Conflicts of Interest Policy

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1.2	27/07/2017	VM		Comments from SM
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Contents

Aims of the Conflict of Interest Policy

1. In accordance with the Health and Social Care Act 2012, there is a legal requirement for Clinical Commissioning Groups (CCGs) to manage the process of Conflicts of Interest, both actual and perceived.

2. This policy sets out how the CCG will manage conflicts of interest and will have affect as if it was incorporated into the CCG's constitution.

3. This policy has been based on the Revised Statutory Guidance for CCGs on managing Conflicts of Interest, issued by NHS England (June 2016)[1].

4. NHS Lewisham Clinical Commission Group (Lewisham CCG) has three core values for how we work:

1. Everyone Counts

Lewisham CCG will work and behave in a way that ensures that everyone counts and feels valued. This means that we will consider and engage with Lewisham people, patients and workforce whenever we make commissioning decisions.

2. Openness & Transparency

As an organisation we will strive to be open and transparent in the way we work and make decisions. We want the CCG to be part of the Lewisham community and people to feel that they understand how decisions are made.

3. Learn & Improve

We are a learning organisation that is self-aware of the impact that we can make to improve health for the people of Lewisham. To achieve this we will all have a positive can-do attitude to resolving challenges and fixing problems. This means that we will need to have bold, innovative approaches that capture the imagination of local people to work with us to improve everyone's health. Above all we will create an environment where everyone in the CCG wants to improve every single day.

5. The aims of the Conflicts of Interest Policy are to:
   - enable the CCG and clinicians in commissioning roles to demonstrate that they are acting fairly and transparently and in the best interest of their patients and local populations;
   - ensure that the CCG operates within the legal framework, but without being bound by over-prescriptive rules that risk stifling innovation;
   - safeguard clinically led commissioning, whilst ensuring objective investment decisions;
   - provide the public, providers, Parliament and regulators with confidence in the probity, integrity and fairness of commissioners' decisions; and
   - uphold the confidence and trust between patients and GPs, in the recognition that individual commissioners want to behave ethically but may need support and

[1] https://www.england.nhs.uk/commissioning/wp-content/uploads/sites/12/2016/06/revsd-coi-guidance-june16.pdf

training to understand when conflicts (whether actual or potential) may arise and how to manage them if they do.

6. Lewisham CCG will carry out its business in a culture of openness and transparency, ensuring trust and confidence in the organisation and enabling strategic, planning and commissioning decisions to be made that are in the best interests of taxpayers and the local population.

7. Governing Body members, members of the CCG, committee members, subcommittee and working group members and employees of Lewisham CCG will transact the CCG's business in line with Section 8 of the CCG's Constitution (Standards of Business Conduct) and in line with this policy.

8. Members of the CCG, members of the Governing Body, members of the CCG's committees or sub-committees or committees or subcommittees of the Governing Body and employees are required to:

- Ensure that the interests of patients and members of the public remain paramount at all times
- Be impartial and honest in the conduct of their official business
- Use public funds entrusted to them to the best advantage of the service, always ensuring value for money
- Ensure that they do not abuse their official position for personal gain or to the benefit of their family or friends
- Ensure that they do not seek to advantage or further, private or other interests, in the course of their official duties.
- Make a declaration of interests and keep this up to date

Scope

9. This policy applies to all members of the CCG, members of the Governing Body, members of the CCG's committees or sub-committees or committees or subcommittees of the Governing Body and employees of NHS Lewisham CCG.

Definition of an interest

10. A conflict of interest occurs where an individual's ability to exercise judgement, or act in a role is, could be, or is seen to be impaired or otherwise influenced by his or her involvement in another role or relationship. In some circumstances, it could be reasonably considered that a conflict exists even when there is no actual conflict. In these cases it is important to still manage these perceived conflicts in order to maintain public trust.

11. Conflicts of interest can arise in many situations, environments and forms of commissioning, with an increased risk in primary care commissioning, out-of-hours commissioning and involvement with integrated care organisations, as clinical commissioners may here find themselves in a position of being at once commissioner and provider of services. Conflicts of interest can arise throughout the whole commissioning cycle from needs assessment, to procurement exercises, to contract monitoring.

12. Interests can be captured in four different categories:

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.
- A shareholder (or similar ownership interests), a partner or owner of a private or not-for-profit company, business, partnership or consultancy which is doing, or which is likely, or possibly seeking to do, business with health or social care organisations.
- A management consultant for a provider.

This could also include an individual being:

- In secondary employment (see paragraph 49-50);
- In receipt of secondary income from a provider;
- In receipt of a grant from a provider;
- In receipt of any payments (for example honoraria, one-off payments, day allowances or travel or subsistence) from a provider;
- In receipt of research funding, including grants that may be received by the individual or any organisation in which they have an interest or role; and
- Having a pension that is funded by a provider (where the value of this might be affected by the success or failure of the provider).

ii. **Non-financial professional interests:** This is where an individual may obtain a non-financial professional benefit from the consequences of a commissioning decision, such as increasing their professional reputation or status or promoting their professional career. This may, for example, include situations where the individual is:

- An advocate for a particular group of patients;
- A GP with special interests e.g., in dermatology, acupuncture etc.
- A member of a particular specialist professional body (although routine GP membership of the RCGP, British Medical Association (BMA) or a medical defence organisation would not usually by itself amount to an interest which needed to be declared);
- An advisor for the Care Quality Commission (CQC) or the National Institute for Health and Care Excellence (NICE);
- A medical researcher.

GPs and practice managers, who are members of the governing body or committees of the CCG, should declare details of their roles and responsibilities held within their GP practices.

iii. **Non-financial personal interests:** This is where an individual may benefit personally in ways which are not directly linked to their professional career and do not give rise to a direct financial benefit. This could include, for example, where the individual is:

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

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

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

- Business partner.

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

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

13. The above categories and examples are not exhaustive. Lewisham CCG will exercise discretion on a case by case basis, having regard to the principles set out in the next section of this guidance, 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.

Principles

14. This section sets out a series of principles for those who are serving as members of the CCG governing body, the CCG committees or take decisions where they are acting on behalf of the public or spending public money.

