declared, either in the register or orally, they must declare this at the start of a meeting
- b) has previously been declared, in relation to the scheduled or likely business of the meeting, the individual concerned must 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 interests or potential conflict of interests

The chair of the meeting will then determine how this should be managed and inform the individual of their decision. 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 must comply with these arrangements, which will be recorded in the minutes of the meeting.

Where the chair of any meeting of the Group, including committees, sub-groups, or the governing body, has a personal interest, previously declared or otherwise, in relation to the scheduled or likely business of the meeting, they must make a declaration and the vice-chair will act as chair for the relevant part of the meeting. Where arrangements have been confirmed for the management of the conflict of interests or potential conflicts of interests in relation to the chair, the meeting must ensure these are followed. Where no arrangements have been confirmed, the vice-chair may require the chair to withdraw from the meeting or part of it. In the event the designated vice-chair is unavailable, the members of the meeting will select a substitute.

Any declarations of interests, and arrangements agreed, in any meeting of the Group, its committees or sub-groups, or the governing body, will be recorded in the relevant minutes.

Where 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 vice-chair) will determine whether or not the discussion can proceed.

In making this decision the chair (or vice-chair) will consider whether the meeting is quorate, in accordance with the number and balance of membership set out in the Group's standing orders. Where the meeting is not quorate, owing to the absence (temporary or otherwise) of certain members, the discussion 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 (or vice-chair) of the meeting shall consult with the Director Performance & Corporate Affairs on the action to be taken.

Actions may include:

- a) requiring another of the Group's committees or sub-groups, or the Group's governing body (as appropriate), which can be quorate, to progress the item of business, or if this is not possible
- b) inviting on a temporary basis one or more of the following to make up the quorum (where these are permitted members of the governing body or committee or sub-group in question) so that the Group can progress the item of business
  - i) a member of the clinical commissioning group who is an individual
  - ii) a member of a relevant Health and Wellbeing Board
  - iii) a member of the governing body of another clinical commissioning group

These arrangements must be recorded in the minutes of the meeting.

In any transaction undertaken in support of the Group's exercise of its commissioning functions (including conversations between two or more individuals, emails, correspondence and any other form of communication), individuals must ensure, where they are aware of an interest, that they conform to the arrangements confirmed for the management of that interest. Where an individual has not had confirmation of arrangements for managing the interest, they must declare their interest at the earliest possible opportunity in the course of that transaction, and declare that interest as soon as possible thereafter. The individual must also inform either their line manager (in the case of staff), or the Director Performance & Corporate Affairs of the transaction.

The Director Performance & Corporate Affairs will take such steps as deemed appropriate, and request information deemed appropriate from individuals, to ensure that all conflicts of interest and potential conflicts of interest are declared.

## **Gifts and Hospitality**

The Group maintains a register of gifts and hospitality which records both accepted and declined gifts and hospitality. The Group's Gifts, Hospitality and Sponsorship Policy ensures that there are robust processes in place to ensure that such individuals do not accept gifts or hospitality or other benefits, which might reasonably be seen to compromise their professional judgement or integrity.

The gift and hospitality register is published on the Group's website.

## **Raising Concerns and Breaches**

It is the duty of every employee of the Group, governing body member, committee or sub-committee member and GP practice member to speak up about genuine concerns in relation to the administration of the CCG's policy on conflicts of interest management, and to report these concerns.

Individuals should not ignore their suspicions or investigate themselves, but rather speak to the designated CCG point of contacts for these matters, the Director Performance & Corporate Affairs and Head of Corporate Governance.

Any non-compliance with this policy should be reported in accordance with the terms below.

Effective management of conflicts of interest requires an environment and culture where individuals feel supported and confident in declaring relevant information, including notifying any actual or suspected breaches of the rules.

Anonymised details of breaches will be published on the CCG's website for the purpose of learning and development.

## **Reporting Concerns**

Any individual who has concerns about the possible breach of the provisions of the Conflicts of Interest or Gifts, Hospitality and Sponsorship Policies should report this to the Director Performance & Corporate Affairs or Head of Corporate Governance immediately in person/by telephone or in writing. The reporting of concerns regarding breaches of these policies link to the provisions of the Raising Concerns at Work (Whistleblowing) Policy.

