East Leicestershire and Rutland Clinical Commissioning Group

Conflicts of Interest, Gifts and Hospitality and Sponsorship Policy

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DOCUMENT STATUS:
This is a controlled document. Whilst this document may be printed, the electronic version posted on the intranet is the controlled copy. Any printed copies of the document are not controlled.

RELATED DOCUMENTS:
This document will reference additional policies and procedures which will provide additional information.

All ELRCCG policies can be provided in large print or Braille formats upon request. An interpreting service, including sign language, is also available.

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Introduction

1. NHS East Leicestershire and Rutland Clinical Commissioning Group (hereafter ELR CCG or "the CCG") recognises that managing conflicts of interest is essential as part of its day-to-day activities. Effective handling of conflicts of interest is crucial to give confidence to patients, tax payers, healthcare providers and Parliament that CCG commissioning decisions are robust, fair and transparent and offer value for money. Failure to manage conflicts of interest could lead to legal challenge and even criminal action in the event of fraud, bribery and corruption.

Policy Statement

2. This policy has been developed in line with updated guidance published by NHS England in June 2017. NHS England's guidance has been compiled in conjunction with guidance and documentation listed within the section entitled "Useful Documents and References".

3. This Policy sets out the approach for ELR CCG to identify, manage and record any conflicts of interest that may arise as part of the commissioning of healthcare for the residents of East Leicestershire and Rutland or whilst providing services locally. Reference to supporting material, guidance and legislation detailed within the "Useful Documents and References" section should be read in conjunction with this Policy where appropriate.

4. The aim of this policy is to:

    - Avoid conflicts of interest wherever possible; and manage conflicts of interests where unavoidable;
    - Safeguard clinically led commissioning, whilst ensuring investment decisions are made objectively;
    - demonstrate that ELR CCG is acting fairly and transparently and in the best interests of patients and local populations;
    - Ensure that the CCG operates within the legal framework;
    - Set out the arrangements for managing conflicts of interest ;
    - Support openness and transparency;
    - Uphold confidence and trust in the NHS;
    - Ensure that assurance can be given to NHS England when services are commissioned from GP practices that the appropriate processes have been put in place to ensure fairness.

Principles

5. The members of the ELR CCG Governing Body, committees or individuals who take decisions, where they are acting on behalf of the public or spending public money, are expected to observe the principles of good governance in the way they do their business. The principles underpinning this Policy include:

- The Nolan Principles – all those with a position in public life should adhere to the Nolan principles which are:

    - **Selflessness** – holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends;
    - **Integrity** – holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties;
    - **Objectivity** – in carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit;
    - **Accountability** – holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office;
    - **Openness** – holders of public office should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands;
    - **Honesty** – holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest;
    - **Leadership** – holder of public office should promote and support these principles by leadership and example.

- The Good Governance Standards for Public Services (2004), Office for Public Management (OPM) and Chartered Institute of Public Finance and Accountancy (CIPFA);
- The seven key principles of the NHS Constitution;
- The Equality Act 2010;
- The UK Corporate Governance Code;
- Standards for members of NHS boards and CCG governing bodies in England.

6. NHS England's guidance also highlights general safeguards that should be in place, these safeguards will be particularly important in relation to the key commissioning decision-making points leading up to, during, and after the actual procurement of services, and in deciding whether to go out to procurement. The general safeguards that will be needed to manage conflicts of interest will vary to some extent, depending on at what stage in the commissioning cycle decisions are being made. The following principles will need to be integral to the commissioning of all services, including decisions on whether to continue to commission a service, such as by contract extension. The principles and general safeguards are as follows, conflicts of interest can be managed by:

    a) Doing business appropriately: if commissioners get their needs assessments, consultation mechanisms, commissioning strategies and

procurement procedures right from the outset, then conflicts of interest become much easier to identify, avoid and/or manage, because the rationale for all decision-making will be clear and transparent and should withstand scrutiny;

b) **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 governing body or other decision-making bodies;
    - ensuring individuals receive proper induction and training so that they understand their obligations to declare conflicts of interest. They should establish and maintain registers of interests, and agree in advance how a range of possible situations and scenarios will be handled, rather than waiting until they arise.

c) **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.

d) **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.

e) **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.

f) **Responsiveness and best practice:** ensuring that commissioning intentions are based on local health needs and reflect evidence of best practice – securing 'buy in' from local stakeholders to the clinical case for change.

g) **Transparency:** documenting clearly the approach taken at every stage in the commissioning cycle so that a clear audit trail is evident.

h) **Securing expert advice:** ensuring that plans take into account advice from appropriate health and social care professionals, e.g. through clinical senates and networks, and draw on commissioning support, for instance around formal consultations and for procurement processes.

i) **Engaging with providers:** early engagement with both incumbent and potential new providers over potential changes to the services commissioned for a local population.

j) **Creating clear and transparent commissioning specifications** that reflect the depth of engagement and set out the basis on which any contract will be awarded.

k) **Following proper procurement processes and legal arrangements**, including even-handed approaches to providers.

l) **Ensuring sound record-keeping, including up to date registers of interests;** and

m) A clear, recognised and easily enacted system for dispute resolution.

7. ELR CCG's constitutional arrangements set out how the CCG will comply with these requirements.

8. If applicable, individuals should also refer to their respective professional codes of conduct relating to conflicts of interest.

9. ELR CCG recognises that a perception of wrongdoing, impaired judgement or undue influence can be as detrimental as any of them actually occurring. If in doubt, it is better to assume the existence of a conflict of interest and manage it appropriately rather than ignore it; and that for a conflict of interest to exist, financial gain is not necessary.

10. The CCG also aims to design and implement policy documents that meet the diverse needs of our service, population and workforce, ensuring that none are placed at a disadvantage over others. It takes into account the provisions of the Equality Act 2010 and advances equal opportunities for all. This document has been assessed to ensure that no one receives less favourable treatment on the protected characteristics of their age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex (gender) or sexual orientation.

Scope of the Policy

11. This policy applies to all staff, members of the Governing Body (including lay members, secondary care clinician and GP Governing Body members), agency and interim staff working within all areas across the CCG. It is particularly relevant to anyone who may be placed in a conflict of interest position including all CCG GP Member practices; all groups involved in commissioning, contracting and procurement processes and where decision making is required by those individuals.

12. The CCG will also require that the commissioning support unit (CSU) and other contractors are aware of the contents of this policy.

Statutory requirements and guidance

13. The Health and Social Care Act 2012 (as amended by the Health and Social Care Act 2012) ("the Act") sets out clear requirements of CCGs to make arrangements for managing conflicts of interest and potential conflicts of interest, to ensure they do not affect or appear to affect the integrity of the CCG's decision making process.

14. ELR CCG also aims to adhere to relevant guidance on conflicts of interest issued by professional bodies, including the British Medical Association (BMA);

the Royal College of General Practitioners; the General Medical Council (GMC); and to procurement rules including The Public Contract Regulations 2015 and The National Health Service (procurement, patient choice and competition) (no.2) regulations 2013, as well as the Bribery Act 2010.

15. In line with legal requirements, NHS England published guidance on conflicts of interest to support CCGs; and this Policy is to be read in conjunction with NHS England's guidance.

16. The NHS England's guidance defines conflict of interest as follows:

> "A conflict of interest occurs where an individual's ability to exercise judgement or act in one role is or could be impaired or otherwise influenced by his or her involvement in another roles 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. "

17. The starting point for ELR CCG is section 14O of the Act, which sets out the minimum requirements in terms of what both NHS England and CCGs must do in terms of managing conflicts of interest. For CCGs, this means that they must:

    a. Maintain one or more registers of interest of: the member of the group, members of the governing body, members of its committees or sub-committees of its governing body, and its employees;

    b. Publish, or make arrangements to ensure that members of the public have access to these registers on request;

    c. Make arrangements to ensure individuals declare any conflict or potential conflict in relation to a decisions to be made by the group, and record them in the registers as soon as they become aware of it, and within 28 days;

    d. Make arrangement, 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 group's decision-making processes; and

    e. Have regard to guidance published by NHS England and Monitor in relation to conflicts of interest.

18. Section 14O also imposes a duty on NHS England to publish guidance for CCGs on the discharge of their functions under this section. NHS England has published updated guidance in June 2017 setting out additional requirements on CCGs:

    a. The recommendation for CCGs to have a minimum of three lay members on the Governing Body, in order to support with conflicts of interest management;

    b. To appoint a conflicts of interest guardian, the expectation is that the role will be assumed by the audit chairs, who will be an important point of contact for any conflicts of interest queries or issues;

c. The requirement for CCGs to include a robust process for managing any breaches within their conflict of interest policy and for anonymised details of the breach to be published on the CCG's website for the purpose of learning and development;

d. Adhere to more strengthened provisions around decision-making when a member of the governing body, or committee or sub-committee is conflicted;

e. Adhere to strengthened provisions around the management of gifts and hospitality, including the need for prompt declarations and a publicly accessible register of gifts and hospitality;

f. A requirement for CCGs to include an annual audit of conflicts of interest management within their internal audit plans and to include the findings of this audit within their annual end-of-year governance statement;

g. A requirement for all CCG employees, governing body and committee members and practice staff with involvement in CCG business, to complete mandatory online conflicts of interest training, which will be provided by NHS England.

19. Section 14O is supplemented by the procurement specific requirements set out in the National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 20139. In particular, regulation 6 requires the following:

a. CCGs 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

b. CCGs must keep a record of how it managed any such conflict in relation to NHS commissioning contracts it enters into.

20. An interest is defined for the purposes of regulation 6 as including an interest of the following:

- a GP member practice (i.e. a member of the commissioner organisation);
- a member of the Governing Body of the commissioner;
- a member of its committees or sub-committees or committees or sub-committees of its governing body; or
- an employee.

21. As with section 14O, regulation 6 sets out the basic framework within which CCGs must operate. The detailed requirements are set out in the guidance issued by Monitor (*Substantive guidance on the Procurement, Patient Choice and*

Competition Regulations) and, in particular, section 7 of that statutory guidance (included as Annex 6 to this guidance).

22. It is important to ensure that the management of conflicts of interest includes the management of perceived conflicts and that there is an appropriate record of how such issues are managed, particularly in the context of specific procurement decisions.

23. For a GP or any other individual involved in commissioning, a conflict of interest may, arise when their own judgement as an NHS commissioner could be, or be perceived to be, influenced and impaired by their own concerns and obligations as a healthcare or related provider, as a member of a particular peer, professional or special interest group, or as a friend or family member.

24. The CCG has adopted some of the model templates from NHS England's guidance to support this Policy.

Definition of an Interest

25. For the purposes of this guidance a conflict of interest is defined as "a set of circumstances by which a reasonable person would consider that an individual's ability to apply judgement or act, in the context of delivering, commissioning, or assuring taxpayer funded health and care services is, or could be, impaired or influenced by another interest they hold".

