

## **CONFLICTS OF INTEREST and BUSINESS CONDUCT POLICY**

<b><i>Approved by:</i></b>	NHS Airedale, Wharfedale and Craven CCG, NHS Bradford City CCG and NHS Bradford District CCG Governing Bodies
<b><i>Date approved</i></b>	14 <sup>th</sup> May 2019
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<b><i>Review date:</i></b>	2 years from approval (May 2021)

## Version Control

Please note that the CCGs website version is the only version that is maintained. Any printed copies should therefore be viewed as 'uncontrolled' and as such, may not necessarily contain the latest updates and amendments.

<b>Version and Date</b>	<b>Author</b>	<b>Description</b>	<b>Circulation</b>
0.1 Oct 17	Sarah Dick	First draft of a 3CCGs joint policy – and amendments arising from June 2017 revisions to guidance.	Audit and Governance Committees
0.2	Sarah Dick	Version recommended for approval by A&G Committees	Governing Bodies
1.0	Sarah Dick	Version approved by Governing Bodies	CCG wide and websites
1.1 Dec 18	Sarah Dick	Scheduled review, including revisions arising from internal audit recommendations: <ol style="list-style-type: none"> <li>i. new section (7.3.3) on declarations of interest at the outside of any commissioning process</li> <li>ii. rewording to reflect that web-links to registers are included on agenda templates and that registers available on CCG websites are updated monthly</li> <li>iii. specification that visitors participating in meetings must also declare any relevant interests (Section 7.3.4 and Appendix C).</li> <li>iv. addition of suspension of standing orders as an option for alternative quorum arrangements for Governing Bodies (Section 7.3.5)</li> <li>v. inclusion of the CCGs' definition of 'decision-taking staff', replacing NHS England's suggested definition (Section 7.4)</li> <li>vi. clarification to Section 8.5 (contract management)</li> <li>vii. addition of Section 8.6 (CCG staff transfer following an award of contract recognised as an interest)</li> <li>viii. clarification of mandatory training requirements (Section 10)</li> <li>ix. Declaration of Interests form (Appendix B): amended for GDPR requirements</li> </ol>	A&G Committee members, Chief Officer
1.2 March 2019	Sarah Dick	Amendments following comments from A&G Committee members, further discussion with the Chief Officer and: <ul style="list-style-type: none"> <li>• clarification to Section 2 (scope) from guidance in the new CCG model constitution</li> <li>• clarification that individuals outside the scope of the CCGs' definition of 'decision-taking' are expected to register interests and undertake relevant training within their own organisations and to declare these interests as appropriate at CCG and / or partnership meetings (Section 7.4)</li> <li>• addition of Appendix G: New Starter Policy Declaration Form</li> </ul>	Audit & Governance Committees
1.3 April 2019	Sarah Dick	<ul style="list-style-type: none"> <li>• definition of an interest added to Appendix C Chair's Col Checklist (audit recommendation)</li> <li>• addition of 'receipt of funding from a pharma or related company as part of a joint working arrangement' as a type of financial interest</li> </ul>	Governing Bodies
2.0 May 2019	Sarah Dick	Version approved by Governing Bodies	CCG wide and websites

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## 1 Introduction and Legislative Framework

*“If conflicts of interest are not managed effectively by CCGs, confidence in the probity of commissioning decisions and the integrity of clinicians involved could be seriously undermined. However, with good planning and governance, CCGs should be able to avoid these risks”.*

**NHS Commissioning Board -- Managing conflicts of interests: Guidance for clinical commissioning groups – March 2013**

Clinical commissioning groups (CCGs) manage conflicts of interest as part of their day-to-day activities. Effective handling of such conflicts is crucial for the maintenance of public trust in the healthcare commissioning system. It also serves to give confidence to patients, providers, parliament and tax payers that CCGs commissioning decisions are robust, fair, transparent and offer value for money.

NHS Airedale, Wharfedale and Craven Clinical Commissioning Group, NHS Bradford City Clinical Commissioning Group and NHS Bradford Districts Clinical Commissioning Group (hereafter known as the CCGs), as commissioners of healthcare, need to manage conflicts of interest in a way that demonstrates transparency, probity and accountability. This is particularly important where commissioning services might be delivered by member practices as providers – ensuring that the approach taken does not affect or appear to affect the integrity of the CCGs’ decision making processes. This will enable the CCGs to withstand scrutiny and challenge and also protect the CCGs, their Governing Bodies, their Clinical Boards / Clinical Executive, Committee members, staff and member practices from any perception of wrong-doing.

*“Conflicts of interest are inevitable in commissioning. It is how we manage them that matters”.*

Managing Conflicts of Interest: Revised Statutory Guidance for CCGs, June 2017, NHS England

### Legislative Framework

There are two separate pieces of legislation that require the CCG to manage conflicts of interest. These are:

(i) *Section 140 of the 2006 Act (Health Act 2006), as amended by section 25 of the 2012 Act (Health and Social Care Act 2012).* This requires commissioners to:

- Maintain appropriate registers of interests;
- Publish or make arrangements for public to access those registers;
- Make arrangements requiring the prompt declaration of any interests and inclusion within the relevant register;
- Make arrangements for managing conflicts of interest and potential conflict of interest;
- Have regard to guidance published by NHS England and Monitor in relation to conflicts of interest.

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(ii) *The NHS (Procurement, Patient Choice and Competition) Regulations 2013.*  
This requires commissioners to:

- Manage conflicts and potential conflicts of interest when awarding a contract by prohibiting the award of a contract when the integrity of the award has been, or appears to have been, affected by a conflict.
- Keep appropriate records of how they have managed any such conflicts in relation to NHS commissioning contracts it enters into. Details of this should be published by the CCGs.

In addition to the legislation outlined above, NHS England has published detailed guidance for CCGs on the discharge of their functions and requires each CCG to have regard to the guidance. The latest version of this guidance is *Managing Conflicts of Interest: Revised Statutory Guidance for CCGs, June 2017*. This guidance supersedes the previous version (June 2016) and has been fully aligned with the new cross-system guidance on *Managing Conflicts of Interest in the NHS* which was published in February 2017.