Reports of breaches are investigated and recorded within Corporate Affairs. Breaches are reported to the Group's Audit Committee, and an anonymised record of breaches will be published on the Group's website for the purposes of learning and development.

## Appendix 7

# Conflicts of Interest Policy Process for Reporting Breaches

## Background

- 1.1 In the current healthcare commissioning system, where providers are involved in commissioning decisions, there is an increased risk that decisions relating to how care is provided and by who, may be influenced by private interests. This may call into question the integrity and probity of the Clinical Commissioning Group (CCG).
- 1.2 CCGs manage conflicts of interest as part of their day-to-day activities. Effective handling of such conflicts is crucial for the maintenance of public trust in the commissioning system. Importantly, it also serves to give confidence to patients, providers, Parliament and taxpayers that CCG commissioning decisions are robust, fair, and transparent and offer value for money.
- 1.3 West Leicestershire CCG recognises the importance of appropriately managing conflicts of interest with respect to how it conducts its business and how decisions are made. Although such conflicts of interest are inevitable, having processes to appropriately identify and manage them is essential to maintain the integrity of the NHS commissioning system and to protect the CCG, its employees and its member practices from allegations and perceptions of wrong-doing.
- 1.4 Since West Leicestershire CCG became Authorised in 2012, conflicts of interest have been managed in accordance with section 8 of our Constitution, which outlines the processes in place for effectively identifying and managing conflicts of interest.

## Process for reporting concerns and breaches

- 1.5 This document sets out the process to be used pursuant to section 23 of the Conflicts of Interest Policy approved by the CCG Governing Body on the 11<sup>th</sup> October 2016.
- 1.6 Section 23 of the Policy states that;

*'It is the duty of every employee of West Leicestershire CCG, governing body member, committee or sub-committee member and GP practice member to speak up about genuine concerns in relation to the administration of the CCG's policy on conflicts of interest management, and to report these concerns.'*

Concerns regarding breaches of the provisions of the Policy may also be made by members of the public.

- 1.7 Individuals should not ignore their suspicions or investigate themselves, but rather speak to the designated CCG point of contacts for these matters, the Director Performance & Corporate Affairs and Head of Corporate Governance.
- 1.8 Effective management of conflicts of interest requires an environment and culture where individuals feel supported and confident in declaring relevant information, including notifying any actual or suspected breaches of the rules. To that end, the

handling of reports of suspected breaches will be swift and sensitive to the concerns of individuals.

Anonymised details of breaches will be published on the CCG's website for the purpose of learning and development.

## **Process and timeframes**

- 1.9 Referrals of concerns or breaches of the provisions of the Policy should be made to the Director Performance & Corporate Affairs or Head of Corporate Governance at:

55 Woodgate  
Loughborough  
Leicestershire  
LE11 2TZ  
Tel: 01509 567 700

Or alternatively (for staff, Governing Body members and GP Practice members) by meeting with the Director Performance & Corporate Affairs or Head of Corporate Governance in person.

When referrals are made, sufficient detail of the concern or breach should be provided to enable an investigation to be undertaken. Where insufficient detail of the concern is provided, it is unlikely that an effective investigation can be undertaken. In matters where this is the case, the referrer will be advised.

- 1.10 Upon receipt of sufficient details of a concern or breach, the Director Performance & Corporate Affairs or Head of Corporate Governance will undertake an investigation, aiming to complete this activity in 20 working days (sooner if the circumstances allow). The referrer will be advised if additional time is required due to complexity or other matter impacting upon the investigation.
- 1.11 In undertaking their investigation, the Director Performance & Corporate Affairs or Head of Corporate Governance will have unfettered access to all documentation held by WLCCG. They will also have access to all individuals working within and with WLCCG in order to interview them and gather evidence. Details of all of the information gathered within the investigation process will be maintained securely by the WLCCG.
- 1.12 The individual reporting their concern will be provided with confirmation of the conclusions of the investigation and next steps.
- 1.13 A report setting out the concern, the conclusions of the investigation and next steps will be reported to the Audit Committee at its next available meeting after the close of the investigation.
- 1.13 Within 7 days of the Audit Committee meeting consideration of the investigation, anonymised details of the referral will be published on the WLCCG website identifying;
- The issue
  - A precis of the conclusion(s) of the investigation

- Lessons learned and next steps (where applicable)

1.14 Within 7 days of the Audit Committee meeting, the Director Performance & Corporate Affairs will advise NHS England of the referral, investigation, conclusions and next steps.