26. A conflict of interest may be:

    a. *Actual:* there is a material conflict between one or more interests; or

    b. *Potential:* there is the possibility of a material conflict between one or more interests in the future.

27. Staff may hold interests for which they cannot see potential conflict. However, caution is always advisable because others may see it differently. It will be important to exercise judgement and to declare such interests where there is otherwise a risk of imputation of improper conduct. The perception of an interest can be as damaging as an actual conflict of interest.

28. 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 and new care models, as CCG staff may here find themselves in a position of being both commissioner and provider of services. Conflicts of interest can arise throughout the whole commissioning cycle from needs assessment, to procurement exercises, to contract monitoring. In this Policy reference to "new care models" makes reference to multi-speciality community providers (MCP), Primary and Acute Care Systems (PACS) or other arrangements of a similar scale or scope.

> "For the purposes of Regulation 6 [*National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 20137*], a conflict will arise

where an individual's ability to exercise judgement 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)*

29. A conflict of interest occurs where an individual's ability to exercise judgement or act in one role is, or could be, impaired or otherwise influenced by his or her involvement in another role or relationship.

30. Interests fall into four categories outlined below. A benefit may arise from the making of a gain or the avoidance of a loss:

    i. **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. This includes involvement with a potential provider of new care model;

    - 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; or

    - A provider of clinical private practice.

31. This could also include an individual being:
    - In employment outside of the CCG;
    - In receipt of secondary income;
    - 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 and Secondary Care Clinician with special interests e.g., in dermatology, acupuncture etc.
- An active 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);
- Engaged in a research role;
- The development and findings of patents and other intellectual property rights which allow staff to protect something that they create, preventing unauthorised use of products or the copying of protected ideas; or

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 and care.

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 family member or relative e.g., parent, grandparent, child, grandchild or sibling;
- Close friend or associate; or
- 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 interest will depend upon the nature of the relationship between that person and the individual, and the role of the individual within the CCG.

32. The above categories and examples are not exhaustive and discretion will be exercised on a case by case basis, having regard to the principles set out in this Policy, in deciding whether any other role, relationship or interest which would impair or otherwise influence the individual's judgement or actions in their role within the CCG. If so, this should be declared and appropriately managed.

33. It is not possible, or practical, to define all instances in which an interest may be an actual or perceived conflict. It is for each individual to exercise their judgement in deciding whether to register any interests that may be construed as a conflict. However, interests that may impact on the work of the Governing Body and should be declared include those listed under section "requirement for declaring conflicts of interests" of this Policy.

34. The individual does not need to exploit his or her position or obtain an actual benefit, financial or otherwise. A potential for competing interests and/or a perception of impaired judgement or undue influence can also be a conflict of interest.

Identification and management of conflicts of interest

35. Conflicts of interest are a common and sometimes unavoidable part of the commissioning and delivery of healthcare. As such, it may not be possible or desirable to completely eliminate the risk of conflicts. Instead, it may be preferable to recognise the associated risks and put measures in place to manage the conflicts appropriately when they do arise.

36. ELR CCG will establish robust systems to identify and manage conflicts of interest. This will involve creating an environment in which CCG staff, governing body and committee members, and member practices feel able, encouraged and obliged to be open, honest and upfront about actual or potential conflicts. Transparency in this regard will lead to effective identification and management of conflicts. The effect should be to make everyone aware of what to do if they suspect a conflict and ensure decision-making is efficient, transparent and fair. To this end, ELR CCG will aim to implement the statutory guidance (and other associated guidance) in a manner that is clear and robust.

37. The Accountable Officer has overall accountability for the CCG's management of conflicts of interest. The Head of Corporate Governance and Legal Affairs has responsibility for:

    a. The day-to-day management of conflicts of interest matters and queries;
    b. Maintaining the CCG's register(s) of interest and the other registers referred to this Policy;
    c. Supporting the Conflicts of Interest Guardian to enable him / her to carry out the role effectively;
    d. Providing advice, support, and guidance on how conflicts of interest should be managed; and
    e. Ensuring that appropriate administrative processes are put in place.

38. There will be occasions where an individual declares an interest in good faith but, upon closer consideration, it is clear that this does not constitute a genuine conflict of interest. Advice can be sought from the Head of Corporate Governance and Legal Affairs to assist in reviewing the interest and whether it needs to be declared.

39. There will be other 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., employment outside the CCG 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 the CCG will want to consider whether, practically, such an interest is manageable at all. If it is not, 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. The CCG's HR policies, governing body and committee terms of reference, and standing orders will be reviewed regularly to ensure the CCG is able to take appropriate action to manage conflicts of interest robustly and effectively in such circumstances.

Gifts and Hospitality

Gifts

40. A 'gift' is defined as any item of cash or goods, or any service, which is provided for personal benefit, free of charge or at less than its commercial value.

41. All gifts of any nature offered to CCG staff, governing body and committee members and individuals within GP member practices by suppliers or contractors linked (currently or prospectively) to the CCG's business should be declined, whatever their value. The person to whom the gifts were offered should also declare the offer to the Head of Corporate Governance and Legal Affairs so the offer, which has been declined, can be recorded on the register.

42. Overarching principles:

    a. CCG staff should not accept gifts that may effect, or be seen to affect, their professional judgement. This overarching principle should apply in all

circumstances;

b. Any personal gift of cash equivalents (e.g. vouchers, tokens, offers of remuneration to attend meeting s whilst in a capacity working for a or representing the CCG) must always be declined, whatever their value and whatever their source, and the offer which has been declined must be declared to Head of Corporate Governance and Legal affairs, who has designated authority to maintain the register of gifts and hospitality and recorded on the register.

43. Gifts from suppliers and contractors:

a. Gifts from suppliers or contractors doing business (or likely to do business) with the CCG should be declined, whatever their value (subject to this, low cost branded promotional aids may be accepted and not declared where they are under the value of a common industry standard of £6 as described in the ABPI Code of Practice for the Parliamentary Industry. The person to who, the gifts were offered should also declare the offer to the Head of Corporate Governance and Legal Affairs.

44. **Gifts from other sources** (e.g. patients, families, service users):

a. CCG staff should not ask for any gifts;
b. modest gifts under the value of £50.00 may be accepted and do not need to be declared;

Hospitality

45. Hospitality means offers of meals, refreshment, travel, accommodation, and other expenses in relation to attendance at meetings, conferences, education and training events etc.

46. Delivery of services across the NHS relies on working with a wide range of partners (including industry and academia) in different places and, sometimes, outside of 'traditional' working hours. As a result, CCG staff will sometimes appropriately receive hospitality. Staff receiving hospitality should always be prepared to justify why it has been accepted, and be mindful that even hospitality of a small value may give rise to perceptions of impropriety and might influence behaviour.

47. A blanket ban on accepting or providing hospitality is neither practical nor desirable from a business point of view. However, individuals should be able to demonstrate that the acceptance or provision of hospitality would benefit the NHS or CCG.

48. **Overarching principles:**

a. CCG staff should not ask for or accept hospitality that may affect, or be see to affect their professional judgement;
b. Hospitality must only be accepted when there is a legitimate business reason and it is proportionate to the nature and purpose of the event,
c. Particular caution should be exercised when hospitality is offered by actual or potential suppliers or contractors, these can be accepted if modest and reasonable, but individuals should always obtain senior approval and declare these.

49. Meals and refreshment:

a. Under a value of £25 may be accepted and need not to be declared;
b. of a value between £25 and £75 may be accepted and must be declared (see also the ABPI Code of Practice for the Pharmaceutical Industry);
c. over a value of £75 should be refused unless (in exceptional circumstances) senior approval is given. A clear reason should be records on an organisation's register(s) of interest as to why it was permissible to accept.

50. Travel and accommodation:

a. Modest offers to pay some or all of the travel and accommodation cost related to attendance at events may be accepted and must be declared;

b. Offers which go beyond modest, or are of a type that the CCG itself might not usually offer, need approval by the Head of Corporate Governance and Legal Affairs or the Chief Finance Officer, should only be accepted in exceptional circumstances, and must be declared. A clear reason should be recorded on the CCG's register(s) of interest as to why it was permissible to accept travel and accommodation of this type;

c. A non-exhaustive list of examples include:
    i. Offers of business class or first class travel and accommodation (including domestic travel); and
    ii. Offers of foreign travel and accommodation.

51. In addition, particular caution should be exercised where hospitality is offered by suppliers or contractors linked (currently or prospectively) to the CCG's business. Offers of this nature can be accepted if they are modest and reasonable but advice should always be sought from a senior member of the CCG (e.g. the Head of Corporate Governance and Legal Affairs) as there may be particular sensitivities, for example if a contract re-tender is imminent. All offers of hospitality from actual or prospective suppliers or contractors (whether or not accepted) should be declared and recorded.

Commercial sponsorship / sponsored events

52. For the purpose of this policy, commercial sponsorship is defined as including: 'NHS funding from an external source, including funding of all, or part of, the costs of a member of staff, NHS research, staff training, pharmaceuticals, equipment, meeting rooms, costs associated with meetings, meals, gifts, hospitality, hotel and transport costs (including trips abroad), provision of free services (including guest speakers), buildings or premises'. Joint working is defined as including: 'situations where for the benefit of patients, the NHS and industry organisations pool skills, experience and resources for the joint development and implementation of patient centred projects and share a commitment to successful delivery'.

53. Sponsorship of NHS events by external parties is valued. Offers to meet some or part of the costs or running an event secures their ability to take place, benefiting NHS staff and patients. Without this funding there may be fewer opportunities for learning, development and partnership working. However, there is potential for conflicts of interest between the organiser and the sponsor, particularly regarding

the ability to market commercial products or services. As a result there should be proper safeguards in place to prevent conflicts occurring.

54. When sponsorships are offered to CCG staff, governing body and committee members, the following principles must be adhered to:

    a. Sponsorship of CCG events by appropriate external bodies (e.g. pharmaceutical companies) should only be approved if a reasonable person would conclude that the event will result in clear benefit for the CCG and the NHS;
    b. During dealings with sponsors there must be no breach of patient or individual confidentiality or data protection rules and regulations;
    c. No information should be supplied to the sponsor from which they could gain a commercial advantage, and information which is not in the public domain should not normally be supplied;
    d. At the CCG's discretion, sponsors or their representatives may attend or take part in the event but they should not have a dominant influence over the content of the main purpose of the event;
    e. The involvement of a sponsor in an event should always be clearly identified in the interest of transparency;
    f. The CCG will make it clear that sponsorship does not equate to endorsement of a company or its products and this should be made visibly clear on any promotional or other materials relating to the event;
    g. Staff will be required to declare their involvement with arranging sponsored events.

55. **Other forms of sponsorship** – organisations external to the CCG or NHS may also sponsor posts or research. However, there is a potential for conflicts of interest to occur, particularly when research funding by external bodies does or could lead to real or perceived commercial advantage, or if sponsored posts cause a conflict of interest between the aims of the sponsor and the aims of the organisation, particularly in relation to procurement and competition. There needs to be transparency and any conflicts of interest should be managed well.A discussion with the Head of Corporate Governance and Legal Affairs and / or the Conflicts of Interest Guardian should take place prior to approval for acceptance of such sponsorship.