NHS England expects all CCGs to fully implement statutory guidance on conflicts of interest management. Where a CCG has decided not to comply with this guidance, the reasons for doing so must be set out in the annual conflicts of interest self-certification.

## **2 Scope of the Policy and Associated Documentation**

This policy applies to all:

- employees of the CCGs (including those on temporary or honorary contracts),
- members of Clinical Boards / Clinical Executive and other committees and sub-committees of the CCGs.
- members of the Governing Bodies, their committees and sub-committees; and
- CCG members (partners or directors where the practice is a company) and any other practice staff with involvement in CCG business.

**Where any individual directly involved with the business or decision-making of the CCG and not otherwise covered by one of the categories above (for example, a member of a CCG programme board from a provider organisation), has an interest, or becomes aware of an interest which could lead to a conflict of interests in the event of the CCG considering an action or decision in relation to that interest, this must be considered as a potential conflict and declared to the CCGs and at all relevant meetings.**

Individuals contracted to work for, or on behalf of the CCGs or otherwise providing services or facilities to the CCGs will be made aware of their obligation with regard to declaring conflicts or potential conflicts of interest. This requirement will be written into their contract for services.

This policy should be read in conjunction with the:

- CCG Constitutions

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- CCGs Anti-Fraud, Bribery and Corruption Policy
- CCGs Whistleblowing and Raising Concerns Policy
- CCGs Policy on the Offer and Receipt of Gifts, Hospitality and Sponsorship
- CCGs Procurement Policy
- CCGs Disciplinary Policy and Procedure
- CCGs Policy on Joint Working Arrangements with the Pharmaceutical and Related Industries
- Code of Conduct of NHS Managers
- General Medical Council Good Medical Practice

### **3 Aims and Objectives**

Conflicts of interest are inevitable in public life. This policy provides advice on recognising where and how conflicts of interest arise and management of these within a robust governance framework to ensure that conflicts of interest do not affect, or appear to affect, the integrity of the CCGs' decision-making processes.

This policy sets out how the CCGs will ensure best practice is followed in managing actual or potential conflicts of interest. The policy sets out the safeguards which are in place as part of a robust governance framework to ensure transparency, fairness and probity in decision-making, including:

- Arrangements for declaring interests
- Maintaining and publishing registers of interests
- Managing conflicts of interest proactively or when they arise
- Keeping a record of the steps taken to manage a conflict
- Situations where individuals would be excluded from decision-making as a result of an actual or potential conflict of interest
- Managing situations where a breach of this policy has occurred
- Engagement with a range of potential providers on service design
- Maintaining and publishing a register of procurement decisions

The benefits of managing conflicts of interest are:

- Maintaining confidence and trust between patients, the public and GPs.
- Enabling the CCGs and member practices to demonstrate that they are acting fairly and transparently and that the members of the CCGs will always put their duty to patients before any personal interest.
- Ensuring that the CCGs operate in line with legislation and statutory guidance.

### **4. Policy Statement on Business Conduct**

As statutory NHS bodies, the CCGs will embody public service values and principles in all business the organisation conducts. High standards of corporate and personal conduct based on the principle that *patients come first*, is a requirement for all members and employees of the CCGs'.

The following principles will govern the activities of the CCGs:

- Accountability:** Everything done by members and employees of the CCGs' must be able to stand the test of parliamentary scrutiny, public judgements on propriety and professional codes of conduct.
- Probity:** There should be an absolute standard of honesty in dealing with the assets of the NHS and of the CCGs. Integrity should be the hallmark of all personal conduct in decisions affecting patients, staff and suppliers, and in the use of information acquired in the course of the CCGs business.
- Transparency:** There should be sufficient transparency about CCGs activities to promote confidence between the CCGs and their staff, patients and the public.

All individuals covered by this policy (see Section 2: Scope) should act in the interests of the CCGs at all times and should follow the *Seven Principles of Public Life* (the Nolan Principles) set out by the Committee on Standards in Public Life and detailed in Appendix F of the CCGs' constitutions:

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership

The CCGs will also observe the principles of good governance set out in:

- The Good Governance Standards for Public Services (2004); Office for Public Management (OPM) and Chartered Institute of Public Finance and Accountancy (CIPFA) (2004)
- The Equality Act 2010
- The UK Corporate Governance Code (2016)
- Standards for members of NHS boards and CCG governing bodies in England (Nov 2013)

The CCGs expect that all employees, members, committee and sub-committee members of the group and members of the governing bodies (and their committees) to:

- Ensure that the interests of the public remain paramount at all times
- Be impartial and honest in the conduct of their official business
- Use the public funds entrusted to them to the best advantage of the service, always ensuring value for money
- Comply with the requirements of Constitutions, Standing Orders and Prime Financial Policies and all instructions relating to corporate governance
- Comply with the Department of Health Code of Conduct / Code of Accountability

It is also the responsibility of employees, members, committee and sub-committee members of the group and members of the governing bodies (and their committees) to ensure that they do not:

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- Abuse their official position for personal gain or to benefit their family or friends
- Seek to advantage or further private business or other interests in the course of their official duties.

## 5 Definition of Conflicts of Interest

Conflicts of interest may arise where personal interests or loyalties conflict with those of the CCGs. Such conflicts may create problems such as inhibiting free discussions which could result in decisions or actions that are not in the best interests of the CCGs, patients or the public and risk creating the impression that the CCGs have acted improperly.

NHS England defines a conflict of interest as occurring:

*“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 of interest exists even when there is no actual conflict” (i.e. a perceived conflict).*

The latest version of this guidance is *Managing Conflicts of Interest: Revised Statutory Guidance for CCGs, June 2017*. This guidance supersedes the previous version (June 2016) and has been fully aligned with the new cross-system guidance on *Managing Conflicts of Interest in the NHS* which was published in February 2017.

NHS England identifies four categories of conflicts of interest:

(1) **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 a health or social care organisation.
- 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 a health or social care organisation.
- A management consultant for a provider

This could also include an individual (or their practices, in the case of GPs) being:

- In secondary employment (see Section 7.2)
- In receipt of secondary income from a provider.
- In receipt of a grant from a provider.
- In receipt of payments (for example, Honoria, one-off payments, day allowances or travel or subsistence) from a provider.
- In receipt of funding from the pharmaceutical or med-tech industry as part of a joint working arrangement.