15. Lewisham CCG observes the principles of good governance in the way they do business. These include:

- The Nolan Principles[10] (as set out below)
- The Good Governance Standards for Public Services (2004), Office for Public Management (OPM) and Chartered Institute of Public Finance and Accountancy (CIPFA)[11]
- The seven key principles of the NHS Constitution[12]
- The Equality Act 2010[13]
- The UK Corporate Governance Code[14]
- Standards for members of NHS boards and CCG governing bodies in England[15]

16. 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;

[10] *The 7 principles of public life* https://www.gov.uk/government/publications/the-7-principles-of-public-life
[11] *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*
[12] *The seven key principles of the NHS Constitution* http://www.nhs.uk/NHSEngland/thenhs/about/Pages/nhscoreprinciples.aspx
[13] *The Equality Act 2010* http://www.legislation.gov.uk/ukpga/2010/15/contents
[14] *UK Corporate Governance Code* https://www.frc.org.uk/Our-Work/Codes-Standards/Corporate-governance/UK-Corporate-Governance-Code.aspx
[15] *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-and-clinical-commissioning-group-governing-bodies-in-england*

- **Accountability** – Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office;

- **Openness** – Holders of public office should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands;

- **Honesty** – Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest;

- **Leadership** – Holders of public office should promote and support these principles by leadership and example.

17. In addition, to support the management of conflicts of interest, Lewisham CCG will:

- **Do business appropriately**: Conflicts of interest become much easier to identify, avoid and/or manage when the processes for needs assessments, consultation mechanisms, commissioning strategies and procurement procedures are right from the outset, because the rationale for all decision-making will be clear and transparent and should withstand scrutiny;

- **Be proactive, not reactive:** Commissioners should seek to identify and minimise the risk of conflicts of interest at the earliest possible opportunity;

- **Be 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 whilst not being overly constraining, complex or cumbersome.

- **Be transparent:** Document clearly the approach and decisions taken at every stage in the commissioning cycle so that a clear audit trail is evident.

- Create an **environment and culture** where individuals feel supported and confident in declaring relevant information and raising any concerns.

18. In addition to the above, Lewisham CCG will bear in mind:

- A perception of wrongdoing, impaired judgment 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.

- For a conflict of interest to exist, financial gain is not necessary.

Identification and management of conflicts of interest

19. Conflicts of interest are a common and sometimes unavoidable part of the 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.

20. The Chief Officer has overall accountability for the CCG's management of conflicts of interest. The Associate Director of Integrated Governance has responsibility for:

- The day-to day management of conflicts of interest matters and queries;
- Maintaining the CCG's register(s) of interest and the other registers referred to in this Guidance;
- Supporting the Conflicts of Interest Guardian to enable them to carry out the role effectively (see paragraph 67 onwards);
- Providing advice, support, and guidance on how conflicts of interest should be managed; and
- Ensuring that appropriate administrative processes are put in place.

21. 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. The team or individual who has designated responsibility for maintaining the registers of interest should provide advice on this and decide whether it is necessary for the interest to be declared.

22. There will be other occasions where the conflict of interest is profound and acute. In such a scenario (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 the CCG) it is likely that Lewisham 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.

Declaring interests

Statutory requirements
CCGs must 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. CCGs must record the interest in the registers as soon as they become aware of it.[16]

23. Lewisham CCG will ensure that, as a matter of course, declarations of interest are made and regularly confirmed or updated (Annex A)

24. All persons referred to in paragraph 27 (Register of Interests) 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). 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 should again be made and recorded.

Annually:
Lewisham CCG has a system in place to satisfy themselves on a six-monthly basis that their 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" should 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 should be recorded in minutes of meetings (see paragraph 90).

[16] National Health Service Act 2006 (as amended by the Health and Social Care Act 2012) section 140(3)

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), 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 materializing. 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.
Lewisham CCG will make it clear who such individuals should formally notify, and how that team or person can be contacted.

25. Whenever interests are declared they should be promptly reported to the Associate Director of Integrated Governance who has designated responsibility for maintaining the register of interests.

Register(s) of interests

Statutory requirements
CCGs must 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. CCGs must publish, and make arrangements to ensure that members of the public have access to, these registers on request.

26. Lewisham CCG will maintain one or more registers of interest and one or more registers of gifts and hospitality.

27. Register(s) of interest will be maintained for:

- **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;
    - Lay Members; 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.

All interests declared will be promptly transferred to the relevant CCG register(s) by the Associate Director of Integrated Governance and the Corporate Services Officer.

28. An interest should remain on the public register for a minimum of 6 months after the interest has expired. In addition, the CCG must 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 should 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 of interests

29. Lewisham CCG will maintain one or more registers detailing actual or potential conflicts of interest pertaining to the individuals listed in paragraph 27 above. as a minimum, the register will contain the following information:

- Name of the person declaring the interest;
- Position within, or relationship with, the CCG (or NHS England in the event of joint committees);
- 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(s) of Gifts and Hospitality

30. Lewisham CCG will maintain one or more registers of gifts and hospitality for the individuals listed in paragraph 27 above. Lewisham CCG will ensure that robust processes are in place to ensure that such individuals do not accept gifts or hospitality or other benefits, which might reasonably be seen to compromise their professional judgement or integrity, in line with the Gifts and Hospitality Policy.

31. All the individuals listed in paragraph 27 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.

Gifts

32. People working in the NHS offer support during significant events in people's lives. For this work they may sometimes receive gifts as a legitimate expression of gratitude. We should be proud that our services are so valued. But situations where the acceptance of gifts could give rise to conflicts of interest should be avoided. CCG staff and members should be mindful that even gifts of a small value may give rise to perceptions of impropriety and might influence behaviour if not handled in an appropriate way.
33. Individuals to whom this policy applies need to consider the risks associated with accepting gifts or hospitality when undertaking activities on behalf of the CCG or their GP practice. Particular care should be taken in dealing with contractors, developers, and firms or individuals in a comparable position especially if a contract re-tender is imminent. Any gift or hospitality from current or prospective suppliers should be declared and recorded appropriately in accordance with this policy.
34. A quick reference guide is provided for those required to make declaration at Appendix 3 and if there is any doubt colleagues should seek advice from either their line manager, the Associate Director of Integrated Governance or the Conflicts of Interest Guardian.