56. In all these cases, the CCG and its employees must publicly declare sponsorship or any commercial relationship linked to the supply of goods or services and be held to account for it.

57. Where such collaborative partnerships involve a pharmaceutical company, the arrangements must comply fully with the Medicines (Advertising) Regulations 1994 (regulation 21 'Inducements and hospitality') see also The ABPI Code of Practice for the Pharmaceutical Industry.

58. Whatever type of agreement is entered into, a clinician's judgement must always be based upon clinical evidence that the product is the best for their patients.

Appointments and Roles and Responsibilities in the CCG

59. Everyone in ELR CCG has responsibility to appropriately manage conflicts of interest.

60. The **Governing Body** is responsible for ensuring that:

- the CCG's policies and procedures reflect statutory requirements and good practice particularly in relation to the procurement of services;
- arrangements are in place to ensure decision-making can be audited, reviewed and scrutinised to ensure transparency, openness and effectiveness; and
- adherence to the expectations set out in the Standards for Members of NHS Boards and Clinical Commissioning Groups.

61. Appointing governing body or committee members and senior employees - on appointing governing body, committee or sub-committee members and senior staff, the appointing panel will need to consider whether conflicts of interest should exclude individuals from being appointed to the relevant role. This will need to be considered on a case-by-case basis but the CCG's constitution and processes will reflect the CCG's general principles.

62. The appointing panel will assess the materiality of the interest, in particular whether the individual (or any person with whom they have a close association) could benefit (whether financially or otherwise) from any decision the CCG might make. This will be particularly relevant for governing body, committee and sub-committee appointments, but should also be considered for all employees and especially those operating at senior level.

63. The appointing panel will also need to determine the extent of the interest and the nature of the appointee's proposed role within the CCG. If the interest is related to an area of business significant enough that the individual would be unable to operate effectively and make a full and proper contribution in the proposed role, then that individual should not be appointed to the role.

64. 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, including 'new care model' providers or healthcare 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, in particular if the nature and extent of their interest and the nature of their proposed role is such that they are likely to need to exclude themselves from decision-making on so regular a basis that it significantly limits their ability to effectively perform that role. Specific considerations in relation to delegated primary care are set in this Policy.

65. **CCG lay members -** the CCG's lay members play a critical role in:

- providing scrutiny, challenge and an independent voice in support of robust and transparent decision-making and management of conflicts of interest; and
- Chairing a number of CCG committees, including the Audit Committee and Primary Care Commissioning Committee.

66. In line with NHS England's guidance, the primary care commissioning committee will continue to be chaired by a lay member; a second lay member will assume the role of the vice-chair, and the secondary care clinician will continue to form part of the membership of the committee.

67. **Conflicts of Interest Guardian** - this role is undertaken by the CCG's audit chair, as he has no provider interests. The conflicts of interest guardian will be supported by the CCG's Head of Corporate Governance and Legal Affairs.

68. The conflicts of interest guardian will liaise with the Head of Corporate Governance and Legal Affairs on a regular basis ensuring he / she is well briefed on conflicts of interest matters and issues arising.

69. The Conflicts of Interest Guardian will, in collaboration with the CCG's Head of Corporate Governance and Legal Affairs:

    a. Act as a conduit for GP practice staff, members of the public and healthcare professionals who have any concerns with regards to conflicts of interest;

    b. Be a safe point of contact for employees or workers of the CCG to raise any concerns in relation to this policy;

    c. Support the rigorous application of conflict of interest principles and policies;

    d. Provide independent advice and judgment where there is any doubt about how to apply conflicts of interest policies and principles in an individual situation;

    e. Provide advice on minimising the risks of conflicts of interest

    f. Complete the annual self-certification in relation to safeguards in place for primary care commissioning.

70. Whilst the Conflicts of Interest Guardian has an important role within the management of conflicts of interest, executive members of the CCG's governing body have an on-going responsibility for ensuring the robust management of conflicts of interest, and all CCG employees, governing body and committee members and member practices will continue to have individual responsibility in playing their part on an ongoing and daily basis.

71. **Primary Care Commissioning Committee Chair** - the primary care commissioning committee will have a lay chair and lay vice chair. To ensure appropriate oversight and assurance, and to ensure the CCG audit chair's position as Conflicts of Interest Guardian is not compromised, the audit chair will not hold the position of chair of the primary care commissioning committee.

72. The CCG audit chair can however serve on the primary care commissioning committee where required to support the quorum, provided appropriate safeguards are put in place to avoid compromising their role as Conflicts of Interest Guardian. Ideally the CCG audit chair would also not serve as vice chair of the primary care commissioning committee.

73. **GPs** - General Medical Council (GMC) advice recommends that any GP with a responsibility for or involved in, commissioning services must:

- satisfy themselves that all decisions made are fair, transparent and comply with the law;

- keep up to date with and follow the guidance and codes of practice that govern the commissioning of services where they work;

- formally declare any financial interest that they, or someone close to them, or their employer has in a provider company, in accordance with the governance arrangements in the jurisdiction where they work (GP Governing Body members, and GPs from member practices who are involved in CCG business to use form at Appendix A);

- take steps to manage any conflict between their duties as a doctor and their commissioning responsibilities, for example by excluding themselves from the decision making process and any subsequent monitoring arrangements.

74. **Head of Corporate Governance and Legal Affairs** will:

- oversee the arrangements for the management of conflicts of interest ensuring the day-to-day management of conflicts of interest matters and queries;
- Maintain the CCG's register(s) of interest and the other registers referred to this Policy;
- Support the Conflicts of Interest Guardian to enable him / her to carry out the role effectively;
- Provide advice, support, and guidance to the Governing Body, Committees, officers on how conflicts of interest should be managed;
- Ensure that appropriate administrative processes are put in place;
- review this policy on an annual basis and make recommendations to the Audit Committee for any required changes;
- 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, to ensure the integrity of the CCG's decision making processes
- ensure any declarations of interest and appropriate registers are published on the CCG website.

75. **Outside employment** – means employment and other engagements outside of formal employment arrangements. The CCG will take all reasonable steps to ensure that employees, committee members, contractors and others engaged under a contract with the CCG are aware of the requirement to inform the CCG if they are employed or engaged in, or wish to be employed or engage in, any employment or consultancy work in addition to their work with the CCG (for example, in relation to new care model arrangements). The purpose of this is to ensure that the CCG is aware of any potential conflict of interest. Examples of work which might conflict with the business of the CCG, including part-time, temporary and fixed term contract work, include:

    - Employment with another NHS body;
    - Employment with another organisation which might be in a position to supply goods/services to the CCG including paid advisory positions and paid honorariums which relate to bodies likely to do business with the CCG;;
    - Directorships for example of a GP federation or non-executive roles; and
    - Self-employment, including private practice charitable trustee roles, political roles and consultancy work, in a capacity which might conflict with the work of the CCG or which might be in a position to supply goods/services to the CCG.

76. **Individuals will need to obtain prior permission to engage in outside employment, and ELR CCG reserves the right to refuse permission where it believes a conflict will arise which cannot be effectively managed.** ELR CCG is responsible for ensuring that clear and robust organisational policies are in place to manage issues arising from outside employment Staff are required to declare any existing outside employment on appointment; and any new outside employment when it arises. In particular, it is unacceptable for pharmacy advisers or other advisers, employees or consultants to the CCG on matters of procurement to themselves be in receipt of payments from the pharmaceutical or devices sector.

77. Furthermore the CCG may also have a legitimate reason(s) within employment law for knowing about outside employment of staff; even if this does not give rise to risk of a conflict.

78. **All Members of Staff** - it is the responsibility of each employee of the CCG:

    - to ensure that he/she reads and understands the CCG's Conflicts of Interest Policy, the CCG's Constitution, Standing Orders; Prime Financial Policies and Operational Financial Policies and how they apply to him/her;
    - to ensure that he/she does not place him/herself in a position where private interests and NHS duties might conflict;

- do not undertake duties, remunerated or otherwise, outside his/her employment with the CCG if there is any actual or potential conflict with, or prejudice of, the standards set out in this document;

- refuse to accept any casual gifts or inducement by declining politely. Articles of low intrinsic value such as diaries or calendars, or small tokens of gratitude to the value of up to £25 from patients or their relatives, need not necessarily be refused. If in doubt, the line manager or Head of Corporate Governance and Legal Affairs should be consulted. If small gifts are accepted a record of this should be made in the gift and hospitality register which is maintained by the Head of Corporate Governance and Legal Affairs (see further guidance and form at Appendix B);

- acceptance of reasonable levels of hospitality by staff is permissible but should not lead to undue favourable treatment being given to the party providing the hospitality. Any hospitality accepted (or offered and then declined) must be declared by the receiving party;

- offer only modest hospitality such as a working lunch in the course of working meetings. Alcoholic beverages must not be provided;

- maintain appropriate confidentiality at all times in respect of information to which he/she has access in the course of his/her duties. In particular, he/she will observe the strict rules relating to patient confidentiality, and will not misuse commercial information, nor will he/she make it available to other people without consulting the line manager;

- ensure that he/she always conducts him/herself and provides services in such a way as to up-hold the good name of the NHS and the CCG

- adhere to the CCG's disciplinary rules as set out in its disciplinary policy

- be aware and comply with the provisions of the Bribery Act 2010 as amended from time to time

- understand that failure to follow this policy may damage the CCG and its work and so may be viewed as a disciplinary matter, to be dealt with under normal disciplinary procedures, and the penalty could include dismissal.

- **Members of staff <u>must not</u>:**

    - use a current or past official position to obtain preferential rates for private transactions, other than organised schemes for NHS employees, such as Health Service Discounts; and

    - attempt to influence the awarding of contracts by any factors other than those set out in Standing Orders and Prime Financial Policies or otherwise designed to ensure that value for money is obtained.

Declaring interests and gifts and hospitality

79. It is a statutory requirement that the CCG 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. A record of the interest must be made in the register as soon as individuals become aware of it.

80. Periodic reminders for staff, Governing Body and committee members to declare any interests will be sent to staff by the Head of Corporate Governance and Legal Affairs. The Register will be updated regularly (on at least a six monthly basis).

81. As a matter of course, declarations of interest will be made and regularly confirmed or updated.

82. All persons referred to within the scope of this Policy must declare any interests. Declarations of interest should be made as soon as reasonably practicable and by law within 28 days after the interest arises (this could include an interest an individual is pursuing). Declaration of interest forms are available at Appendices A and B.

83. Further opportunities to make declarations include:

- **On appointment:**
  Applicants for any appointment to the CCG or its governing body or any committees will be asked to declare any relevant interests. When an appointment is made, a formal declaration of interests will again be made and recorded.