## Appendix 8 - Conflicts of Interest: Political Parties

### *Introduction*

1. Active political involvement and commitments may give rise to the perception of conflicts of interest for people who are members of the CCG's governing body or who have decision making authority for commissioning matters. There is no blanket prohibition on individuals becoming involved in political activity.
2. Anyone is entitled to be a member of a political party or organisation. However, there are a small number of occasions where public disclosure of political activity may risk compromising perceptions of the CCG's decision making, suggesting outside influence or conflict of interest.
3. In order to safeguard against this, members of the governing body and CCG staff are asked to declare any political memberships or political involvement on the Declaration of Interest form. Such declarations will be recorded in the CCG's register of interests, and where required by virtue of the role or seniority of the individual, published in the CCG's publically available register.
4. The Conflicts of Interest Guardian, supported by the Director Performance and Corporate Affairs, is responsible for providing advice to individuals in order to ensure fairness and consistency in dealing with these matters.
5. **Individuals should seek the advice of the Director Performance & Corporate Affairs where appropriate, to discuss individual circumstances in confidence.**
6. Active political involvement can give rise to questions about the impartiality of the individual, and in turn suggest that there may be conflicts of interest in the CCG's decision making. Involvement in such activity must be notified to the CCG, and in some circumstances the individual will be asked to consider whether such activity is consistent with the need to ensure that the CCG's decision making and commissioning activities are free from conflicts of interest.
7. There are three general considerations in each individual case:
  - the level of political involvement
  - the nature and level of the individual's job
  - the extent of involvement in CCG commissioning decisions.
8. Considerations about the level of the individual's political involvement - nationally or locally - may include, for instance:
  - being publicly identified as a candidate or prospective candidate for a parliamentary, assembly or local authority election; no matter that the date of the election is not confirmed;
  - holding any office in a party political organisation at a national or local level.
  - speaking in public on matters of political controversy or public policy;
  - expressing views on matters of political controversy or public policy in books, articles, leaflets, letters in the press, social networking sites, blogs, etc. canvassing for a political party or candidate for election.
  - demonstrating practical support in the public domain for a political party or candidate, for instance, distributing leaflets, arranging transport etc.

9. We would expect all members of staff, board members and committee members to declare involvement in such activities such that the CCG can ensure that any conflict is appropriately identified, recorded and managed.
10. In addition, further restrictions may apply to the activities which can be undertaken by a member of CCG staff during an election or 'purdah' period.

## **Appendix 9: Summary of key aspects of the guidance on managing conflicts of interest relating to commissioning of new care models**

### **Introduction**

1. Conflicts of interest can arise throughout the whole commissioning cycle from needs assessment, to procurement exercises, to contract monitoring. They arise in many situations, environments and forms of commissioning.
2. Where CCGs are commissioning new care models<sup>1</sup>, particularly those that include primary medical services, it is likely that there will be some individuals with roles in the CCG (whether clinical or non-clinical), that also have roles within a potential provider, or may be affected by decisions relating to new care models. Any conflicts of interest must be identified and appropriately managed, in accordance with this statutory guidance.
3. This annex is intended to provide further advice and support to help CCGs to manage conflicts of interest in the commissioning of new care models. It summarises key aspects of the statutory guidance which are of particular relevance to commissioning new care models rather than setting out new requirements. Whilst this annex highlights some of the key aspects of the statutory guidance, CCGs should always refer to, and comply with, the full statutory guidance.