Overarching principles:

35. CCG staff should not accept gifts that may affect, or be seen to affect, their professional judgement. This overarching principle should apply in all circumstances;
36. Any personal gift of cash or cash equivalents (e.g. vouchers, tokens, offers of remuneration to attend meetings whilst in a capacity working for 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 the Corporate Services Officer who has designated responsibility for maintaining the register of gifts and hospitality and recorded on the register.

Gifts from suppliers or contractors:

37. 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 £62).
38. The person to whom the gifts were offered should also declare the offer to Corporate Services Officer who has designated responsibility for maintaining the register of gifts and hospitality so the offer which has been declined can be recorded on the register.

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

39. CCG staff should not ask for any gifts;
40. Modest gifts under a value of £50 may be accepted and do not need to be declared;
41. Gifts valued at over £50 should be treated with caution and only be accepted on behalf of an organisation (i.e. to an organisation's charitable funds), not in a personal capacity. These should be declared by staff;
42. A common sense approach should be applied to the valuing of gifts (using an actual amount, if known, or an estimate that a reasonable person would make as to its value);
43. Multiple gifts from the same source over a 12 month period should be treated in the same way as single gifts over £50 where the cumulative value exceeds £50.

Hospitality

44. 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.
45. Hospitality means offers of meals, refreshments, travel, accommodation, and other expenses in relation to attendance at meetings, conferences, education and training events etc.

Overarching principles:

46. CCG staff should not ask for or accept hospitality that may affect, or be seen to affect, their professional judgement;
47. Hospitality must only be accepted when there is a legitimate business reason and it is proportionate to the nature and purpose of the event;
48. 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.

Meals and Refreshments:

49. Under a value of £25 may be accepted and need not be declared;

[2] NHS England Managing Conflicts of Interest: Revise Statutory Guidance for CCGs 2017 https://www.england.nhs.uk/commissioning/pc-co-comms/coi/

50. Of a value between £25 and £75 may be accepted and must be declared;
51. Over a value of £75 should be refused unless (in exceptional circumstances) senior staff approval is given. A clear reason should be recorded on an organisation's register(s) of interest as to why it was permissible to accept;
52. A common sense approach should be applied to the valuing of meals and refreshments (using an actual amount, if known, or an estimate that a reasonable person would make as to its value).

Travel and Accommodation:

53. Modest offers to pay some or all of the travel and accommodation costs related to attendance at events may be accepted and must be declared;
54. Offers which go beyond modest, or are of a type that the CCG itself might not usually offer, need approval by senior staff (e.g. the CCG governance lead or equivalent), should only be accepted in exceptional circumstances, and must be declared. A clear reason should be recorded on an organisation's register(s) of interest as to why it was permissible to accept travel and accommodation of this type;
55. A non-exhaustive list of examples includes:
    - Offers of business class or first class travel and accommodation (including domestic travel); and
    - Offers of foreign travel and accommodation.

Sponsored events

56. Sponsorship of NHS events by external parties is valued. Offers to meet some or part of the costs of 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.
57. When sponsorships are offered, the following principles must be adhered to:

- Sponsorship of CCG events by appropriate external bodies should only be approved if a reasonable person would conclude that the event will result in clear benefit for the CCG and the NHS;
- During dealings with sponsors there must be no breach of patient or individual confidentiality or data protection rules and legislation;
- 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;
- 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 or the main purpose of the event;

58. The involvement of a sponsor in an event should always be clearly identified in the interest of transparency;

- CCGs should 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
- Staff should declare involvement with arranging sponsored events to their CCG.

Other forms of sponsorship

59. Organisations external to the CCG or NHS may also sponsor posts or research. However, there is potential for conflicts of interest to occur, particularly when research funding by external bodies does or could lead to a 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 well managed. For further information, please see Managing Conflicts of Interest in the NHS: Guidance for staff and organisations.

Declaration of offers and receipt of gifts and hospitality

60. A draft template for declaring gifts and hospitality is annexed at Annex C. 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. A template gifts and hospitality register annexed at Annex D. As a minimum, the registers will contain the following information:

- Recipient's name;
- Current position(s) held by the individual (within the CCG);
- Date of offer and/or receipt;
- Details of the gifts of hospitality
- The estimated value of the gifts or hospitality
- Details of the supplier/offeror (e.g. their name and the nature of their business);
- Details of previous gifts and hospitality offered or accepted by this offeror/ supplier;
- Details of the officer reviewing/approving the declaration made and date;
- Whether the offer was accepted or not; and
- Reasons for accepting or declining the offer.

Publication of registers

61. Lewisham CCG will publish the register(s) of interest and register(s) of gifts and hospitality, referred to above, and the Register of procurement decisions described below, in a prominent place on the CCG's website.
62. Lewisham CCG will publish its register of interests and gifts and hospitality of 'decision making staff' (see point 46) at least annually.
63. Decision making staff in Lewisham CCG are defined as:
    - All Governing Body members;
    - Members of advisory groups which contribute to direct or delegated decision making on the commissioning or provision of taxpayer funded

services such as working groups involved in service redesign or stakeholder engagement that will affect future provision of services;

- Members of the Primary Care Commissioning Committee (PCCC):
- Members of other committees of the CCG e.g. audit committee, remuneration committee etc;
- Members of new care models joint provider/commissioner groups/committees;
- Members of procurement (sub) committees
- those at Agenda for Change band 8d and above;
- Management, administrative and clinical staff who have the power to enter into contracts on behalf of the CCG: and
- Management, administrative and clinical staff involved in decision making concerning the commissioning of services, purchasing of goods, medicines, medical devices or equipment, and formulary decisions.

64. 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 for the CCG, who should seek appropriate legal advice where required, and the CCG should retain a confidential un-redacted version of the register(s).

65. All persons who are required to make a declaration of interest(s) or a declaration of gifts or hospitality should be made aware that the register(s) will be published in advance of publication. This should be done by the provision of a 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 should additionally be provided to individuals identified in the registers because they are in a relationship with the person making the declaration.