- **Six-monthly:**
  the Head of Corporate Governance and Legal Affairs will ensure that on a six-monthly basis the register of interests is accurate and up-to-date. Declarations of interest should be obtained from all relevant individuals every six months and where there are no interests or changes to declare, a “nil return” will be recorded.

- **At meetings:**
  All attendees are required to declare their interests as a standing agenda item for every governing body, committee, sub-committee or working group meeting, before the item is discussed. Even if an interest has been recorded in the register of interests, it should still be declared in meetings where matters relating to that interest are discussed. Declarations of interest will be recorded in minutes of meetings.

- **On changing role, responsibility or circumstances:**
  Whenever an individual’s role, responsibility or 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 enters into a new business or relationship starts a new project / piece of work or may be affected by a procurement decision for example if their role may transfer to a proposed new provider), a further declaration should be made to reflect the change in circumstances as

soon as possible, and in any event *within 28 days*. This could involve a conflict of interest ceasing to exist or a new one materialising. It should be made clear to all individuals who are required to make a declaration of interests that if their circumstances change, it is their responsibility to make a further declaration as soon as possible and in any event within 28 days, rather than waiting to be asked. It should also be clear who such individuals should formally notify, and how that team or person can be contacted. ELR CCG may also wish to consider including this requirement in employees' contracts.

84. Whenever interests are declared they should be promptly reported to the Head of Corporate Governance and Legal Affairs who has designated responsibility for maintaining the register of interests and the registers of gifts and hospitality.

Register(s) of interests and gifts and hospitality

85. The CCG has a statutory requirement to maintain one or more registers 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. The CCG will publish, and make arrangements to ensure that members of the public have access to, these registers on request; and will also maintain one or more registers of gifts and hospitality. The CCG should maintain one or more register of interest and one or more register of gifts and hospitality.

86. Declarations of interest and gifts and hospitality should be made by the following :

- **All CCG employees**, including:
  - All full and part time staff;
  - Any staff on sessional or short term contracts;
  - Any students and trainees (including apprentices);
  - Agency staff; and
  - Seconded staff

  In addition, any self-employed consultants or other individuals working for the CCG under a contract for services should make a declaration of interest in accordance with this guidance, as if they were CCG employees.

- **Members of the governing body:** All members of the CCG's committees, sub-committees/sub-groups, including:

  - Co-opted members;
  - Appointed deputies; and
  - Any members of committees/groups from other organisations.

  Where the CCG is participating in a joint committee alongside other CCGs, any interests which are declared by the committee members should be recorded on the register(s) of interest of each participating CCG.

- **All members of the CCG (i.e., each practice)**
  This includes each provider of primary medical services which is a member of the CCG under Section 14O (1) of the 2006 Act. Declarations should be made by the following groups:

    - GP partners (or where the practice is a company, each director);
    - Any individual directly involved with the business or decision-making of the CCG.

87. GPs and other staff within the CCG's member practices are not required to declare offers / receipts of gifts and hospitality to the CCG which are unconnected with their role or involvement with the CCG, and this statutory guidance does not apply to such situations. However, GP staff will need to adhere to other relevant guidance issued by professional bodies.

88. All interests declared must be promptly transferred to the relevant CCG register(s) by the Head of Corporate Governance and Legal Affairs for maintaining registers of interest. An interest should remain on the public register for a minimum of 6 months after the interest has expired. In addition, the CCG will retain a private record of historic interests for a minimum of 6 years after the date on which it expired. The CCG's published register of interests will state that historic interests are retained by the CCG for the specified timeframe, with details of whom to contact to submit a request for this information.

Register(s) of Interest

89. The declaration of interest(s) form and guidance for use by ELR CCG Governing Body members, GPs from member practices who are involved in CCG business, and CCG employees is as at Appendix A. Appendix A contains the following information as a minimum:

    - Name of the person declaring the interest;
    - Position within, or relationship with, the CCG (or NHS England in the event of joint committee);
    - Type of interest e.g., financial interests, non-financial professional interests;
    - Description of interest, including for indirect interests details of the relationship with the person who has the interest;
    - The dates from which the interest relates; and
    - The actions to be taken to mitigate risk - these should be agreed with the individual's line manager or a senior manager within the CCG.

Register of Gifts and Hospitality

90. ELR CCG needs to maintain one or more registers of gifts and hospitality for the individuals listed above (i.e. CCG employees, members of the Governing

Body, and members of the CCG). Individuals are reminded not to accept gifts or hospitality or other benefits, which might reasonably be seen to compromise their professional judgement or integrity.

91. All individuals 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.

Declaration of offers and receipt of gifts and hospitality

92. The guidance and form for declaring gifts and hospitality is at Appendix B. All hospitality or gifts declared must be promptly transferred to a register of gifts and hospitality that all CCGs should maintain. This should include any gifts and hospitality declared in meetings. As a minimum, the register contains the following information:

    a. Recipient's name;

    b. Current position(s) held by the individual (within the CCG);

    c. Date of offer and/or receipt;

    d. Details of the gifts of hospitality

    e. The estimated value of the gifts or hospitality

    f. Details of the supplier/offeror (e.g. their name and the nature of their business);

    g. Details of previous gifts and hospitality offered or accepted by this offeror/ supplier;

    h. Details of the officer reviewing/approving the declaration made and date;

    i. Whether the offer was accepted or not; and

    j. Reasons for accepting or declining the offer.

Publication of registers

93. All CCG employees, members of the governing body and all members of the CCG should declare interests and offers / receipt of gifts and hospitality, however some staff, governing body and committee members are more likely than others to have decision making influence on the use of taxpayers' money because of the requirements of their role. For the purposes of this policy these people are referred to as "decision making staff". Decision making staff, governing body and committee members are those that have a material influence on how taxpayers' money is spent. Decision making staff may also include management, administrative and clinical staff who have the power to enter into contracts on

behalf of the CCG; and / or are involved in decision making concerning the commissioning of services, purchasing of goods, medicines, medical devices or equipment and formulary decisions.

94. As a minimum, the CCG is required to publish the register(s) of interest, and register(s) of gifts and hospitality of decision making staff, governing body and committee members at least annually in a prominent place on the CCG website, and will be made available at the CCG office upon request.

95. In exceptional circumstances, where the public disclosure of information could give rise to a real risk of harm or is prohibited by law, an individual's name and/or other information may be redacted from the publicly available register(s). Where an individual believes that substantial damage or distress may be caused, to him/herself or somebody else by the publication of information about them, they are entitled to request that the information is not published. Such requests must be made in writing. Decisions not to publish information must be made by the Conflicts of Interest Guardian, who should seek appropriate legal advice where required, and the CCG should retain a confidential un-redacted version of the register(s).

96. All decision making staff, governing body and committee members will be made aware, in advance of publication, that the register(s) will be kept, how the information on the registers may be used or shared and that the register(s) will be published. Individuals are made aware of this via the CCG's fair processing notice that details the identity of the data controller, the purposes for which the registers are held and published, and contact details for the data protection officer. This information will be published and made available to individuals identified in the registers.

97. All staff who are not decision making staff but who are still required to make a declaration of interest(s) or a declaration of gifts or hospitality will also be informed in advance of the publication of the register(s) and how the information on the register(s) will be kept and shared. In the main this will be via the CCG's fair processing notice.

98. Interests (including offers of gifts and hospitality) of decision making staff will remain on the public register for a minimum of 6 months. In addition, the CCG is required to retain a private record of historic interests and offers / receipt of gifts and hospitality for a minimum of 6 years after the date on which it expired. The CCG's published register of interests will state that historic interests are retained by the CCG for the specified timeframe, with details of the Head of Corporate Governance and Legal Affairs who can be contacted should a request of this information be made.

99. The register(s) of interests (including the register of gifts and hospitality) will also be published as part of the CCG's Annual Report and Annual Governance Statement. A web link to the CCG's registers is acceptable.

Managing conflicts of interest at meetings

100. CCGs must make arrangements 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 group's decision-making.

101. ELR CCG will review its governance structures and policies for managing conflicts of interest, at agreed intervals, to ensure that they reflect the guidance and are appropriate. This should include consideration of the following:

    a. The **make-up of the governing body and committee structures** and processes for decision-making;

    b. 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 **raising concerns under this policy**;

    c. How **non-compliance** with policies and procedures relating to conflicts of interest will be managed (including how this will be addressed when it relates to contracts already entered into); and

    d. Identifying and implementing **training** or other programmes to assist with compliance, including participation in the training offered by NHS England.

Chairing arrangements and decision-making processes

102. The chair of a meeting of the CCG's governing body or any of its committees, sub-committees or groups has ultimate responsibility for deciding whether there is a conflict of interest and for taking the appropriate course of action in order to manage the conflict of interest.

103. In the event that the chair of a meeting has a conflict of interest, the vice chair is responsible for deciding the appropriate course of action in order to manage the conflict of interest. If the vice chair is also conflicted then the remaining non-conflicted voting members of the meeting should agree between themselves how to manage the conflict(s).

104. In making such decisions, the chair (or vice chair or remaining non-conflicted members as above) may wish to consult with the Conflicts of Interest Guardian or another member of the governing body.

105. It is good practice for the chair, with support of the CCG's Head of Corporate Governance and Legal Affairs and, if required, the Conflicts of Interest Guardian, to proactively consider ahead of meetings what conflicts are likely to arise and how they should be managed, including taking steps to ensure that supporting papers for particular agenda items of private sessions/meetings are not sent to conflicted individuals in advance of the meeting where relevant.

106. To support chairs in their role, they have access to a declaration of interest

checklist for consideration prior to meetings (see Appendix C), which should include details of any declarations of conflicts which have already been made by members of the group.

107. The chair should ask at the beginning of each meeting if anyone has any conflicts of interest to declare in relation to the business to be transacted at the meeting. Each member of the group should declare any interests which are relevant to the business of the meeting whether or not those interests have previously been declared. Any new interests which are declared at a meeting must be included on the CCG's relevant register of interests to ensure it is up-to-date.

108. Similarly, any new offers of gifts or hospitality (whether accepted or not) which are declared at a meeting must be included on the CCG's register of gifts and hospitality to ensure it is up-to-date.

109. It is the responsibility of each individual member of the meeting to declare any relevant interests which they may have. However, should the chair or any other member of the meeting be aware of facts or circumstances which may give rise to a conflict of interests but which have not been declared then they should bring this to the attention of the chair who will decide whether there is a conflict of interest and the appropriate course of action to take in order to manage the conflict of interest.