### **Identifying and managing conflicts of interest**

4. The statutory guidance for CCGs is clear that any individual who has a material interest in an organisation which provides, or is likely to provide, substantial services to a CCG (whether as a provider of healthcare or provider of commissioning support services, or otherwise) should recognise the inherent conflict of interest risk that may arise and should not be a member of the governing body or of a committee or sub-committee of the CCG.
5. In the case of new care models, it is perhaps likely that there will be individuals with roles in both the CCG and new care model provider/potential provider. These conflicts of interest should be identified as soon as possible, and appropriately managed locally. The position should also be reviewed whenever an individual's role, responsibility or circumstances change in a way that affects the individual's interests. For example where an individual takes on a new role outside the CCG, or enters into a new business or relationship, these new interests should be promptly declared and appropriately managed in accordance with the statutory guidance.
6. There will be occasions where the conflict of interest is profound and acute. In such scenarios (such as where an individual has a direct financial interest which gives rise to a conflict, e.g., secondary employment or involvement with an organisation which benefits financially from contracts for the supply of goods and services to a CCG or aspires to be a new care model provider), it is likely that

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<sup>1</sup> Where we refer to 'new care models' in this note, we are referring to any Multi-speciality Community Provider (MCP), Primary and Acute Care Systems (PACS) or other arrangements of a similar scale or scope that (directly or indirectly) includes primary medical services.

CCGs will want to consider whether, practically, such an interest is manageable at all. CCGs should note that this can arise in relation to both clinical and nonclinical members/roles. If an interest is not manageable, the appropriate course of action may be to refuse to allow the circumstances which gave rise to the conflict to persist. This may require an individual to step down from a particular role and/or move to another role within the CCG and may require the CCG to take action to terminate an appointment if the individual refuses to step down. CCGs should ensure that their contracts of employment and letters of appointment, HR policies, governing body and committee terms of reference and standing orders are reviewed to ensure that they enable the CCG to take appropriate action to manage conflicts of interest robustly and effectively in such circumstances.

7. Where a member of CCG staff participating in a meeting has dual roles, for example a role with the CCG and a role with a new care model provider organisation, but it is not considered necessary to exclude them from the whole or any part of a CCG meeting, he or she should ensure that the capacity in which they continue to participate in the discussions is made clear and correctly recorded in the meeting minutes, but where it is appropriate for them to participate in decisions they must only do so if they are acting in their CCG role.

8. CCGs should take all reasonable steps to ensure that employees, committee members, contractors and others engaged under contract with them are aware of the requirement to inform the CCG if they are employed or engaged in, or wish to be employed or engaged in, any employment or consultancy work in addition to their work with the CCG (for example, in relation to new care model arrangements).

9. CCGs should identify as soon as possible where staff might be affected by the outcome of a procurement exercise, e.g., they may transfer to a provider (or their role may materially change) following the award of a contract. This should be treated as a relevant interest, and CCGs should ensure they manage the potential conflict. This conflict of interest arises as soon as individuals are able to identify that their role may be personally affected.

10. Similarly, CCGs should identify and manage potential conflicts of interest where staff are involved in both the contract management of existing contracts, and involved in procurement of related new contracts.

### **Governance arrangements**

11. Appropriate governance arrangements must be put in place that ensure that conflicts of interest are identified and managed appropriately, in accordance with this statutory guidance, without compromising the CCG's ability to make robust commissioning decisions.

12. We know that some CCGs are adapting existing governance arrangements and others developing new ones to manage the risks that can arise when commissioning new care models. We are therefore, not recommending a "one size fits" all governance approach, but have included some examples of governance models which CCGs may want to consider.

13. The principles set out in the general statutory guidance on managing conflicts of interest ([paragraph 19-23 of the guidance](#)), including the Nolan Principles and the Good Governance Standards for Public Services (2004), should underpin all governance arrangements.

14. CCGs should consider whether it is appropriate for the Governing Body to take decisions on new care models or (if there are too many conflicted members to make this possible) whether it would be appropriate to refer decisions to a CCG committee.

#### Primary Care Commissioning Committee

15. Where a CCG has full delegation for primary medical services, CCGs could consider delegating the commissioning and contract management of the entire new care model to its Primary Care Commissioning Committee. This Committee is constituted with a lay and executive majority, and includes a requirement to invite a Local Authority and Healthwatch representative to attend ([see paragraph 97 onwards of the guidance](#)).