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- 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).
- (2) **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 a special interest(s);
  - A member of a particular specialist professional body (although routine GP membership of the Royal College of General Practitioners, British Medical Association 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.
- (3) **Non-financial personal interests:** This is where an individual may benefit personally in ways which are not directly linked to their professional career or do not give rise to 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 with a voluntary sector organisation.
  - A member of a lobby or pressure group with an interest in health.
- (4) **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, for example:
- Spouse / partner
  - Close relatives e.g. parent, grandparent, child, grandchild or sibling;
  - Close friend;
  - Business partner. A declaration 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 (this could be done by cross-referring to the separate declarations made by those GP partners).

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

It is not possible to define all instances in which an interest may be a real or perceived conflict. It is for each individual to exercise their judgement in deciding whether to register any interests that may be construed as a conflict. If an individual is unsure as to whether an interest should be declared then that individual should seek advice from

the Associate Director of Corporate Affairs and CCGs Head of Governance, Committee Chairs, Accountable Officer or the Conflicts of Interest Guardian (Chair of Audit and Governance Committees).

Where the CCGs' Accountable Officer wishes to seek advice on their own interests, he / she should consult with the Conflicts of Interest Guardian (Chair of Audit and Governance Committees).

***If in doubt it is better to assume the existence of a conflict of interest and declare it, rather than ignore it.***

NHS England has developed a series of case studies to accompany the revised statutory guidance on managing conflicts of interest for CCGs. The case studies are intended to raise awareness of the different types of conflicts of interest that could arise in CCGs and to support CCGs to robustly and effectively identify and manage them. The case studies can be accessed here:

<https://www.england.nhs.uk/commissioning/wp-content/uploads/sites/12/2016/06/coi-case-studies-jun16.pdf>

## **6 Roles and Responsibilities**

### **6.1 Governing Bodies**

The Governing Bodies will oversee this policy and will ensure that there are systems and processes in place to support all members of the Governing Bodies, Clinical Executive, members of Committees, employees and member practices to:

- Declare their interests through a Register of Interests which is made available to the public via the CCGs websites or on request to the CCGs.
- Declare any interests relevant to discussions and proceedings so that any comments they make are fully understood by all others in that context.
- Ensure that where any conflict which could have an effect on any decision or process the individual concerned will have no part in making or influencing the relevant decision.

### **6.2 Chair of the Audit and Governance Committees (CCGs' Conflicts of Interest Guardian)**

The Chair of the Audit and Governance Committees (the Lay Member for Audit and Governance) act as the CCGs' Conflicts of Interest Guardian and have a lead role in ensuring that the Governing Bodies and wider CCGs behave with the utmost probity at all times. The Chair of the Audit and Governance Committees oversees key elements of governance including the appropriate management of conflicts of interest in line with national guidance.

The Conflicts of Interest Guardian will:

- 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;

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- Be a safe point of contact for employees or workers of the CCGs to raise any concerns in relation to this policy;
- Support the rigorous application of conflicts of interest principles and policies;
- Provide independent advice and judgement where there is any doubt about how to apply conflicts of interest policies and principles in an individual situation;
- Provide advice on minimising the risks of conflicts of interests.

The Chair of the Audit and Governance Committees (together with the CCGs' Accountable Officer) will provide direct attestation to NHS England that the CCGs have complied with national guidance on the management of conflict of interest via quarterly and annual self-certifications

### **6.3 Audit and Governance Committees**

The Audit and Governance Committees will receive copies of the Registers of Interests and of Procurement Decisions on a regular basis. They will also receive copies of the Procurement Template when the CCGs are potentially procuring services from GP Practices. In addition, if any instances of non-compliance with this policy are identified, a lessons learnt review will be reported to the Audit and Governance Committees.

### **6.4 Accountable Officer**

The CCGs' Accountable Officer has overall responsibility for the implementation of this policy and for ensuring that a robust process for declaring and managing conflicts of interest is in place.

The Accountable Officer will ensure that for every interest declared, either in writing or by oral declaration, arrangements are put in place to manage the conflict or potential conflict of interest to ensure the integrity of the CCGs' decision making process.

Where appropriate, the Accountable Officer will put in writing to the relevant individual, arrangements for managing the conflict or potential conflict of interest within a week of declaration. This will confirm the following:

- When an individual should withdraw from a specified activity, on a temporary or permanent basis.
- Monitoring of the specified activity undertaken by the individual, either by a line manager, colleague or other designated individual.

### **6.5 Meeting Chairs**

Meeting Chairs have particular responsibility for ensuring the appropriate management of conflicts of interest during the course of all of the CCGs meetings. They are responsible for ensuring:

- They are familiar with the contents of the Registers of Interests as pertinent to their Groups or Committees.
- They prepare for the meeting mindful of any actual or potential conflicts of interest that may arise relevant to the business of that meeting.
- That declarations of interest are always an item on the agendas.
- That the meeting is quorate and that this is recorded in the minutes.

- That members are asked to declare any interests that are likely to lead to a conflict or potential conflict that could impact (or has the potential to impact) on any items on the agendas. This should be repeated again at individual item(s) where it is considered a conflict is likely to or could potentially arise.
- Any declaration must be clearly noted in the minutes both at the start of the meeting and at the relevant item. If there is any doubt as to whether or not a conflict of interest could arise, a declaration should be made and noted in the minutes.
- The minutes must specify how the Chair decided to manage the declared interest (please see **Appendix C** for additional guidance) and provide evidence that it was managed accordingly.
- Any declaration arising during the course of a meeting / individual item must be minuted and action how to handle it agreed by the Chair and recorded in the minutes.
- Quoracy of the meeting or for individual items must be checked if an interest is declared. If the meeting is no longer quorate (in full or for particular items) or there is insufficient relevant expertise to inform decision-making once those with conflicts of interests are excluded the Chair must agree how this should be managed, i.e. defer the item / meeting or refer any decisions for particular items(s) to another Committee for consideration and formal approval.

Please see **Appendix C** for a Conflicts of Interest Checklist for Committee Chairs.