110. When a member of the meeting (including the chair or vice chair) has a conflict of interest in relation to one or more items of business to be transacted at the meeting, the chair (or vice chair or remaining non-conflicted members where relevant as described above) must decide how to manage the conflict. The appropriate course of action will depend on the particular circumstances, but could include one or more of the following:
    a. Where the chair has a conflict of interest, deciding that the vice chair (or another non-conflicted member of the meeting if the vice chair is also conflicted) should chair all or part of the meeting;

    b. Requiring the individual who has a conflict of interest (including the chair or vice chair if necessary) not to attend the meeting;

    c. Ensuring that the individual concerned does not receive the supporting papers or minutes of the meeting which relate to the matter(s) which give rise to the conflict: requiring the individual to leave the discussion when the relevant matter(s) are being discussed and when any decisions are being taken in relation to those matter(s). In private meetings, this could include requiring the individual to leave the room and in public meetings to either leave the room or join the audience in the public gallery;

    d. Allowing the individual to participate in some or all of the discussion when the relevant matter(s) are being discussed but requiring them to leave the meeting when any decisions are being taken in relation to those matter(s). This may be appropriate where, for example, the conflicted individual has important relevant knowledge and experience of the matter(s) under discussion, which it would be of benefit for the meeting to hear, but this will depend on the nature and extent of the

interest which has been declared;

e. Noting the interest and ensuring that all attendees are aware of the nature and extent of the interest, but allowing the individual to remain and participate in both the discussion and in any decisions. This is only likely to be the appropriate course of action where it is decided that the interest which has been declared is either immaterial or not relevant to the matter(s) under discussion. The conflicts of interest case studies (provided by NHS England) include examples of material and immaterial conflicts of interest.

111. Where the conflict of interest relates to outside employment and an individual continues to participate in meetings pursuant to the preceding two bullet points, 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. Where it is appropriate for them to participate in decisions they must only do so if they are acting in their CCG role.

Primary care commissioning committees and sub-committees

112. **Delegated commissioning** enables ELR CCG to assume responsibility for commissioning general practice services.

113. The CCG's Primary Care Commissioning Committee is a committee established, in line with NHS England's guidance, by the CCG and is separate to the CCG's Governing Body. The interests of all primary care commissioning committee members are recorded on the CCG's register(s) of interests.

114. As a general rule, meetings of the primary care commissioning committee, including the decision-making and deliberations leading up to the decision, should be held in public unless the CCG has concluded it is appropriate to exclude the public where it would be prejudicial to the public interest to hold that part of the meeting in public. Examples of where it may be appropriate to exclude the public include:

a. Information about individual patients or other individuals which includes sensitive personal data is to be discussed;

b. Commercially confidential information is to be discussed, for example the detailed contents of a provider's tender submission;

c. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings is to be discussed;

d. To allow the meeting to proceed without interruption and disruption.

Membership of primary care commissioning committees

115. The CCG will agree the full membership of the primary care commissioning committees, within the following parameters:

- The primary care commissioning committee must be constituted to have a **lay and executive majority**, where lay refers to non-clinical.

This ensures that the meeting will be quorate if all GPs had to withdraw from the decision-making process due to conflicts of interest.

- The primary care commissioning committee should have a lay chair and lay vice chair;

- **GPs** can, and should, be members of the primary care commissioning committee to ensure sufficient clinical input, but must not be in the majority. Appointment of retired GPs or out-of-area GPs to the committee is permitted to ensure clinical input whilst minimising the risk of conflicts of interest.

- A standing invitation must be made to the CCG's **local HealthWatch** representative and **a local authority representative from the local Health and Wellbeing Board** to join the primary care commissioning committee as non-voting attendees, including, where appropriate, for items where the public is excluded for reasons of confidentiality.

- Other individuals could be invited to attend the primary care commissioning committee on an ad-hoc basis to provide **expertise** to support with the decision-making process.

116. The CCG could also consider reciprocal arrangements with other CCGs, for example exchanging GP representatives from their respective GP member practices, or sharing lay or executive members, in order to ensure a majority of lay and executive members and to support effective clinical representation within the primary care commissioning committee.

Primary care commissioning committee decision-making processes and voting arrangements

117. The primary care commissioning committee is a decision-making committee, which is established to exercise the discharge of the primary medical services functions.

118. The quorum requirements for primary care commissioning committee meetings must include a majority of lay and executive members in attendance with eligibility to vote.

119. In the interest of minimising the risks of conflicts of interest, GPs do not have voting rights on the primary care commissioning committee. The arrangements do not preclude GP participation in strategic discussions on primary care issues, subject to appropriate management of conflicts of interest. They apply to decision-making on procurement issues and the deliberations leading up to the decision.

120. Whilst sub-committees or sub-groups of the primary care commissioning committee can be established e.g., to develop business cases and options appraisals, ultimate decision-making responsibility for the primary medical services functions rest with the primary care commissioning committee. For example, whilst a sub-group could develop an options appraisal, it should take

the options to the primary care commissioning committee for their review and decision-making. CCG will carefully consider the membership of sub-groups and will also consider appointing a lay member as the chair of the group.

121. It is important that conflicts of interests are managed appropriately within sub-committees and sub-groups. As an additional safeguard, sub-groups will submit their minutes to the primary care commissioning committee, detailing any conflicts and how they have been managed. The primary care commissioning committee should be satisfied that conflicts of interest have been managed appropriately in its sub-committees / groups and take action where there are concerns.

Minute-taking

122. It is imperative that the CCG ensures complete transparency in its decision-making processes through robust record-keeping. If any conflicts of interest are declared or otherwise arise in a meeting, the chair must ensure the following information is recorded in the minutes:

- **who has the interest**;
- **the nature of the interest and why it gives rise to a conflict**, including the magnitude of any interest;
- the **items on the agenda** to **which the interest relates**;
- **how the conflict was agreed to be managed**; and
- **evidence that the conflict was managed as intended** (for example recording the points during the meeting when particular individuals left or returned to the meeting).

Managing conflicts of interest throughout the commissioning cycle

123. Conflicts of interest need to be managed appropriately throughout the whole commissioning cycle. At the outset of a commissioning process, the relevant interests of all individuals involved should be identified and clear arrangements put in place to manage any conflicts of interest. This includes consideration as to which stages of the process a conflicted individual should not participate in, and, in some circumstances, whether that individual should be involved in the process at all. The conflicts of interest case studies provided by NHS England include examples of this. The CCG will identify and appropriately manage any conflicts of interest that may arise where staff are involved in both the management of existing contracts and the procurement of related / replacement contracts.

124. The CCG will also identify as soon as possible where staff 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 the CCG will ensure it manages the potential conflict.

Designing service requirements

125. The way in which services are designed can either increase or decrease the extent of perceived or actual conflicts of interest. Particular attention will be given to public and patient involvement in service development.

126. Public involvement supports transparent and credible commissioning decisions. It should happen at every stage of the commissioning cycle from needs assessment, planning and prioritisation to service design, procurement and monitoring. CCGs have legal duties under the Act to properly involve patients and the public in their respective commissioning processes and decisions.

Provider engagement

127. 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. The CCG will be particularly mindful of these issues when engaging with existing / potential providers in relation to the development of new care models.

128. Provider 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 at the same time and procedures are transparent. This mitigates the risk of potential legal challenge.

129. As the service design develops, it is good practice to engage with a range of providers on an on-going basis to seek comments on the proposed design e.g., via the commissioners website and/or via workshops with interested parties (ensuring a record is kept of all interaction). NHS Improvement has issued guidance on the use of provider boards in service design.

130. Engagement should help to shape the requirement to meet patient need, but it is important not to gear the requirement in favour of any particular provider(s). If appropriate, the advice of an independent clinical adviser on the design of the service should be secured.

131. The CCG will ensure that it meets any obligation to document its decisions including, but not limited to, any obligations under the National Health Services (Procurement, Patient Choice and Competition) (No 2) regulations 2013 and the Public Contracts Regulations 2015.

Specifications

132. The CCG, as a Commissioner should seek, as far as possible, to specify the outcomes it wishes to see delivered through a new service, rather than the process by which these outcomes are to be achieved. As well as supporting innovation, this helps prevent bias towards particular providers in the specification of services. However, we will also need to ensure careful consideration is given to the appropriate degree of financial risk transfer in any new contractual model.

133. Specifications should be clear and transparent, reflecting the depth of engagement, and set out the basis on which any contract will be awarded.

Procurement and awarding grants

134. The CCG will need to be able to recognise and manage any conflicts or potential conflicts of interest that may arise in relation to the procurement of any services or the administration of grants. "Procurement" relates to any purchase of goods, services or works and the term "procurement decision" should be understood in a wide sense to ensure transparency of decision making on spending public funds. The decision to use a single tender action, for instance, is a procurement decision and if it results in the commissioner entering into a new contract, extending an existing contract, or materially altering the terms of an existing contract, then it is a decision that should be recorded.

135. The CCG must comply with two different regimes of procurement law and regulation when commissioning healthcare services: the NHS procurement regime, and the European procurement regime:

    a. The NHS procurement regime – the NHS (Procurement, Patient Choice and Competition (No.2)) Regulations 2013: made under S75 of the 2012 Act; apply only to NHS England and CCGs; enforced by NHS Improvement; and

    b. The European procurement regime – Public Contracts Regulations 2015 (PCR 2015): incorporate the European Public Contracts Directive into national law; apply to all public contracts over the threshold value (€750,000, currently £589,148); enforced through the Courts. The general principles arising under the Treaty on the Functioning of the European Union of equal treatment, transparency, mutual recognition, non- discrimination and proportionality may apply even to public contracts for healthcare services falling below the threshold value if there is likely to be interest from providers in other member states.

136. Whilst the two regimes overlap in terms of some of their requirements, they are not the same – so compliance with one regime does not automatically mean compliance with the other.

137. The National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 201323 states:

CCGs 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

CCGs must keep a record of how it managed any such conflict in relation to NHS commissioning contracts it has entered into. [As set out in paragraph 113 below, details of this should also be published by the CCG.]

The National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013

138. Paragraph 24 of PCR 2015 states: "Contracting authorities shall take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all economic operators". Conflicts of interest are described as "any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure".

139. The Procurement, Patient Choice and Competition Regulations (PPCCR) place requirements on commissioners to ensure that they adhere to good practice in relation to procurement, run a fair, transparent process that does not discriminate against any provider, do not engage in anti-competitive behaviour that is against the interest of patients, and protect the right of patients to make choices about their healthcare. Furthermore the PPCCR places requirements on commissioners to secure high quality, efficient NHS healthcare services that meet the needs of the people who use those services. The PCR 2015 are focused on ensuring a fair and open selection process for providers.

140. An obvious area in which conflicts could arise is where the CCG commissions (or continues to commission by contract extension) healthcare services, including GP services, in which a member of the CCG has a financial or other interest. This may most often arise in the context of co-commissioning of primary care, particularly with regard to delegated commissioning, where GPs are current or possible providers.

141. A procurement checklist, provided in Appendix D, sets out factors that the CCG should address when drawing up plans to commission general practice services. This will assist in providing evidence of deliberations on conflicts of interest. In addition, Appendix E is the form to be completed documenting the conflicts of interest for bidders and contractors.

142. CCG will be required to make the evidence of their management of conflicts publicly available, and the relevant information from the procurement template should be used to complete the register of procurement decisions. Complete transparency around procurement will provide:

a. Evidence that the CCG is seeking and encouraging scrutiny of its decision- making process;

b. A record of the public involvement throughout the commissioning of the service;

c. A record of how the proposed service meets local needs and priorities for partners such as the Health and Wellbeing Boards, local Healthwatch and local communities;

d. Evidence to the audit committee and internal and 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.