66. The register(s) of interests (including the register of gifts and hospitality) must be published as part of the CCG's Annual Report and Annual Governance Statement.

Appointments and roles and responsibilities in the CCG

67. Everyone in a CCG has responsibility to appropriately manage conflicts of interest.

Secondary employment

68. Lewisham CCG will 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 engage in, any employment or consultancy work in addition to their work with the CCG. 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;
- Directorship of a GP federation; and
- Self-employment, including private practice, 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.

69. Lewisham CCG requires that individuals obtain prior permission to engage in secondary employment, and reserve the right to refuse permission where it believes a conflict will arise which cannot be effectively managed. Lewisham CCG will ensure that they have clear and robust organisational policies in place to manage issues arising from secondary employment. 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.

Appointing governing body or committee members and senior employees

70. On appointing governing body, committee or sub-committee members and senior staff, Lewisham CCG will 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 andt the CCG's constitution reflects the CCG's general principles.

71. The CCG will need to assess the materiality of the interest, in particular whether the individual (or any person with whom they have a close association

as listed in paragraph 12 and 27) 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.

72. Lewisham CCG 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.

73. 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 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 or joint commissioning of primary care are set out below.

74. Lewisham CCG has set out in the constitution a statement of the conduct expected of individuals involved in the CCG, e.g. members of the governing body, members of committees, and employees, which reflect the safeguards in this guidance. This should reflect the expectations set out in the Standards for Members of NHS Boards and Clinical Commissioning Groups[17].

CCG lay members

75. Lay members play a critical role in CCGs, providing scrutiny, challenge and an independent voice in support of robust and transparent decision-making and management of conflicts of interest. They chair a number of CCG committees, including the Audit Committee, the Remuneration Committee, the Local Auditor Panel, the Primary Care Commissioning Committee and the Public Engagement and Equalities Forum.

76. By statute, CCGs must have at least two lay members (one of whom must have qualifications, expertise or experience such as to enable the person to express informed views about financial management and audit matters[18] and serve as the chair of the audit committee [19] ; and the other, knowledge of the geographical area covered in the CCG's constitution such as to enable the person to express informed views about the discharge of the CCG's

[17] *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-and-clinical-commissioning-group-governing-bodies-in-england*
[18] *Section 12(3) NHS (CCG) Regulations 2012* http://www.legislation.gov.uk/uksi/2012/2996/pdfs/uksi_20122996_en.pdf
[19] *Section 14(2) NHS (CCG) Regulations 2012* http://www.legislation.gov.uk/uksi/2012/2996/pdfs/uksi_20122996_en.pdf

functions[20]). In light of lay members' expanding role in primary care co-commissioning, Lewisham CCG is increasing this requirement within the constitution to a minimum of three lay members on the governing body.

Conflicts of Interest Guardian

77. To further strengthen scrutiny and transparency of CCGs' decision-making processes, Lewisham CCG will have a Conflicts of Interest Guardian (akin to a Caldicott Guardian). This role will be undertaken by the CCG audit chair, provided they have no provider interests, as the audit chair already has a key role in conflicts of interest management. They will be supported by the CCG's Associate Director of Integrated Governance who has a responsibility for the day-to-day management of conflicts of interest matters and queries. The Associate Director of Integrated Governance will keep the Conflicts of Interest Guardian well briefed on conflicts of interest matters and issues arising.

78. The Conflicts of Interest Guardian should, in collaboration with the CCG's governance lead:

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

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

80. 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.

81. The Conflicts of Interest Guardian will have access to legal advice if it is deemed necessary.

Primary Care Commissioning Committee Chair

82. The primary care commissioning committee must 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 should not hold the position of chair of the primary care commissioning committee. This is because CCG audit chairs would

conceivably be conflicted in this role due to the requirement that they attest annually to the NHS England Board that the CCG has:

- Had due regard to the statutory guidance on managing conflicts of interest; and

- Implemented and maintained sufficient safeguards for the commissioning of primary care.

83. CCG audit chairs can however serve on the primary care commissioning committee provided appropriate safeguards are put in place to avoid compromising their role as Conflicts of Interest Guardian.

Responsibilities

84. Individuals including employees

a. The primary responsibility for declaring and guarding against conflicts of interests lies with individual members of the CCG, members of the Governing Body, members of the CCG's committees or sub-committees or committees or subcommittees of the Governing Body and employees.

b. Members of the CCG, members of the Governing Body, members of the CCG's committees or sub-committees or committees or subcommittees of the Governing Body and employees:

i. will familiarise themselves with this policy and comply with the provisions set out in it.

ii. will take proactive action to seek advice if there is any doubt about whether to include any information in the Register of Interests and or how to manage a potential conflict of interest.

c. In any transaction undertaken in support of the clinical commissioning group's exercise of its commissioning functions (including conversations between two or more individuals, e-mails, correspondence and other communications), individuals must ensure, where they are aware of an interest that they conform to the arrangements confirmed for the management of that interest. Where an individual has not had confirmation of arrangements for managing the interest, they must declare their interest at the earliest possible opportunity in the course of that transaction, and declare that interest as soon as possible thereafter. The individual must also inform either their line manager (in the case of employees), or the governing body, of the transaction.

85. Governing Body

a. It is the responsibility of the Governing Body to ensure that the register of interests is reviewed regularly, and updated as necessary and at least six-monthly; and to ensure that all conflicts of interest or potential conflicts of interest are declared.

b. It is the responsibility of the Governing Body to 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.

c. It is the responsibility of the Governing Body to determine arrangements for the management of conflicts of interest including to put in writing to the relevant individual arrangements for managing the conflict of interests or potential conflicts of interests, within a week of declaration. The arrangements will confirm the following

i. when an individual should withdraw from specified activity, on a temporary or permanent basis

ii. monitoring of the specified activity undertaken by the individual, either by a line manager, colleague or other designated individual.

86. Chair of the Governing Body, chairs of the CCG's committees or sub-committees or committees or subcommittees of the Governing Body (chairs of meetings)

a. It is the responsibility of the chairs of meetings to ensure that the Register of Interests is reviewed at the start of every meeting and updated as necessary

b. It is the responsibility of the chairs of meetings to take such steps as deemed appropriate, and request information deemed appropriate from individuals, to ensure that all conflicts of interest and potential conflicts of interest are declared.