## 6.6 Associate Director of Corporate Affairs

The Associate Director of Corporate Affairs, supported by the CCGs' Head of Governance, is responsible for:

- Ensuring the appropriate maintenance of the Registers of Interest and the Register of Procurement Decisions and their public availability.
- Supporting the Conflicts of Interest Guardian to enable them to carry out their role effectively.
- Providing advice, support and guidance on how conflicts of interest should be managed.
- Ensuring that appropriate administrative processes are in place to support conflicts of interest management.

## 6.7 Senior Management Team

The role of the Senior Management Team is to ensure that members of staff and any contractors working on behalf of the CCGs are aware of this policy and the processes to be followed.

## 6.8 All Individuals

To ensure openness and transparency in business transactions, all employees, contractors working on behalf of the CCGs, members, committees and sub-committee members of the groups and members of the Governing Bodies and its committees are required to:

- Ensure that the interests of the public remain paramount at all times.
- Be impartial and honest in the conduct of their official business.

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- Use the public funds entrusted to them to the best advantage of the service, always ensuring value for money.
- Ensure they do not abuse their official position for personal gain or the benefit of family or friends.
- Ensure that they do not seek to advantage or further private or other interests in the course of their official duties.
- Familiarise themselves and comply with the requirements of this policy, including the declaration of any actual or potential conflicts of interest.

#### Transactions in Support of Commissioning Functions

In any transaction undertaken in support of the CCGs' commissioning functions (including conversations between two or more individuals, emails, correspondence and other communications) individuals must ensure, where they are aware of an interest that they declare it and conform to any arrangements confirmed for the management of that interest.

#### Privileged Information

No-one should use confidential information acquired in the pursuit of their role within the CCGs to benefit themselves or another connected person, or create the impression of having done so.

Members of the CCGs, employees, the Governing Bodies, Clinical Boards / Clinical Executive and committee / sub-committee members should take care not to provide any third party with a possible advantage by sharing privileged, personal or commercial information, or by providing any information that may be commercially useful in advance of that information being available publically (such as by informing a potential supplier of an upcoming procurement in advance of other potential bidders), or any other information that is not otherwise available and in the public domain.

## 7 Management of Conflict of Interests

### 7.1 Principles and General Safeguards

The following general principles and safeguards will apply at all stages of the commissioning process and will be particularly pertinent at key decision points:

- **Doing business appropriately**, i.e. appropriate needs assessment, consultation, commissioning strategies and procurement procedures in place, including clear and transparent commissioning specifications that reflect engagement activities and set out the basis on which any contract will be awarded.
- **Responsive and best practice**, i.e. commissioning intentions are based on local health needs, reflect evidence of best practice and have 'buy-in' from local stakeholders on the clinical case for change.
- **Being proactive not reactive**, minimising the risk of conflict of interests at the earliest possible opportunity e.g. ensuring robust induction and training so that individuals understand their obligations and by being mindful of potential conflicts when appointing / selecting individuals to commissioning roles.
- **Assuming that individuals will seek to act ethically and professionally**, but may not always be sensitive to conflicts of interests or lack awareness of rules and procedures
- **Being balanced and proportionate**, i.e. rules should be clear and robust but not overly prescriptive or restrictive; decision-making processes should be transparent and fair but not constrained by being overly complex or cumbersome.
- **Being open and transparent**, by ensuring early engagement with all relevant stakeholders in relation to proposed commissioning plans and by clear documenting the approach taken at all stages of the commissioning cycle
- **Securing expert advice**, by ensuring that commissioning plans take account of advice from appropriate health and social care professionals.
- **Engaging with providers**, via early engagement with both incumbent and potential new providers regarding potential changes to services being commissioned and in ensuring equal treatment, non-discrimination and transparency in aspects of engaging with providers.
- **Specifying the outcomes** (as far as possible) to be delivered by a new service rather than the process by which it will be delivered.
- **Ensuring sound-record keeping, including up-to-date Registers of Interests.**
- **A clear, recognised and easily enacted system for dispute resolution**, via the Disciplinary and Grievance Policy for staff, the Constitution for member practices, the standard NHS contract for providers and collaborative agreements with partners.

Where the CCGs commission services from GP practices, the general safeguards described above will be supplemented by additional safeguards to ensure maximum transparency and probity and provide reassurance that commissioning decisions have been made fairly and in the best interests of patients – please see **Section 9** of this policy.

## 7.2 Secondary Employment

All CCGs' employees, contractors and committee members are required to inform the CCGs 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 CCGs. The purpose of this is to ensure that the CCGs are aware of any potential conflicts of interest.

Examples of work which might conflict with the business of the CCGs, including part-time, temporary or 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 CCGs.
- Directorship of a GP Federation; and
- Self-employment, including private practice, in a capacity which might conflict with the work of the CCGs or which might be in a position to supply goods / services to the CCGs.

All individuals must obtain prior permission to engage in secondary employment and the CCGs reserve the right to refuse permission where it is believed that a conflict will arise which cannot be effectively managed.

In particular, it is unacceptable for employees, advisors or consultants to the CCGs on matters of procurement to be in receipt of payments from the pharmaceutical or medical devices sector.

## 7.3 Declaration of Interests – when to make a declaration and decision-making when a conflict arises

Individuals should take all reasonable steps to identify conflicts of interest that arise or may arise in the course of the CCGs commissioning any services or the delivery of the CCGs business. Individuals are not required to declare all interests they may have outside of the CCGs, but rather those interests which could relate to or impact on the CCGs business.

Declarations of interest must be made either orally or in writing as soon as they are aware of it and in any event no later than 28 days after becoming aware of the conflict. A form to be used for this purpose is included at **Appendix B** to the policy.

Any declared interest must also be raised verbally when dealing with or discussing a matter to which it is pertinent.

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



It must be stressed that, in all instances, whilst advice and guidance is available, the question of whether or not to declare an interest is one which is a matter for the judgement of the individual themselves. In most cases a decision is straightforward but in cases of doubt, the preferred option is to declare the interest.