143. External services such as commissioning support units (CSUs) can play an important role in helping CCGs decide the most appropriate procurement route, undertake procurements and manage contracts in ways that manage conflicts of interest and preserve the integrity of decision-making. When using a CSU, t h e CCG will have systems to assure itself that a CSU's business processes are robust and enable the CCG to meet its duties in relation to procurement (including those relating to the management of conflicts of interest). This would require the CSU to declare any conflicts of interest it may have in relation to the work commissioned by the CCG.

144. The CCG cannot, however, lawfully delegate commissioning decisions to an external provider of commissioning support. Although CSUs are likely to play a key role in helping to develop specifications, preparing tender documentation, inviting expressions of interest and inviting tenders, the CCG itself will need to:

a. Determine and sign off the specification and evaluation criteria;

b. Decide and sign off decisions on which providers to invite to tender; and

c. Make final decisions on the selection of the provider.

Register of procurement decisions

145. ELR CCG needs to maintain a register of procurement decisions taken, either for the procurement of a new service or any extension or material variation of a current contract. This must include:

a. The details of the decision;

b. Who was involved in making the decision (including the name of the CCG clinical lead, the CCG contract manager, the name of the decision making committee and the name of any other individuals with decision-making responsibility);

c. A summary of any conflicts of interest in relation to the decision and how this was managed by the CCG retaining the anonymity of bidders; and

d. The award decision taken.

146. The register of procurement decisions must be updated whenever a procurement decision is taken. A draft register is included at Appendix F. The Procurement, Patient Choice and Competition Regulations 9(1) place a requirement on commissioners to maintain and publish on their website a record of each contract it awards. The register of procurement decisions will be made publicly available and easily accessible to patients and the public.

147. Although it is not a requirement to keep a register of services that may be procured in the future, it would be considered good practice to ensure planned service developments and possible procurements are transparent and available for the public to see.

Declarations of interests for bidders / contractors

148. As part of a procurement process, it is good practice to ask bidders to declare any conflicts of interest. This allows commissioners to ensure that they comply with the principles of equal treatment and transparency. When a bidder declares a conflict, the commissioners must decide how best to deal with it to ensure that no bidder is treated differently to any other. Please see Appendix E for a declaration of interests for bidders/ contractors template.

149. It will not usually be appropriate to declare such a conflict on the register of procurement decisions, as it may compromise the anonymity of bidders during the procurement process. However, commissioners should retain an internal audit trail of how the conflict or perceived conflict was dealt with to allow them to provide information at a later date if required. Commissioners are required under regulation 84 of the Public Contract Regulations 2015 to make and retain records of contract award decisions and key decisions that are made during the procurement process (there is no obligation to publish them). Such records must include “communications with economic operators and internal deliberations” which should include decisions made in relation to actual or perceived conflicts of interest declared by bidders. These records must be retained for a period of at least three years from the date of award of the contract.

Contract Monitoring

150. The management of conflicts of interest applies to all aspects of the commissioning cycle, including contract management.

151. Any contract monitoring meeting needs to consider conflicts of interest as part of the process i.e., the chair of a contract management meeting should invite declarations of interests; record any declared interests in the minutes of the meeting; and manage any conflicts appropriately and in line with this guidance. This equally applies where a contract is held jointly with another organisation such as the Local Authority or with other CCGs under lead commissioner arrangements.

152. The individuals involved in the monitoring of a contract should not have any

direct or indirect financial, professional or personal interest in the incumbent provider or in any other provider that could prevent them, or be perceived to prevent them, from carrying out their role in an impartial, fair and transparent manner.

153. The CCG will be mindful of any potential conflicts of interest when they disseminate any contract or performance information/reports on providers, and manage the risks appropriately.

Raising concerns and breaches

154. There will be situations when interests will not be identified, declared or managed appropriately and effectively. This may happen innocently, accidently, or because of the deliberate actions of staff or organisations. For the purposes of this policy these situations are referred to as “breaches”.

155. It is the duty of every CCG employee, 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. These individuals should not ignore their suspicions or investigate themselves, but rather speak to the designated CCG point of contact for these matters (the point of contact may vary in accordance with the CCG’s conflicts of interest and whistleblowing policies).

156. Any non-compliance with the CCG’s conflicts of interest policy should be reported in accordance with the terms of the policy, and CCG’s whistleblowing policy (where the breach is being reported by an employee or worker of the CCG) or with the whistleblowing policy of the relevant employer organisation (where the breach is being reported by an employee or worker of another organisation).

157. 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. In particular, Head of Corporate Governance and Legal Affairs will work with lead officers to ensure that organisational policies are clear about the support available for individuals who wish to come forward to notify an actual or suspected breach of the rules, and of the sanctions and consequences for any failure to declare an interest or to notify an actual or suspected breach at the earliest possible opportunity.

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

Reporting breaches

159. The Head of Corporate Governance and Legal Affairs will be responsible for recording the breach and informing the Conflicts of Interest Guardian. Where further investigation of the breach is required this will be done in conjunction

and advice sought from the Conflicts of Interest Guardian and, where appropriate advice sought from NHS England or legal advisers. The breach may be of such significance and therefore reportable to NHS England at the earliest opportunity.

160. Employees, governing body members, committee or sub-committee members and GP practice members should be aware of how they can report suspected or known breaches of the CCG's conflicts of interest policies, including ensuring that they should generally contact the CCG's designated Conflicts of Interest Guardian in the first instance to raise any concerns. They should also be advised of the arrangements in place to ensure that they are able to contact the Conflicts of Interest Guardian on a strictly confidential basis.

161. Anyone who wishes to report a suspected or known breach of the policy, who is not an employee or worker of the CCG, should also ensure that they comply with their own organisation's whistleblowing policy, since most such policies should provide protection against detriment or dismissal.

162. The CCG will ensure that the Conflicts of Interest Guardian is in a position to cross refer to and comply with other CCG policies on raising concerns, counter fraud, or similar as and when appropriate.

163. All such notifications will be treated with appropriate confidentiality at all times in accordance with the CCG's policies and applicable laws, and the person making such disclosures should expect an appropriate explanation of any decisions taken as a result of any investigation.

164. Furthermore, providers, patients and other third parties can make a complaint to NHS Improvement in relation to a commissioner's conduct under the Procurement Patient Choice and Competition Regulations. The regulations are designed as an accessible and effective alternative to challenging decisions in the courts.

Fraud, Corruption and Bribery

165. It is vital that staff and Governing Body members 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, or a gift registered, individuals should take a cautious approach and do so.

166. The offering or taking of bribes are criminal offences under the Bribery Act 2010. Allegations of this sort do not only affect the individuals concerned, however, as the Bribery Act 2010 introduced a new corporate offence so that the CCG can be held responsible if it fails to enact adequate procedures to prevent bribery.

167. All allegations of suspected fraud, bribery and/or corruption must be reported to the CCG's Counter Fraud Specialist in accordance with the CCG's Fraud, Corruption and Bribery Policy.

Impact of non-compliance

168. Failure to comply with the CCG's policy on conflicts of interest management, pursuant to NHS England's statutory guidance, can have serious implications for the CCG and the individuals concerned.

Disciplinary implications

169. The CCG will ensure that individuals who fail to disclose any relevant interests or who otherwise breach the CCG's rules and policies relating to the management of conflicts of interest are subject to investigation and, where appropriate, to disciplinary action. CCG staff, governing body and committee members in particular should be aware that the outcomes of such action may, if appropriate, result in the termination of their employment or position with the CCG.

Professional regulatory implications

170. Statutorily regulated healthcare professionals who work for, or are engaged by, t h e CCG are under professional duties imposed by their relevant regulator to act appropriately with regard to conflicts of interest. CCGs ae required to report statutorily regulated healthcare professionals to their regulator if they believe that they have acted improperly, so that these concerns can be investigated. Statutorily regulated healthcare professionals should be made aware that the consequences for inappropriate action could include fitness to practise proceedings being brought against them, and that they could, if appropriate, be struck off by their professional regulator as a result.

Civil sanctions

171. If conflicts of interest are not effectively managed, the CCG could face civil challenges to decisions it makes – for instance if interests were not disclosed that were relevant to the bidding for, or performance of contracts. In extreme cases, staff and other individuals could face personal civil liability, for example a claim for misfeasance in public office.

Criminal sanctions

172. Failure to manage conflicts of interest could lead to criminal proceedings including for offences such as fraud, bribery and corruption. This could have implications for the organisation and linked organisations, and the individuals who are engaged by them.

Conflicts of Interest Training

173. Management of conflicts of interest training will be offered to all employees, governing body members, members of CCG committees and sub-committees and practice staff with involvement in CCG business. This will be to ensure staff and others understand what conflicts are and how to manage them effectively.

174. The training will cover:

- What is a conflict of interest;
- Why is conflict of interest management important;
- What are the responsibilities of the organisation you work for in relation to conflicts of interest;
- What should you do if you have a conflict of interest relating to your role, the work you do or the organisation you work for (who to tell, where it should be recorded, what actions you need to take and what implications it may have for your role);
- How conflicts of interest can be managed;
- What to do if you have concerns that a conflict of interest is not being declared or managed appropriately;
- What are the potential implications of a breach of the CCG's rules and policies for managing conflicts of interest.

175. NHS England is developing an online training package for CCG employees, governing body members, members of CCG committees and sub-committees, and practice staff with involvement in CCG business. This training will be mandatory and need to be completed on an annual basis by 31 January of each year. Completion rates will be reported as part of the CCG's annual conflicts of interest audit. NHS England may also make available face-to-face training for specific individuals.

Policy review

176. This Policy will be reviewed annually by the Head of Corporate Governance and Legal Affairs for approval by the Audit Committee. The Policy will be regularly monitored to ensure it is compliant with new legislation and guidance.

Policy dissemination

177. The CCG will ensure that all employees and decision-makers are aware of the existence of this policy by:
    - An introduction to the policy being given during local induction for new starters to the CCG;
    - The Policy will be available to all members of staff; the Governing Body; members of committees and sub-groups; and to GP member practices via the shared drive and via the intranet.
    - An annual reminder of the existence and importance of the policy delivered via internal communication methods; and
    - At least an annual reminder to update declaration forms sent to all members of the Governing Body and any other committee, sub-group or decision-making group.

Monitoring and audit arrangements

178. NHS England will review the CCG's compliance with statutory conflicts of interest requirements through its review and assessment processes.

179. Adherence to this Policy will be reviewed regularly by the Head of Corporate Governance and Legal Affairs.

180. The CCG will need to undertake an audit of conflicts of interest management as part of their internal audit on an annual basis. The results of the audit should be reflected in the CCG's annual governance statement and should be discussed in the end of year governance meeting with NHS regional teams.