87. Chief Officer

a. The Chief Officer has overall responsibility for ensuring NHS Lewisham CCG has appropriate governance policies and procedures in place to ensure the CCG works to best practice and complies with all relevant legislation.

88. Conflict of Interest Guardian

a. The Conflict of Interest Guardian is responsible for reviewing the Register of Interests against the agenda for the Governing Body prior to the meetings.

b. The Conflict of Interest Guardian will undertake regular inspections to review the Register of Interests against the agenda for all other committees and working groups supported by the corporate governance team.

c. The Conflict of Interest Guardian lay member will make himself/herself available to provide advice to any individual who believes they have, or may have, a conflict of interest.

d. The Conflict of Interest Guardian lay member will develop a body of 'case law' as a source of guidance, which may be reviewed, when providing advice.

e. The Conflict of Interest Guardian lay member (with the support of an appropriate director) will review cases where an individual disputes that they have a conflict of interest and will make a recommendation to be approved by the Governing Body

f. The Conflicts of Interest Guardian will assist with the annual internal audit on the management of conflicts of interest to provide further assurance about the degree of compliance with the statutory guidance.

89. The Chief Financial Officer

a. The Chief Financial Officer is responsible for seeking assurance that all of its providers of commissioning support services have robust business practices that enable the CCG to meet its statutory duties and policy commitments in relation to procurement including the management of conflicts of interests

b. The Chief Financial Officer will ensure that the Register of Contracts is published on the CCG's website and is available to view on request.

90. Commissioning Directors

a. The Commissioning Directors will ensure that the Register of Procurement Decisions is published on the CCG's website and is available to view on request.

91. Corporate Director

a. The Corporate Director is responsible for ensuring NHS Lewisham CCG applies the principles of this policy and that there are suitable resources to support its implementation.

b. The Corporate Director is normally responsible for reviewing register entries on a regular basis and taking any action necessary as highlighted by the review

c. The Corporate Director is responsible for reviewing any suspected and actual breaches of the policy and for reporting lessons learned to the lay member of the governing body with responsibility for governance and to the audit committee

92. Associate Director of Integrated Governance supported by the Corporate Governance Team

a. The Associate Director of Integrated Governance is responsible for maintaining the Registers of Interests and ensuring this is produced for the chairs of meetings at every Governing Body and Committee Meeting.

b. The Associate Director of Integrated Governance will ensure that the Register of Interests is a standard agenda item for all committee, sub-committee and working group meetings.

c. In the event of withdrawal of a conflicted member, the Associate Director of Integrated Governance will ensure that the chairs of meetings are supported and advised to monitor quorum appropriately.

d. The Associate Director of Integrated Governance will hold details of each query in regard to conflicts of interests to provide an audit trail on each query and the action taken. These records may be used, in liaison with the lay member with responsibility for governance, to compile a body of “case law” for use by the Governing Body lay member when providing advice

e. The Associate Director of Integrated Governance will ensure that the Registers of Interests are published on the CCG’s website or made available to the public on request.

f. The Associate Director of Integrated Governance will ensure that refresher training is provided for all Governing Body members, members of the CCG, committee, subcommittee and working group members and employees on an annual basis.

Managing conflicts of interest at meetings

Statutory requirements
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.

Chairing arrangements and decision-making processes

93. The chair of a meeting of the Lewisham 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.

94. 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).

95. 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 (see paragraph 58-61) or another member of the governing body.

96. It is good practice for the chair, with support of the CCG's Associate Director of Integrated Governance or equivalent 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.

97. To support chairs in their role, they should have access to a declaration of interest checklist prior to meetings, which should include details of any declarations of conflicts which have already been made by members of the group. A template declaration of interest checklist has been annexed at Annex E.

98. 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.

99. 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.

100. 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.

101. 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:

- 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;

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

- 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;

- 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; 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.

Primary care commissioning committees and sub-committees

102. There are three general practice co-commissioning models:

- **Greater involvement** is simply an invitation to CCGs to collaborate more closely with their NHS England teams to ensure that decisions taken about

healthcare services are strategically aligned across the local health economy.

- **Joint commissioning** enables one or more CCGs to assume responsibility for jointly commissioning primary medical services with their local NHS England team via a joint committee. It is a requirement for each joint committee to have a register of interests, and for the interests of both CCG and NHS England representatives to be included on this register. These interests should also be recorded on the CCG's main register(s) of interests.

- **Delegated commissioning** enables CCGs to assume responsibility for commissioning general practice services.

103. Each CCG with joint or delegated primary care co-commissioning arrangements must establish a primary care commissioning committee for the discharge of their primary medical services functions. This committee should be separate from the CCG governing body. The interests of all primary care commissioning committee members must be recorded on the CCG's register(s) of interests.

104. The primary care commissioning committee should:

- For joint commissioning, take the form of a joint committee established between the CCG (or CCGs) and NHS England; and
- In the case of delegated commissioning, be a committee established by the CCG.

105. 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:

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

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

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

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

Membership of primary care commissioning committees (for joint and delegated arrangements)

106. CCGs (and NHS England with regards to joint arrangements) can agree the full membership of their 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. Lewisham.
- 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.

86. Where a CCG is engaged in joint commissioning arrangements alongside NHS England, the joint role of NHS England in decision-making will provide an additional safeguard in managing conflicts of interest. However, Lewisham CCG will still satisfy itself that it has appropriate arrangements in place in relation to conflicts of interest with regard to their own role in the decision-making process. NHS England representatives need to take similar precautions.

Primary care commissioning committee decision-making processes and voting arrangements

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

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

Minute-taking

89. It is imperative that Lewisham CCG completes transparency in their 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

90. 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.

91. 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 decision relating to new care models. Any conflicts of interest must be identified and appropriately managed, in accordance with this statutory guidance. Further details are available in Annex J.

Designing service requirements

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

93. 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

94. 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.

95. 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.

96. 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[21] has issued guidance on the use of provider boards in service design.[22]

[21] NHS Improvement is the organisation which brings together Monitor and the NHS Trust Development Authority, and is a combination of the continuing statutory functions and legal powers vested in those

97. 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.