### 7.3.1 Prior to appointment

Individuals applying for posts at the CCGs or seeking appointment to the Governing Bodies or any Committees of the CCGs will be required to declare any potential conflicts of interest during the appointment process. The materiality and extent of interests / conflicts of interest will be considered as part of the assessment of their suitability for the appointment. Where a question arises as to whether this may impact on the ability to appoint, further guidance should be sought from the CCGs Chair, Chair of the Audit and Governance Committees or Accountable Officer.

### 7.3.2 On appointment

All CCGs' employees and all members of the Governing Bodies, and any committees or sub-committees of the Governing Bodies or the CCGs are required to complete a Declaration of Interests form (including a "nil return" if there are no interests to declare). The form is attached at **Appendix B**.

The CCGs will assess the materiality of any interests declared, in particular whether the individual (or any person with whom they have a close association) could benefit for any decision the CCGs might make, as part of the appointment process. This is particularly relevant for Governing Bodies, committees and sub-committee appointments but will also be considered for all employees and especially those operating at a senior level.

Where a position at the CCGs requires an individual to refrain from a role with a specified organisation(s) (e.g. the Secondary Care Specialist or the Registered Nurse undertaking a role at a local healthcare provider), this requirement will be incorporated into the individual's contract of employment.

### 7.3.3 At the outset of any commissioning process

At the outset of a commissioning process, the relevant interests of all individuals involved will be identified and clear arrangements put in place to manage any conflicts of interest. This includes consideration as to which stages of the process a conflicted individual should not participate in, and, in some circumstances, whether that individual should be involved in the process at all. The conflicts of interest case studies include examples of this: <https://www.england.nhs.uk/commissioning/wp-content/uploads/sites/12/2016/06/coi-case-studies-jun16.pdf>

The CCGs will identify and appropriately manage any conflicts of interest that may arise where staff are involved in both the management of existing contracts and the procurement of related / replacement contracts.

### 7.3.4 Annually

The CCGs will contact all individuals to whom this policy applies on an annual basis to request a declaration of interests form (see **Appendix B**). Where there are no interests or changes to declare, a "nil return" should be returned.

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### 7.3.5 At meetings

Details of declarations of interest already made will be provided to the Chair of Governing Bodies and committee meetings when papers are issued (via web-links to the CCGs' published Registers of Interests).

Declarations of interest will be an agenda item at each meeting. Visitors in attendance who participate in the meeting must also declare any interests in a timely manner.

In any meeting, where an individual is aware of an interest, previously declared or otherwise, in relation to the scheduled or likely business of the meeting, the individual concerned will bring this to the attention of the Chair of the meeting, together with details of any arrangements which have been previously confirmed for the management of the actual or potential conflict of interest. Where no arrangements have been previously confirmed, the Chair of the meeting will determine the action to be taken. 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.

The conflicts of interest case studies include examples of material and immaterial conflicts of interest: <https://www.england.nhs.uk/commissioning/wp-content/uploads/sites/12/2016/06/coi-case-studies-jun16.pdf>

Where the conflict of interest relates to outside employment and an individual continues to participate in meetings (as agreed by the Chair), he or she should ensure that the capacity in which they continue to participate in the discussions is made clear and correctly recorded in the meeting minutes. Where it is appropriate for them to participate in decisions they must only do so if they are acting in their CCG role.

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### Minute Taking at Meetings

It is imperative that CCGs ensure complete 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).

Further guidance for Chairs of meetings is provided at **Appendix C: Conflicts of Interest Checklist for Chairs**.

#### 7.3.6 Alternative quoracy arrangements

Where more than 50% of the members of a meeting are required to withdraw from a meeting or part of it, owing to the arrangements agreed for the management of conflicts of interests or potential conflicts of interests, the Chair (or Deputy) will determine whether or not the discussion can proceed.

In making this decision the Chair will consider whether the meeting is quorate. Where the meeting is not quorate, owing to the absence of certain members, the discussion will be deferred until such time as a quorum can be convened. Where a quorum cannot be convened from the membership of the meeting, owing to the arrangements for managing conflicts of interest or potential conflicts of interests, the Chair of the meeting shall consult with the Accountable Officer on the action to be taken. This may include:

- a) requiring another of the Group's committees or sub-committees, the Group's Governing Bodies or the Governing Bodies committees or sub-committees (as appropriate) which can be quorate to progress the item of business, or if this is not possible,
- b) inviting on a temporary basis one or more of the following to make up the quorum (where these are permitted members of the governing bodies or committees / sub-committees in question) so that the Group can progress the item of business:
  - i) a member of the Group who is an individual;
  - ii) an individual appointed by a member to act on its behalf in the dealings between it and the Group;
  - iii) a member of a relevant Health and Wellbeing Board;
  - iv) a member of a governing body of another clinical commissioning group.
- c) suspension of standing orders: in accordance with the CCGs' constitutions, except where it would contravene any statutory provision or a direction by the

Secretary of State or by NHS England, any part of standing orders (such as the Governing Body quorum requirement) may be suspended provided (i) two-thirds of members present at the relevant meeting agree, (ii) a full record of this resolution and the reasons for it are recorded in the minutes and (iii) the suspension of standing orders is reported to the CCG's Audit & Governance Committee for review of the reasonableness of the decision taken to suspend standing orders.

These arrangements must be recorded in the minutes.

#### 7.3.7 On any change of circumstances, role or responsibility

Where an individual changes role or responsibility within the CCGs any change to the individual's interests should be declared.

Wherever an individual's circumstances change in a way that affects the individual's interests (e.g. where an individual takes on a new role outside of the CCGs or sets up a new business or relationship), a further declaration should be made to reflect the change in circumstances. This could involve a conflict of interest ceasing to exist or a new one materialising.

Any declaration must be made as soon as possible and no later than 28 days after becoming aware of the actual or potential conflict.

#### **7.4 Register of Interests**

The CCGs will maintain three separate registers for:

- CCGs employees (including any temporary, agency or seconded staff), plus any self-employed consultants or other individuals working for the CCGs under a contract for services.
- Governing Body members and Clinical Boards/Clinical Executive and members of committees, sub-committees and sub-groups of the CCGs and of the Governing Bodies.
- CCGs members (i.e. each practice). Individual declarations should be made by GP partners (or where the practice is a company, each director) and any other individuals directly involved with the business or decision-making of the CCGs (e.g., Practice Representatives on the Council of Members/Council of Representatives, and/or those who take part in the CCGs Task and Finish Groups, etc).