181. The Audit Committee will be responsible for undertaking reviews of decision-making processes to ensure that the Policy is applied effectively and where further controls are required will advise accordingly. The Audit Committee will ensure an audit of conflicts of interest forms part of the annual internal audit plan, and will also look to commissioning an audit review where policy has not been adhered to to identify any lessons learnt and advise on changes to systems and processes as appropriate.

Useful Documents and References

The ABPI Code of Practice for the Pharmaceutical Industry:
http://www.pmcpa.org.uk/thecode/Pages/default.aspx

BMA guidance on conflicts of interest for GPs in their role as commissioners and providers
http://www.bma.org.uk/support-at-work/commissioning/ensuring-transparency-and-probity

The Bribery Act 2010 http://www.legislation.gov.uk/ukpga/2010/23/contents

The Equality Act 2010 http://www.legislation.gov.uk/ukpga/2010/15/contents

GMC | Good medical practice (2013) http://www.gmc-uk.org/guidance/good_medical_practice.asp and http://www.gmc-uk.org/guidance/ethical_guidance/21161.asp and http://www.gmcuk.org/guidance/ethical_guidance/21161.asp

The Good Governance Standards for Public Services , 2004, OPM and CIPFA
http://www.opm.co.uk/wp-content/uploads/2014/01/Good-Governance-Standard-for-Public-Services.pdf

Managing conflicts of interests in the NHS: Guidance for staff and organisations.2017
https://www.england.nhs.uk/wp-content/uploads/2017/02/guidance-managing-conflicts-of-interestnhs.Pdf

Managing conflicts of interest in clinical commissioning groups:
http://www.rcgp.org.uk/~/media/Files/CIRC/Managing_conflicts_of_interest.ashx

NHS Commissioning Board (2012) *Standards of Business Conduct*
https://www.england.nhs.uk/wpcontent/uploads/2012/11/stand-bus-cond.pdf

National Health Service Act 2006 (as amended by the Health and Social Care Act 2012) section

The NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013
http://www.legislation.gov.uk/uksi/2013/500/contents/made

The Public Contract Regulations 2015 http://www.legislation.gov.uk/uksi/2015/102/regulation/57/made

The 7 principles of public life https://www.gov.uk/government/publications/the-7-principles-of-publiclife

The seven key principles of the NHS Constitution
http://www.nhs.uk/NHSEngland/thenhs/about/Pages/nhscoreprinciples.aspx

Standards for members of NHS boards and CCG governing bodies in England
http://www.professionalstandards.org.uk/publications/detail/standards-for-members-of-nhs-boards-andclinical-commissioning-group-governing-bodies-in-england

UK Corporate Governance Code https://www.frc.org.uk/Our-Work/CodesStandards/Corporategovernance/UK-Corporate-Governance-Code.aspx

Appendix A

East Leicestershire and Rutland Clinical Commissioning Group

Register of Interest Guidance
(updated November 2017, v5)

1. Why Do We Have a Register of Interests?

This guidance relates to the ELR CCG Clinical Commissioning Group (CCG), in particular to the Governing Body members (i.e. the CCG Board), to the members of the committees of the Governing Body; GPs from member practices who are involved in CCG business; and CCG employees.

1.1 All Governing Body members and employees of the CCG have a legal obligation to act in the best interests of the CCG. Public service values matter in the NHS and those working in it have a duty to conduct NHS business with probity.

1.2 The *Code of Accountability for NHS Boards* sets out a requirement that chairs and all board directors should declare any conflict of interest that arises in the course of conducting NHS business.

1.3 Furthermore, given the requirements of the *Nolan Principles - The Seven Principles of Public Life*, all NHS organisations are required to maintain a Register of Interests to avoid any danger of board members, GPs from member practices and employees of the CCG being influenced, or appearing to be influenced, by their private interests in the exercise of their public duties.

1.4 All members and employees of the CCG are therefore expected to declare any personal or business interest which may influence, or may be *perceived* to influence, their judgement. This should include, as a minimum, personal, direct and indirect financial interests, and should normally also include such interests of close family members.

1.5 You are also required to register any gifts or hospitality received in connection with your role in the CCG.

1.6 It is important to note that registration of interests does not imply any wrongdoing.

2. Duties of Governing Body Members (Chief Officers, GP Members, Secondary Care Clinician and Lay Members), and GPs from member practices who are involved in CCG business, in Respect of Registration

2.1 You are required to make a full disclosure of your interest(s), and any gifts or hospitality received in connection with your role in the CCG. Appendix 1 below provides the declaration of interests form for your disclosure; and also details the types of interest you should declare. You may also need to complete the Declaration of Gifts and Hospitality Form (please refer to the guidance on gifts and hospitality), where applicable.

2.2 If you are not sure what to declare, or whether/when your declaration needs to be updated, please err on the side of caution.

2.3 If you have any doubt about the relevance of an interest, this should be discussed with the either Donna Enoux (Chief Finance Officer) or Daljit K. Bains (Head of Corporate Governance and Legal Affairs).

2.4 You are also formally required to review your entry in the Register of Interests at least annually at the start of the Financial Year.

2.5 To be effective, the declaration of interests needs to also be updated when any changes occur. It is your responsibility to notify the Head of Corporate Governance and Legal Affairs of any changes in your interests within four weeks of the change occurring. The same time frame applies to registering gifts and hospitality.

3. Data Protection

3.1 The information provided will be processed in accordance with data protection principles as set out in the Data Protection Act 1998. Data will be processed only to ensure that all CCG Governing Body members, GPs from member practices who are involved in CCG business, and employees act in the best interests of the CCG. The information provided will not be used for any other purpose.

4. Publication and Public Inspection

4.1 The Register of Interests will be published in the CCG's annual report and accounts and will also be available on the CCG website.

4.2 Between publications of the annual report, the Register of Interests will be regularly updated in a loose leaf form, and in that form will be available for public inspection in the Corporate Office. At the discretion of the Head of Corporate Governance and Legal Affairs, copies of individual entries may be supplied on request, upon payment of a small charge, to cover photocopying and administrative costs.

5. Declaration of Interests

5.1 Where there is a potential for private interests to be material and relevant to the business being conducted, the relevant interest should be declared and recorded in the CCG Governing Body minutes and entered in to the Register of Interests. When a conflict of interest is established, the Governing Body member (chief officer, GP Member, Secondary Care Clinician or lay member), or other GPs or employees of the CCG should withdraw from the meeting as appropriate and play no part in the relevant discussion or decision.

5.2 All decisions under a conflict of interest will be recorded by the Head of Corporate Governance and reported in the minutes of the meeting. The report will record:

- The nature and extent of the conflict;
- An outline of the discussion;
- The actions taken to manage the conflict.

5.3 Where a CCG Governing Body member, GP from a member practice or employee of the CCG benefits from the decision, this will be reported in the annual report and accounts accordingly.

6. Conclusion

6.1 This document only provides guidance. If you are unsure about any aspect of it, you should contact the Chief Finance Officer or the Head of Corporate Governance and Legal Affairs in the first instance for advice.

APPENDIX 1

NHS East Leicestershire and Rutland CCG

Declaration of interests form for ELR CCG members and employees

Name:	
Position within, or relationship with, the CCG (or NHS England in the event of joint committees):	

Detail of interests held (complete all that are applicable):

Type of Interest* ***See following page for details**	**Description of Interest (including for indirect Interests, details of the relationship with the person who has the interest)**	**Date interest relates From & To**		**Actions to be taken to mitigate risk** **(to be agreed with line manager or a senior CCG manager)**

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

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

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

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

Please return to**:** **Daljit K. Bains, Head of Corporate Governance and Legal Affairs**
East Leicestershire and Rutland CCG
Room G30, Pen Lloyd Building, County Hall,
Glenfield, Leicester, LE3 8TB.

Types of interest

Type of Interest	Description
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 owner interests), a partner or owner of a private or not-for-profit company, business, partnership or consultancy which is doing, or which is likely, or possibly seeking to do, business with health or social care organisations. • A management consultant for a provider; • In secondary employment; • 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, BMA or a medical defence organisation would not usually by itself amount to an interest which needed to be declared); • An advisor for Care Quality Commission (CQC) or National Institute for Health and Care Excellence (NICE); • A medical researcher.
Non-Financial 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 groups with an interest in health.
Indirect Interests	This is where an individual has a close association with an individual who has a financial interest, a non-financial professional interest or a non-financial personal interest in a commissioning decision (as those categories are described above). For example, this should include: • Spouse / partner; • Close relative e.g., parent, grandparent, child, grandchild or sibling; • Close friend; • Business partner.

Appendix B

East Leicestershire and Rutland Clinical Commissioning Group

Guidance on the acceptance of gifts and hospitality
(updated November 2017)

Why do we need this guidance?

1. East Leicestershire and Rutland Clinical Commissioning Group has a responsibility to ensure integrity and probity in its relationships with suppliers, contractors and service users; and ensure that robust systems of control are in place within the CCG to prevent fraud and corruption.

2. During the course of their work, staff will sometimes receive offers of gifts (which includes goods or payment) and hospitality. Openness in declaring and recording these matters is a safeguard for staff who might otherwise be perceived to be receiving a personal and direct benefit in contravention of the CCG Constitution (i.e. Standing Orders and Prime Financial Policies) and Fraud and Corruption Policy.

3. The current process / procedure / guiding principles covering the acceptance of gifts and hospitality are outlined within the Conflicts of Interest, Gifts and Hospitality and Sponsorship Policy, although it is not possible to provide for every eventuality and, therefore staff should not hesitate to seek advice from their line manager in the first instance, the Chief Finance Officer and / or the Head of Corporate Governance and Legal Affairs.

4. The benefits of such systems are both to the CCG and to individual members of staff, who by following the requirements and guidance in relation to gifts and hospitality, can be reassured that they are acting within the limits of acceptable business conduct.

What do I need to report and how?

5. The key guiding principle is that any gifts offered by contractors, suppliers or any other organisations that have a business relationship with the CCG, which might reasonably be seen to compromise their personal judgement or integrity, should be politely but firmly declined.

6. If you wish to record the acceptance of a gift or hospitality an “Acceptance of Gifts and Hospitality” form must be completed and returned to Daljit K. Bains (Head of Corporate Governance and Legal Affairs), who will ensure that the item is entered into the Register. A copy of this form is at Appendix 1.

7. Any member of staff who has been offered a gift / hospitality and refuses to accept it should also inform Daljit K. Bains, via the form at Appendix 1. Daljit K. Bains will ensure that this information is also entered on to the gifts and hospitality register as non-acceptance. Recording refusals can assist in ensuring members of staff are covered against any possible allegations.

8. Acceptance of hospitality should as a principle be limited in both frequency and in the value of the hospitality extended. A list is attached at Appendix 2 as a reference (this is not an exhaustive list) and identifies items which are deemed as potentially acceptable and those which are specifically unacceptable.