Specifications

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

99. 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

100. Lewisham 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 ina 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.

101. NHS England and CCGs must comply with two different regimes of procurement law and regulation when commissioning healthcare services: the NHS procurement regime, and the European procurement regime:

- 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

- The European procurement regime – Public Contracts Regulations 2015 (PCR 2105): incorporate the European Public Contracts Directive into national law; apply to all public contracts over the threshold value; 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.

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.

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

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

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".

103. 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.

104. 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.

[23] *The National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013* http://www.legislation.gov.uk/uksi/2013/500/contents/made

105. A procurement template, provided in Annex G, sets out factors that the CCG should address when drawing up their plans to commission general practice services..

106. Lewisham 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:

- Evidence that the CCG is seeking and encouraging scrutiny of its decision-making process;
- A record of the public involvement throughout the commissioning of the service;
- 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;
- 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.

107. External services such as commissioning support services (CSSs) 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 CSS, Lewisham CCG should have systems to assure themselves that a CSS' 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 CSS to declare any conflicts of interest it may have in relation to the work commissioned by the CCG.

108. Lewisham CCG cannot, however, lawfully delegate commissioning decisions to an external provider of commissioning support. Although CSSs 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:

- Determine and sign off the specification and evaluation criteria;
- Decide and sign off decisions on which providers to invite to tender; and
- Make final decisions on the selection of the provider.

Register of procurement decisions

109. Lewisham 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:

- The details of the decision;

- 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);

- A summary of any conflicts of interest in relation to the decision and how this was managed by the CCG (see paragraph 117 in relation to retaining the anonymity of bidders); and

- The award decision taken.

110. The register of procurement decisions must be updated whenever a procurement decision is taken. 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 should be made publicly available and easily accessible to patients and the public by:

- Ensuring that the register is available in a prominent place on the CCG's website; and

- Making the register available upon request for inspection at the CCG's headquarters

111. Although it is not a requirement to keep a register of services that may be procured in the future, it is 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

112. 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 Annex I for a declaration of interests for bidders/ contractors template.

113. 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

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

115. 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.

116. 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.

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

CCG Improvement and Assessment Framework

118. NHS England is introducing a new Improvement and Assessment Framework for CCGs from 2016/17 onwards. The management of conflicts of interest is a key indicator of the new framework.

119. As part of the new framework, CCGs will be required on an *annual* basis to confirm via self-certification:

- That the CCG has a clear policy for the management of conflicts of interest in line with the statutory guidance and a robust process for the management of breaches;
- That the CCG has a minimum of three lay members;
- That the CCG audit chair has taken on the role of the Conflicts of Interest Guardian;
- The level of compliance with the mandated conflicts of interest on-line training, as of 31 January annually.

120. In addition, CCGs will be required to report on a *quarterly* basis via self-certification whether the CCG:

- Has processes in place to ensure individuals declare any interests which may give rise to a conflict or potential conflict as soon as they become aware of it, and in any event within 28 days, ensuring accurate up to date registers are complete for:
    - conflicts of interest,
    - procurement decisions and
    - gifts and hospitality
- Has made these registers available on its website and, upon request, at the CCG's HQ.
- Is aware of any breaches of its policies and procedures in relation to the management of conflicts of interest and how many:
    - To include details of how they were managed;
    - Confirmation that anonymised details of the breach have been published on the CCG website;
    - Confirmation that they been communicated to NHS England.

121. In addition there is a requirement for each CCG to undertake an annual internal audit on the management of conflicts of interest to provide further assurance about the degree of compliance with the statutory guidance (as set out in paragraph 127 onwards). Consideration of the indicator should form part of this audit.

Internal audit

122. All CCGs will need to undertake an audit of conflicts of interest management as part of their internal audit on an annual basis.

123. NHS England will provide a template for the audit.

124. 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.

Raising concerns and breaches

132. 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 Associate Director of Integrated Governance or the Conflicts of Interest Guardian).

133. Any non-compliance with the CCG's conflicts of interest policy should be reported in accordance with the terms of this 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).

134. 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, the team or individual designated by the CCG to provide advice, support, and guidance on how conflicts of interest should be managed, should 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.

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

Reporting breaches

136. Failure to comply with the CCG's policies on conflicts of interest management, pursuant to this statutory guidance, can have serious implications for the CCG and any individuals concerned. The CCG's Accountable Officer 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 or to refer to the relevant regulatory body by the Accountable Officer.

137. 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 Conflicts of Interest Guardian or the CCG Associate Director of Integrated Governance in the first instance. In the event that there is a concern regarding the Conflicts of Interest Guardian, this should be raised with the Governing Body Chair and Accountable Officer in the first instance.

138. Any non-compliance with the CCG's conflicts of interest policy should be reported in accordance with the terms of that policy, and CCG's Whistleblowing Policy (where the breach is being reported by an employee or worker of the CCG).

139. The CCG Associate Director of Integrated Governance will maintain a Register of Breaches which sets out:-

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

140. All breaches will be reported to the CCG's Audit Committee, and will be reported to the Governing Body through a Standing Item in the Audit Committee Overview Report. Anonymised details of breaches will be published on the CCG's website for the purpose of learning and development.

141. Statutorily regulated healthcare professionals who work for, or are engaged by, CCGs are under professional duties imposed by their relevant regulator to act appropriately with regard to conflicts of interest. The CCG will 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

Resolving disputes

142. Members of the CCG, members of the Governing Body, members of the CCG's committees or sub-committees or committees or subcommittees of the Governing Body and employees of NHS Lewisham Clinical Commission Group who dispute that they have a conflict of interest will be invited to discuss the matter with the lay member of the governing body with responsibility as the Conflicts of Interest Guardian.

143. The Conflicts of Interest Guardian will review the case and make recommendations on whether there is a conflict of interest and how it will be managed that will have immediate effect until ratified by the Governing Body.

144. The Conflicts of Interest Guardian will present his/her recommendation at the next meeting of the Governing Body (in private) for agreement. Members of the CCG, members of the Governing Body, members of the CCG's committees or sub-committees or committees or subcommittees of the Governing Body and employees in dispute will be given an opportunity to present their case to the Governing Body at this same meeting as a form of appeal.