The registers above will specify which committees / sub-committees / working groups an individual is a member of. Details of declarations of interest already made will be provided to the Chairs of the Governing Bodies / committees / sub-committees / sub-groups meetings when papers are issued.

The Registers of Interests will be updated promptly whenever a new or revised interest is declared.

In addition, all interests, including nil declarations, will be confirmed annually.

The Registers will be published on the CCGs websites (updated monthly) and are also available for inspection by members of the public at the CCGs' headquarters. They will

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also be published as part of the Annual Report and Annual Report Statement (a web-link is acceptable).

Whilst all staff are required to declare any relevant interests, only the interests of “decision-taking staff” will be included on the publically available register. The CCGs have defined such staff as:

- Chairs / Deputy Chairs of Council of Members / Representatives
- Governing Body Members
- Clinical Board / Executive Members
- Public Health representatives at Governing Body and Clinical Board / Executive
- Clinical Speciality Leads
- Associate GPs (AWC)
- All Staff Band 8A and above

Declarations by CCG members will also be included on a publically available register.

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 registers. 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 CCGs Conflicts of Interest Guardian who will seek appropriate legal advice where required and the CCGs will retain a confidential, un-redacted version of the register.

An interest will remain on the public register for a minimum of six months after the interest has expired. The CCGs will also retain a private record of historic interests for a minimum of 6 years after the date on which it expired.

NOTE: for individuals involved with CCG business but not holding a contract for service or employment with CCGs (for example partners in the Health & Care Partnerships or involved with CCG programmes / projects), it is expected that that such individuals will register their interests and undertake conflicts of interest training within their own organisations. Where such individuals have an interest, or become aware of an interest which could lead to a conflict of interests in the event of the CCG considering an action or decision in relation to that interest, this must be considered as a potential conflict and declared to the CCGs and at all relevant meetings.

## **7.5 Impact of Non-Compliance**

Where an individual fails to comply with this policy and / or fails to declare an interest disciplinary action will be taken which could lead in extreme circumstances to dismissal or criminal action, for example under the Fraud Act 2006.. Please refer also to the CCGs Disciplinary Policy and Procedure.

Impact and non-compliance relates to a statutorily regulated health professional, the CCGs will give consideration to reporting the breach to the relevant regulatory body.

If conflicts of interest are not effectively managed, the CCGs could face:

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- Civil challenges to the decisions it makes.
- Criminal charges under the Bribery Act 2010, where failure to prevent bribery and corruption can be brought as a corporate offence.

## **7.6 Raising Concerns about Conflicts of Interests**

It is the duty of all those to whom this policy applies to speak up about genuine concerns in relation to the application and administration of the CCGs Policy on Conflicts of Interest. Any concerns or suspicions should be raised with the Associate Director of Corporate Affairs, Head of Governance or the Conflict of Interest Guardian (Chair of the Audit and Governance Committees). If concerns or suspicions relate to the CCGs Head of Governance or Conflicts of Interest Guardian, they should be reported to the CCGs Accountable Officer.

CCGs employees should refer to the CCGs Whistleblowing and Raising Concerns Policy for further guidance.

Should someone other than a CCGs employee wish to report a concern in relation to the CCGs' conflict of interest management, they are advised to refer also to their own organisation's whistleblowing policy for guidance.

## **7.7 Managing and Reporting Conflicts of Interest Breaches**

Any breaches or potential breaches identified will be immediately notified to the CCGs Conflicts of Interest Guardian and will fully investigated by the CCGs Head of Governance or, if more appropriate, independently by the CCGs' internal auditors or legal advisors. Full and confidential records of any investigation will be maintained. Reports arising from the investigation of breaches or potential breaches of the conflict of interest policy and any resulting actions to be taken will be approved by the CCGs Conflicts of Interest Guardian.

The CCGs Head of Governance will ensure that any breaches of this policy identified are reported to the CCGs' Audit and Governance Committees, along with a lessons learnt review.

All material breaches of this policy identified will also be reported:

- To NHS England (Regional Director).
- Anonymously on the CCGs website.
- To the relevant regulator where a breach of this policy relates to a regulated healthcare professional.

When determining the materiality of a breach, the following points will be considered:

- The nature, seriousness and consequences of the breach;
- Has anyone gained an unfair advantage as a result of the breach?
- Has any final decision been made that was contaminated by the breach? When was that decision made? This has a potential impact in relation to time limits for bringing potential judicial review claims.
- Is there any appearance of bias in the decision-making as a result of the breach, in particular were any financial interests not declared/ not dealt with appropriately?

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- Has any legally binding contract been entered into by the CCGs as a result of the decision? If so, the following points will be considered:
  - The length and value of the contract
  - The consequences of terminating the contract, including considerations of continuity and safety of services to patients and the implications of entering into any interim service provision arrangements.

## 7.8 Managing Conflict of Interest on an Ongoing Basis

The CCGs will continue to monitor their governance structure and procedures for managing conflicts of interest to ensure that they continue to remain fit for purpose as the organisations develop.

## 8 Transparency in Procuring Services and Awarding Grants

### 8.1 Regulatory Requirements

The CCGs recognise the importance of making decisions about the services it procures or the grants it awards in a way that does not call in to question the motives behind the procurement decision that has been made. The CCGs will procure services and award grants in a manner that is open, transparent, non-discriminatory and fair to all providers and is compliant with the principles of procurement law and guidance.

The Procurement, Patient Choice and Competition Regulations 2013 place requirements on commissioners to ensure that they adhere to good practice in relation to procurement, do not engage in anti-competitive behavior that is against the interests of patients and protect the right of patients to make choices about their healthcare.

The Regulations requires commissioners to:

- Manage conflicts and potential conflicts of interest when awarding contracts by prohibiting the award of contracts when the integrity of the award has been, or appears to have been, affected by a conflict.
- Keep appropriate records of how they have managed any such conflicts in relation to NHS commissioning contracts it enters into. Details of this should be published by the CCGs.