Appendix 1

NHS East Leicestershire and Rutland CCG

Declarations of gifts and hospitality form

Recipient Name and Position	Date of Offer and / or Date of Receipt (if applicable)	Details of Gift / Hospitality	Estimated Value £	Supplier / Offeror Name and Nature of Business	Details of Previous Offers or Acceptance by this Offeror/ Supplier	Declined or Accepted?	Details of the officer reviewing and approving the declaration made and date	Reason for Accepting or Declining	Other Comments

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, professional regulatory 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: (Line Manager or Senior CCG Manager)	**Position:**	**Date:**

Please return to**:** **Daljit K. Bains, Head of Corporate Governance and Legal Affairs**
East Leicestershire and Rutland CCG
Room G30, Pen Lloyd Building, County Hall,
Glenfield, Leicester, LE3 8TB

Appendix 2

NHS East Leicestershire and Rutland CCG

Template: Register of gifts and hospitality

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

Appendix 3

GIFTS AND HOSPITALITY

Gift / Hospitality	Acceptable	Potentially unacceptable (Prior approval and Declaration required)	Unacceptable	Declarable	Non-declarable
Low value promotional gifts such as: Diaries/calendars	√			√	
Token gifts given at courtesy visit	√			√	
Gifts of low value (e.g. chocolates, biscuits – **not** money) from patients/relatives/friend of patients – although acceptable, persons offering such gifts should be advised of the existence of Charitable Funds as an alternative.	√ (if in doubt seek approval)			Individual value of up to £10.00	
Infrequent working breakfast	√				√
Infrequent working lunch	√				√
Formal dinners/evening		√		√	
Visits to view equipment paid for by outside companies		√		√	
Other forms of commercial sponsorship – including drug company sponsorship		√		√	
Gifts which would cause offence to return		√		√	
Gifts to relative / friends			√	√ if offered	
Holiday accommodation			√	√ if offered	
Casual gifts offered by contractors			√	√ if offered	
Promotional offers i.e. personal discounts / discount vouchers			√	√ if offered	
Other promotional gifts			√	√ if offered	
Attendance at sporting events			√	√ if offered	
Invitation to cultural events			√	√ if offered	

Appendix C

East Leicestershire and Rutland CCG

Declarations of interest checklist for meeting Chairs

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

Timing	Checklist for Chairs	Responsibility
In advance of the meeting	**1. The agenda** to include a standing item on declaration of interests to enable individuals to raise any issues and/or make a declaration at the meeting.	Meeting Chair and secretariat
	2. A **definition of conflicts of interest** should also be accompanied with each agenda to provide clarity for all recipients.	Meeting Chair and secretariat
	3. Agenda to be circulated to enable attendees (including visitors) to identify any interests relating specifically to the agenda items being considered.	Meeting Chair and secretariat
	4. Members should contact the Chair as soon as an actual or potential conflict is identified.	Meeting members
	5. Chair to review a **summary report from preceding meetings** i.e., sub-committee, working group, etc., detailing any conflicts of interest declared and how this was managed. **A template for a summary report** to present discussions at preceding meetings is detailed below.	Meeting Chair
	6. A **copy of the members' declared interests** is checked to establish any actual or potential conflicts of interest that may occur during the meeting.	Meeting Chair
During the meeting	**7. Check and declare the meeting is quorate** and ensure that this is noted in the minutes of the meeting.	Meeting Chair

Timing	Checklist for Chairs	Responsibility
	8. Chair requests **members to declare any interests in agenda items**- which have not already been declared, including the nature of the conflict.	Meeting Chair
	9. Chair makes a decision as to how to manage each interest which has been declared, including whether / to what extent the individual member should continue to participate in the meeting, on a case by case basis, and this decision is recorded.	Meeting Chair and secretariat
	10. As minimum requirement, the following should be **recorded in the minutes of the meeting**: • Individual declaring the interest; • At what point the interest was declared; • The nature of the interest; • The Chair's decision and resulting action taken; • The point during the meeting at which any individuals retired from and returned to the meeting - even if an interest has not been declared; • **Visitors in attendance** who participate in the meeting must also follow the meeting protocol and declare any interests in a timely manner. **A template for recording any interests during meetings** is detailed below.	Secretariat
Following the meeting	**11.** All **new interests declared** at the meeting should be promptly updated onto the declaration of interest form;	Individual(s) declaring interest(s)
	12. All new completed declarations of interest should be **transferred onto the register of interests.**	Designated person responsible for registers of interest

Appendix D

NHS East Leicester and Rutland Clinical Commissioning Group

Procurement checklist

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

9. In respect of every conflict or potential conflict, you must record how you have managed that conflict or potential conflict. Has the management of all conflicts been recorded with a brief explanation of how they have been managed?	
10. Why have you chosen this procurement route e.g., single action tender?[1]	
11. What additional external involvement will there be in scrutinising the proposed decisions?	
12. How will the CCG make its final commissioning decision in ways that preserve the integrity of the decision-making process and award of any contract?	
Additional question when qualifying a provider on a list or framework or pre selection for tender (including but not limited to any qualified provider) or direct award (for services where national tariffs do not apply)	
13. How have you determined a fair price for the service?	
Additional questions when qualifying a provider on a list or framework or pre selection for tender (including but not limited to any qualified provider) where GP practices are likely to be qualified providers	
14. How will you ensure that patients are aware of the full range of qualified providers from whom they can choose?	
Additional questions for proposed direct awards to GP providers	
15. What steps have been taken to demonstrate that the services to which the contract relates are capable of being provided by only one provider?	
16. In what ways does the proposed service go above and beyond what GP practices should be expected to provide under the GP contract?	
17. What assurances will there be that a GP practice is providing high-quality services under the GP contract before it has the opportunity to provide any new services?	

Appendix E

NHS East Leicester and Rutland Clinical Commissioning Group

Declaration of conflict of interests for bidders/contractors

(Bidders/potential contractors/service providers' declaration form: financial and other interests)

This form is required to be completed in accordance with the CCG's Constitution.

Notes:

- All potential bidders/contractors/service providers, including sub-contractors, members of a consortium, advisers or other associated parties (Relevant Organisation) and required to identify any potential conflicts of interest that could arise if the Relevant Organisation were to take part in any procurement process and/or provide services under, or otherwise enter into any contract with the CCG.
- If any assistance is required in order to complete this form, then the Relevant Organisation should contact the Head of Corporate Governance and Legal Affairs (daljit.bains@eastleicestershireandrutlandccg.nhs.uk).
- Any changes to interests declared either during the procurement process or during the terms of any contract subsequently entered into by the Relevant Organisation and the CCG must be notified to the CCG by completing a new declaration form and submitting it by both email and signed hard copy to the Head of Corporate Governance and Legal Affairs.
- Relevant Organisations completing this declaration form must provide sufficient detail of each interest so that a member of the public would be able to understand clearly the sort of financial or other interest the person concerned has and the circumstances in which a conflict of interest with the business or running of the CCG might arise.
- If in doubt as to whether a conflict of interest could arise, a declaration of the interest/s should be made.

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

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

Declaration of conflict of interests for bidders/contractors form

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

Name of Relevant Person	[*complete for all Relevant Persons*]	
Details of interests held:		
Type of Interest	**Details**	**Personal interest or that of a family member, close friend or other acquaintance?**
Provision of services or other work for the CCG or NHS England		
Provision of services or other work for any other potential bidder in respect of this project or procurement process		
Any other connection with the CCG or NHS England, whether personal or		

professional, which the public could perceive may impair or otherwise influence the CCG's or any of its members' or employees' judgements, decisions or actions		

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

Signed:

On behalf of:

Date:

Appendix F

NHS East Leicestershire and Rutland Clinical Commissioning Group

Template form and register: Procurement decisions and contracts awarded

Ref No	Contract / Service title	Procurement description	Existing contract or new procurement (if existing include details)	Procurement type – CCG procurement, collaborative procurement with partners	CCG clinical lead (Name)	CCG contract manger (Name)	Decision making process and name of decision making committee	Summary of conflicts of interest noted	Actions to mitigate conflicts of interest	Justification for actions to mitigate conflicts of interest	Contract awarded (supplier name & registered address)	Contract value (£) (Total) and value to CCG	Comments to note

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

Signed:

On behalf of:

Date:

Please return to**: Daljit K. Bains, Head of Corporate Governance and Legal Affairs, ELR CCG, G30, Pen Lloyd Building, County Hall, Glenfield, Leicester, LE3 8TB.**

Appendix G

Sample template for recording minutes

XXXX Clinical Commissioning Group
Primary Care Commissioning Committee Meeting

Date: ***16 June 2017***
Time: ***2pm to 4pm***
Location: ***Room B, XXXX CCG***

Attendees:

Name	**Initials**	**Role**
Sarah Kent	SK	XXX CCG Governing Body Lay Member (Chair)
Andy Booth	AB	XXX CCG Audit Chair Lay Member
Julie Hollings	JH	XXX CCG PPI Lay Member
Carl Hodd	CH	Assistant Head of Finance
Mina Patel	MP	Interim Head of Localities
Dr Myra Nara	MN	Secondary Care Doctor
Dr Maria Stewart	MS	Chief Clinical Officer
Jon Rhodes	JR	Chief Executive – Local Healthwatch

In attendance from 2.35pm

Neil Ford	NF	Primary Care Development Director

Item No	Agenda Item	Actions
1	**Chairs welcome**	
2	**Apologies for absence** <apologies to be noted>	

3	**Declarations of interest** *SK reminded committee members of their obligation to declare any interest they may have on any issues arising at committee meetings which might conflict with the business of XXX clinical commissioning group.* *Declarations made by members of the Primary Care Commissioning Committee are listed in the CCG's Register of Interests. The Register is available either via the secretary to the governing body or the CCG's website at the following link: http://xxxccg.nhs.uk/about-xxx-ccg/who-we- are/our -governing-body/* **Declarations of interest from sub committees.** *None declared* **Declarations of interest from today's meeting**	
	The following update was received at the meeting: • *With reference to business to be discussed at this meeting, MS declared that he is a shareholder in XXX Care Ltd.* *SK declared that the meeting is quorate and that MS would not be included in any discussions on agenda item X due to a direct conflict of interest which could potentially lead to financial gain for MS.* *SK and MS discussed the conflict of interest, which is recorded on the register of interest, before the meeting and MS agreed to remove himself from the table and not be involved in the discussion around agenda item X.*	
4	**Minutes of the last meeting** <*date to be inserted*> ***and matters arising***	
5	**Agenda Item** <*Note the agenda item*> *MS left the meeting, excluding himself from the discussion regarding xx.* ***<conclude decision has been made>*** ***<Note the agenda item xx>*** *MS was brought back into the meeting.*	
6	**Any other business**	
7	**Date and time of the next meeting**	

Appendix H

Summary of key aspects of the guidance on managing conflicts of interest relating to commissioning of new care models
(as provided by NHS England)

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, 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. 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.

3. This appendix 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 appendix 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 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 non- clinical 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, 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.

<u>Primary Care Commissioning Committee</u>

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 CCG 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 this 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.