The Governing Body's decision will be final.

145. Members of the CCG, members of the Governing Body, members of the CCG's committees or sub-committees or committees or subcommittees of the

Governing Body and employees of NHS Lewisham Clinical Commission Group should also refer to their respective professional codes of conduct relating to the declaration of conflicts of interest.

146. The CCG will view instances where this policy is not followed as serious and may take appropriate disciplinary action against individuals, which may result in dismissal.

147. Any disciplinary action will be taken following the policy and procedures set out in the NHS Lewisham CCG Disciplinary Policy and Procedures and the CCG's Constitution. Where Fraud, Bribery or Corruption is suspected the matter will be passed to the CCG's Local Counter Fraud Specialist (LCFS) for investigation in line with the NHS Lewisham CCG Policy in relation to Fraud and Fraud Response Plan and the CCG's Anti-Bribery Policy. This may lead to the individual being prosecuted through the Criminal Courts.

Fraud or Bribery

136. Any suspicions or concerns of acts of fraud or bribery can be reported online via https://www.reportnhsfraud.nhs.uk/ or via the NHS Fraud and Corruption Reporting Line on 0800 0284060. This provides an easily accessible and confidential route for the reporting of genuine suspicions of fraud within or affecting the NHS. All calls are dealt with by experienced trained staff and any caller who wishes to remain anonymous may do so.

Impact of non-compliance

137. Failure to comply with the CCG's policies on conflicts of interest management, pursuant to this statutory guidance, can have serious implications for the CCG and any individuals concerned.

Civil implications

138. If conflicts of interest are not effectively managed, CCGs could face civil challenges to decisions they make. For instance, if breaches occur during a service re-design or procurement exercise, the CCG risks a legal challenge from providers that could potentially overturn the award of a contract, lead to damages claims against the CCG, and necessitate a repeat of the procurement process. This could delay the development of better services and care for patients, waste public money and damage the CCG's reputation. In extreme cases, staff and other individuals could face personal civil liability, for example a claim for misfeasance in public office.

Criminal implications

139. 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 CCGs and linked organisations, and the individuals who are engaged by them.

140. The Fraud Act 2006 created a criminal offence of fraud and defines three ways of committing it:

- Fraud by false representation;
- Fraud by failing to disclose information; and,
- Fraud by abuse of position.

141. An essential ingredient of the offences is that, the offender's conduct must be dishonest and their intention must be to make a gain, or cause a loss (or the risk of a loss) to another. Fraud carries a maximum sentence of 10 years imprisonment and /or a fine if convicted in the Crown Court or 6 months imprisonment and/or a fine in the Magistrates' Court. The offences can be committed by a body corporate.

142. Bribery is generally defined as giving or offering someone a financial or other advantage to encourage that person to perform their functions or activities. The Bribery Act 2010 reformed the criminal law of bribery, making it easier to tackle this offence proactively in both the public and private sectors. It introduced a corporate offence which means that commercial organisations, including NHS bodies, will be exposed to criminal liability, punishable by an unlimited fine, for failing to prevent bribery. The offences of bribing another person, being bribed and bribery of foreign public officials can also be committed by a body corporate. The Act repealed the UK's previous anti-corruption legislation (the

Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Acts of 1906 and 1916 and the common law offence of bribery) and provides an updated and extended framework of offences to cover bribery both in the UK and abroad. The offences of bribing another person, being bribed or bribery of foreign public officials in relation to an individual carries a maximum sentence of 10 years imprisonment and/or a fine if convicted in the Crown Court and 6 months imprisonment and/or a fine in the Magistrates' Court. In relation to a body corporate the penalty for these offences is a fine.

Disciplinary implications

143. CCGs should 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

144. Statutorily regulated healthcare professionals who work for, or are engaged by, CCGs are under professional duties imposed by their relevant regulator to act appropriately with regard to conflicts of interest. CCGs should 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.

Conflicts of interest training

145. All CCGs must ensure that training is offered to all employees, governing body members, members of CCG committees and sub-committees and practice staff with involvement in CCG business on the management of conflicts of interest. This is to ensure staff and others within the CCG understand what conflicts are and how to manage them effectively.

146. All such individuals should have training on the following:

- 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 may 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.

147. Training will need to be completed on a yearly basis to raise awareness of the risks of conflicts of interest and to support staff in managing conflicts of interest. The annual training will be mandatory and will need to be completed by all staff by 31 January of each year. CCGs will be required to record their completion rates as part of their annual conflicts of interest audit.

Glossary

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

BMA: British Medical Association

CASC: Clinical Advisory Sub-Committee

CCG: Clinical Commissioning Group

CIPFA: The Chartered Institute for Public Finance and Accounting

CQC: Care Quality Commission

CSS: Commissioning Support Service

RCGP: Royal College of General Practitioners

GP: General Practitioner

NAO: National Audit Office

NICE: National Institute for Clinical Excellence

OPM: Office for Public Management

PCCC: Primary Care Commissioning Committee

PCR: Public Contract Regulations 2015

Annexes

Annex A	**Template Declaration of interests for CCG members and employees**
Annex B	**Template Register of interests for CCGs**
Annex C	**Template Declarations of gifts and hospitality**
Annex D	**Template Registers of gifts and hospitality**
Annex E	**Template Declarations of interest checklist**
Annex F	**Template for recording minutes**
Annex G	**Procurement checklist**
Annex H	**Template Register of procurement decisions and contracts awarded**
Annex I	**Template Declaration of interests for bidders/ contractors**

Annex A: Template Declaration of interests for CCG members and employees

NHS Lewisham Clinical Commissioning Group
Member / employee/ governing body member / committee or sub-committee member (including committees and sub-committees of the governing body) declaration form: financial and other interests

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 reverse of form 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 be published on registers that the CCG holds. If consent is NOT given please give reasons:

Signed: Date:

Signed: Position: Date:

Please return to Katie Hitchen (khitchen@nhs.net)

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 organization 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 (see paragraph 56-57 of the guidance) • 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, travel or subsistence) from a provider; • In receipt of research funding, including grants that may be received by the individual or any organization 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 organization 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 connections 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