***Conflicts that affect or appear to affect the integrity of a contract award; examples of factors that a commissioner is likely to need to consider in deciding whether or not it can award a contract***

- The nature of the individual's interest in the provision of services, including whether the interest is direct or indirect, financial or personal and the magnitude of that interest.
- Whether and how the interest is declared, at what stage of the process and to whom.
- The extent of the individual's involvement in the procurement process, including, for example, whether the individual has had significant influence on the service specification / design, has played a key role in setting award criteria, has been involved in deliberations about which provider or providers to award the contract to and / or has voted on the decision to award the contract.
- What steps have been taken to manage the actual or potential conflict of interest?

## 8.2 Contractors and people who provide services to the CCGs

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

### Commissioning Support Organisations (CSO)

The CCGs have contracts for commissioning support for a number of the CCGs functions. Members of staff from the CSO are often in a position to influence the decisions of the CCGs. As such, the CCGs will require the CSO, to provide on a regular basis, a register of interests for senior members of staff supporting the CCGs.

Where a CSO supports the CCGs in undertaking procurement, the CSO will help to demonstrate that the CCGs are acting fairly and transparently by assessing whether providers meet pre-qualifying criteria and which provider provides best value for money against the specification and evaluation criteria. However, the CCGs will:

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

## 8.3 Bidders in Procurement Processes

Bidders will be asked to complete a formal declaration at the invitation to tender stage of the procurement process. This form is enclosed as **Appendix D**.

## 8.4 Register of Procurement Decisions

The CCGs will 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. The register of procurement decisions will be maintained by the CCGs' Governance team working in conjunction with the commissioning and contracting teams.

"Procurement" relates to the purchase of any goods, services or works and the term "procurement decision" should be understood in a wide sense to ensure transparency of decision-making on spending public funds. For example, the decision to use a single tender action is a procurement decision and if it results in the CCGs entering into a new contract, extending an existing contract or materially altering the terms of an existing contract, the decision should be recorded on the register.

The registers will include, as a minimum:

- The details of the decision.
- Who was involved in the decision (for example, Governing Bodies, Clinical Boards/Clinical Executive, Committee members or other with decision-making responsibility)?
- A summary of conflicts of interest in relation to the decision and how this was managed by the CCGs.



In the interests of transparency, the value of all contracts will be published following the agreement of the contract. Where it is decided to commission services through Any Qualified Provider (AQP), the type of services being commissioned and the agreed price for each service will also be included. Such details will also be set out in the annual report.

The register will be updated whenever a procurement decision is taken and will be available on the CCGs website and on request for inspection at the CCGs' headquarters. Updated copies will be presented to the Audit and Governance Committees on a regular basis.

Whilst there is no requirement to keep a register of services that may be procured in the future, it is considered good practice to ensure planned service developments and proposed procurements are transparent and available for the public to see. The CCGs will include planned procurements on the Register once these have been clearly determined.

## **8.5 Contract Monitoring and Management**

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

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.

The CCGs will identify and appropriately manage any conflicts of interest that may arise where staff are involved in both the management of existing contracts and the procurement of related / replacement contracts.

## **8.6 CCG Staff Transfer following Award of Contract**

The CCGs will also identify as soon as possible where staff might 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 managed appropriately.

## **9 Member Practices and Conflicts of Interests where GP Practices are Potential Providers of CCG Commissioned Services**

The British Medical Association (BMA) have identified that a conflict of interest may arise in the following instances:

- Where GPs may refer their patients to a provider company in which they have a financial interest.
- Where GPs make decisions regarding the care of their patients to influence the 'quality premium' they receive through the CCGs.
- Where enhanced services are commissioned that could be provided by member practices.

The CCGs expect that member practices continue to ensure that patients are referred to the service that they in their professional opinion believe is most appropriate for that patient's condition, whilst responding to the wishes and choices of that patient.

Where the most appropriate service to which the patient is referred is also one in which the GP has a vested interest, the GP must inform them of this fact, in line with paragraph 76 of the General Medical Council Guidelines “Good Medical Practice”, 2006.

### **9.1 Factors to address when commissioning services from GP practices**

Conflicts can arise where the CCGs commission (or continues to commission by contract extension) healthcare services, including primary medical services, in which a member / advisor of the Governing Bodies or Clinical Boards / Clinical Executive, their sub-committees or committees of the CCGs or an employee has a financial or other interest.

This is likely to arise most often in the context of co-commissioning of primary medical care but it should also be considered in respect of any commissioning issue where GPs are current or possible providers.

These factors will be addressed in a consistent and transparent manner by the use of the Procurement Template (see **Appendix E**).

### **9.2 Providing assurance**

The CCGs will address the factors set out in the Procurement Template when drawing up plans to commission a service for which GP practices may be potential providers.

This will provide appropriate assurance:

- To the Health and Wellbeing Boards and to local communities that the proposed services meet local needs and priorities and has included appropriate public engagement.
- To the Audit and Governance Committees and, where necessary, the external auditors that a robust process has been followed in deciding to commission the service, in selecting the appropriate procurement route and in addressing actual or potential conflicts of interest.

Completed Procurement templates will be made available to the public upon request.

### **9.3 Preserving integrity of the decision-making process when all or most GPs have an interest in the decision**

Where individuals on the Governing Bodies or one of its committees or sub-committees have a material interest, they should either be excluded from relevant parts of meetings, or join in the discussion but not participate in the decision-making itself (i.e. not have a vote).

Where a limited number of GPs have an interest, it should be straightforward for relevant individuals to be excluded from decision-making. Decisions as to whether an individual declares an interest and:

- Leaves the meeting for the whole of the item
- Takes part in the discussions but not in the decision-making; this may be appropriate where the conflicted individual has important relevant knowledge and

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experience of the matter under discussion, which it would be of benefit for the meeting to hear.

- Remains and participates in the discussions and any decisions; this is only likely to 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 under discussion.

will be made by the Chair of the meeting and the action taken recorded in the minutes.