16. Should this approach be adopted, the CCG may also want to increase the representation of other relevant clinicians on the Primary Care Commissioning Committee when new care models are being considered, as mentioned in [Paragraph 98 of the guidance](#). The use of the Primary Care Commissioning Committee may assist with the management of conflicts/quorum issues at governing body level without the creation of a new forum/committee within the CCG.

17. If the CCG does not have a Primary Care Commissioning Committee, the CCG might want to consider whether it would be appropriate/advantageous to establish either:

- a) A **new care model commissioning committee** (with membership including relevant non-conflicted clinicians, and formal decision making powers similar to a Primary Care Commissioning Committee (“NCM Commissioning Committee”)); or
- b) A separate **clinical advisory committee**, to act as an advisory body to provide clinical input to the Governing Body in connection with a new care model project, with representation from all providers involved or potentially involved in the new care model but with formal decision making powers remaining reserved to the governing body (“NCM Clinical Advisory Committee”).

#### NCM Commissioning Committee

18. The establishment of a NCM Commissioning Committee could help to provide an alternative forum for decisions where it is not possible/appropriate for decisions to be made by the Governing Body due to the existence of multiple conflicts of interest amongst members of the Governing Body. The NCM Commissioning Committee should be established as a sub-committee of the Governing Body.

19. The CCG could make the NCM Commissioning Committee responsible for oversight of the procurement process and provide assurance that appropriate governance is in place, managing conflicts of interest and making decisions in relation to new care models on behalf of the CCG. CCGs may need to amend their constitution if it does not currently contain a power to set up such a committee either with formal delegated decision making powers or containing the proposed categories of individuals (see below).

20. The NCM Commissioning Committee should be chaired by a lay member and include non-conflicted GPs and CCG members, and relevant non-conflicted secondary care clinicians.

## NCM Clinical Advisory Committee

21. This advisory committee would need to include appropriate clinical representation from all potential providers, but have no decision making powers.

With conflicts of interest declared and managed appropriately, the NCM Clinical Advisory Committee could formally advise the CCG Governing Body on clinical matters relating to the new care model, in accordance with a scope and remit specified by the Governing Body.

22. This would provide assurance that there is appropriate clinical input into Governing Body decisions, whilst creating a clear distinction between the clinical/provider side input and the commissioner decision-making powers (retained by the Governing Body, with any conflicts on the Governing Body managed in accordance with this statutory guidance and constitution of the CCG).

23. From a procurement perspective the Public Contracts Regulations 2015 encourage early market engagement and input into procurement processes. However, this must be managed very carefully and done in an open, transparent and fair way. Advice should therefore be taken as to how best to constitute the NCM Clinical Advisory Committee to ensure all potential participants have the same opportunity. Furthermore it would also be important to ensure that the advice provided to the CCG by this committee is considered proportionately alongside all other relevant information. Ultimately it will be the responsibility of the CCG to run an award process in accordance with the relevant procurement rules and this should be a process which does not unfairly favour any one particular provider or group of providers.

24. When considering what approach to adopt (whether adopting an NCM Commissioning Committee, NCM Clinical Advisory committee or otherwise) each CCG will need to consider the best approach for their particular circumstances whilst ensuring robust governance arrangements are put in place. Depending on the circumstances, either of the approaches in paragraph 17 above may help to give the CCG assurance that there was appropriate clinical input into decisions, whilst supporting the management of conflicts. When considering its options the CCG will, in particular, need to bear in mind any joint / delegated commissioning arrangements that it already has in place either with NHS England, other CCGs or local authorities and how those arrangements impact on its options.

## **Provider engagement**

25. It is good practice to engage relevant providers, especially clinicians, in confirming that the design of service specifications will meet patient needs. This may include providers from the acute, primary, community, and mental health sectors, and may include NHS, third sector and private sector providers. Such engagement, done transparently and fairly, is entirely legal. However, conflicts of interest, as well as challenges to the fairness of the procurement process, can arise 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. CCGs should be particularly mindful of these issues when engaging with existing / potential providers in relation to the

development of new care models and CCGs must ensure they comply with their statutory obligations including, but not limited to, their obligations under the National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations 2013 and the Public Contracts Regulations 2015.

**Further support**

26. If you have any queries about this advice, please contact:  
[england.cocommissioning@nhs.net](mailto:england.cocommissioning@nhs.net).