Annex B: Template Register of interests

Name	Current position (s) held in the CCG i.e. Governing Body member; Committee member; Member practice; CCG employee or other	Declared Interest (Name of the organisation and nature of business)	Type of Interest			Is the interest direct or indirect ?	Nature of Interest	Date of Interest		Action taken to mitigate risk
			Financial Interest	Non-Financial Professional Interest	Non-Financial Personal Interest			From	To	

Annex C: Template Declarations of gifts and hospitality

Recipient Name	Position	Date of Offer	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	Details of the officer reviewing and approving the declaration made and date	Declined or Accepted?	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: **Position:** **Date:**
(Line Manager or a Senior CCG Manager)
Please return to **<insert name/contact details for team or individual in CCG nominated to provide advice, support, and guidance on how conflicts of interest should be managed, and administer associated administrative processes>**

Annex D: Template Register of gifts and hospitality

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

Annex E: Template declarations of interest checklist

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
	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

Template for recording any interests during meetings

Report from <insert details of sub-committee/ work group>	
Title of paper	<insert full title of the paper>
Meeting details	<insert date, time and location of the meeting>
Report author and job title	<insert full name and job title/ position of the person who has written this report>
Executive summary	<include summary of discussions held, options developed, commissioning rationale, etc.>
Recommendations	<include details of any recommendations made including full rationale> <include details of finance and resource implications>
Outcome of Impact Assessments completed (e.g. Quality IA or Equality IA)	<Provide details of the QIA/EIA. If this section is not relevant to the paper state 'not applicable'>
Outline engagement – clinical, stakeholder and public/patient:	<Insert details of any patient, public or stakeholder engagement activity. If this section is not relevant to the paper state 'not applicable'>
Management of Conflicts of Interest	<Include details of any conflicts of interest declared> <Where declarations are made, include details of conflicted individual(s) name, position; the conflict(s) details, and how these have been managed in the meeting> <Confirm whether the interest is recorded on the register of interests- if not agreed course of action>
Assurance departments/ organisations who will be affected have been consulted:	<Insert details of the people you have worked with or consulted during the process : Finance (insert job title) Commissioning (insert job title) Contracting (insert job title) Medicines Optimisation (insert job title) Clinical leads (insert job title) Quality (insert job title) Safeguarding (insert job title) Other (insert job title)>
Report previously presented at:	<Insert details (including the date) of any other meeting where this paper has been presented; or state 'not applicable'>
Risk Assessments	<insert details of how this paper mitigates risks- including conflicts of interest>

Template to record interests during the meeting.

Meeting	Date of Meeting	Chairperson (name)	Secretariat (name)	Name of person declaring interest	Agenda Item	Details of interest declared	Action taken

Annex F: Template for recording minutes

NAME OF MEETING
DATE

PRESENT:	NAME	*JOB TITLE*	*ORGANISATION*
	NAME	*JOB TITLE*	*ORGANISATION*
	NAME	*JOB TITLE*	*ORGANISATION*

(List alphabetically but always put Chair's name first)

IN ATTENDANCE:	NAME	*JOB TITLE*	*ORGANISATION*
	NAME	*JOB TITLE*	*ORGANISATION*
	NAME	*JOB TITLE*	*ORGANISATION*

(People attending the meeting who are not members of the Group)

APOLOGIES:	NAME	*JOB TITLE*	*ORGANISATION*
	NAME	*JOB TITLE*	*ORGANISATION*
	NAME	*JOB TITLE*	*ORGANISATION*

(Those who have given apologies)

1. **Welcome and Introductions**
2. **Apologies for Absence**
3. **Declarations of Interests**
4. **Minutes of Previous Meeting**

(Changes to the minutes should be noted under this item)

5. **Action Log**
6. **Matters Arising**

(Any matter mentioned in the last meeting with outstanding issues or work to be completed)

7. **Agenda Items**

(Each item should be numbered sequentially, and each item should be followed, if appropriate, by an action point and initials of responsible officer i.e action by).

8. **Any Other Business**

(Any matter not raised as part of the agenda)

9. **Date of Next Meeting**

Annex G: 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?[25]	

[25]Taking into account all relevant regulations (e.g. the NHS (Procurement, patient choice and competition) (No 2) Regulations 2013 and guidance (e.g. that of Monitor).

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?	

Template: 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 **<insert name/contact details for team or individual in CCG nominated for procurement management and administrative processes>**

Annex H: Template Register of 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	CCG contract manger	Decision making process and name of decision making committee	Summary of conflicts of interest declared and how these were managed	Contract awarded (supplier name & registered address)	Contract value (£) (Total)	Contract value (£) to CCG

Annex I: Template Declaration of conflict of interests for bidders/contractors

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:

Annex J: Summary of key aspects of the guidance on managing conflicts of interest relating to commissioning of new care models (From NHS England)

Introduction

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

3. This annex is intended to provide further advice and support to help the CCG to manage conflicts of interest in the commissioning of new care models. It summarises key aspects of the statutory guidance which are of particular relevance to commissioning new care models rather than setting out new requirements. Whilst this annex highlights some of the key aspects of the statutory guidance, CCGs should always refer to, and comply with, the full statutory guidance. This annex is based on national guidance (https://www.england.nhs.uk/wp-content/uploads/2017/06/revised-ccg-coi-guidance-jul-17.pdf)

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 the CCG will want to consider whether, practically, such an interest is manageable at all. It should note that this can arise in relation to both clinical

and nonclinical members/roles. If an interest is not manageable, the appropriate course of action may be to refuse to allow the circumstances which gave rise to the conflict to persist. This may require an individual to step down from a particular role and/or move to another role within the CCG and may require the CCG to take action to terminate an appointment if the individual refuses to step down.
The CCG will 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. The CCG will 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. The CCG will 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, the CCG will 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 will 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. CCGs are adapting existing governance arrangements and others developing new ones to manage the risks that can arise when commissioning new care models. There is not a recommended “one size fits” all governance approach, but belwo are some examples of governance models which CCGs may want to consider in the future.

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

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

- **Primary Care Commissioning Committee**

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

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.

Further support

26. If you have any queries about this advice, please contact: england.cocommissioning@ nhs.net.