Where all the GPs or practice representatives on the Governing Bodies or one of its committees or sub-committees could have a material interest in the decisions, particularly where it is proposed to commission services on a single tender basis to all GP practices in the area, or where it is likely that all or most practices would wish to be qualified providers for a service under Any Qualified Provider (AQP), the decision will be undertaken by the remainder of the Governing Body (or by a specific Committee established for this purpose). In such circumstances, the quorum for the Governing Bodies / specific Committee will be four to include:

- Either the Registered Nurse or the Secondary Care Consultant
- Either of the Lay Member for Governance or the Lay Member for Patient and Public Involvement
- Either the Chief Officer, Chief Operating Officer or Chief Finance Officer

#### **9.4 Primary Care Co-Commissioning**

Where the CCGs undertake joint or delegated co-commissioning, procurement decisions relating to primary care will be undertaken by sub-committees of each Governing Body (the Primary Care Commissioning Committees). This will:

- Take the form of a joint committee established between the CCG and NHS England in the case of joint commissioning.
- Take the form of a committee established by the CCGs in the case of delegated co-commissioning.

In either case, the membership of the committee will ensure that the majority is held by lay and executive members (provided they are not GPs or have any other related conflicts of interests). The Chair and Deputy Chair of the committees will be lay members, however, the Chair of the Audit and Governance Committees / CCGs Conflicts of Interest Guardian is excluded from being appointed as the Chair of these Committees.

Provision will be made for the committees to have the ability to call on additional lay or CCGs members when required (e.g. to remain quorate). The committees could also include GP representatives from other CCG areas and non-GP clinical representatives.

There will be a standing invitation for (as a minimum) representatives of the CCG's local Healthwatch and Health and Wellbeing Boards to attend committee meetings, although they will not form part of the membership of the committees. As the CCGs cover two local authority areas, the CCGs will agree with them which Healthwatch and Health and Wellbeing Board will be represented.

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As a general rule, meetings of the committees, including the decision-making and the deliberations leading up to the decision, will be held in public (unless the CCGs have concluded it is appropriate to exclude the public).<sup>1</sup>

The CCG may wish to include decisions on other commissioning matters within the remit of the committee. They may also wish to designate an existing committee to incorporate these responsibilities within their remit, provided the membership and chairing arrangements comply with the requirements outlined above or that when dealing with primary care procurement issues, the participating membership and chairing arrangements are adjusted to meet these requirements.

The CCGs may establish sub-committees or sub-groups of the Primary Care Commissioning Committees (or equivalent body). However, ultimate decision-making responsibility for primary medical services functions must remain with the Primary Care Commissioning Committee.

The arrangements for primary medical care decision-making do not preclude GP participation in strategic discussions on primary care issues, subject to appropriate management of conflicts of interest. Rather these arrangements apply to decision-making on procurement issues and the deliberations leading up to the decision.

## 10 Implementation, and Dissemination and Training

Once approved by the Governing Bodies, this policy will be available to the public and all relevant individuals and organisations via the CCG website.

Once approved, notification that the policy has been updated and a summary of the key changes made will be sent to all employees, Governing Body members, members of Governing Body and CCG committees and sub-committees and to member practices.

The policy will be provided to new appointees as part of the CCGs' induction process, who will also confirm in writing that they have read and understood its requirements (see Appendix F for the Policy Declaration Form).

NHS England has developed an on-line training package on conflicts of interest. . . . Three levels of training are available relating to an individual's role and the extent of their involvement with conflicts of interest management. Only the first module is mandatory and only for those deemed as 'decision-taking' (see Section 7.4 for the CCGs' definition of 'decision-making staff'); this training must be repeated on an annual basis. Compliance with the uptake of module one of the training will form part of the CCG's performance assessment by NHS England.

Any individuals who consider themselves in need of immediate training or further guidance should contact the Head of Governance for assistance.

## 11 Review and Monitoring

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<sup>1</sup> As per the process for governing body meetings in paragraph 8(3) Schedule 1A of the NHS Act 2006 (as amended). In joint commissioning arrangements, NHS England should follow the process in the Public Bodies (Admission to Meetings) Act 1960.

This policy will be reviewed every two years.. Earlier review may be required in response to exceptional circumstances, organisational change or relevant changes in legislation or guidance.

Any changes to the policy will be approved by the Governing Bodies.

The CCGs' monitor and review their performance in relation to the policy through a programme of internal and external audit work and through the oversight of the CCGs Governing Bodies and Audit and Governance Committees.

## 12 Public Sector Equality Duty

The Equality Act 2010 includes a general legal duty to:

- Eliminate unlawful discrimination, harassment victimisation and any other conduct prohibited under the Act
- Advance quality of opportunity between people who share a protected characteristic and people who do not share it
- Foster good relations between people who share a protected characteristic and people who do not have it

The protected characteristics are:

- Age
- Disability
- Gender reassignment
- Marriage or civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

Public bodies have to demonstrate due regard to the general duty. This means active consideration of equality must influence the decisions reached that will impact on patients, carers, communities and staff.

It is no longer a specific legal requirement to carry out an Equality Impact Assessment on all policies, procedures, practices and plan but, as described above, the CCGs do need to be able to demonstrate they have paid due regard to the general duty.

The policy establishes how the CCGs will ensure best practice is followed in managing actual or potential conflicts of interest and sets out the safeguards that will put be put in place to ensure transparency, fairness and probity in decision-making. It is not believed that this policy will impact on or affect differently or adversely any of the groups with protected characteristics.

## 13 References

- NHS Airedale, Wharfedale and Craven CCG, NHS Bradford City CCG and NHS Bradford District CCG Governing Body Constitutions

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- West Yorkshire Audit Consortium: Policy on Business Conduct and Management of Conflicts of Interest Template
- Managing Conflicts of Interest Statutory Guidance for CCGs NHS England (June 2017)
- The UK Corporate Governance Code, Financial Reporting Council (2016)
- NHS Clinical Commissioners, Royal College of General Practitioners and British Medical Association – Shared Principles on conflicts of interests when CCGs are commissioning from member practices (2014)
- Standards for Members of NHS Boards and CCG Governing Bodies in England, Professional Standards Authority (2013)
- Code of Conduct: Managing Conflicts of Interest Where GP Practices are Potential Providers of CCG Commissioned Services , NHS Commissioning Board (2013)
- Monitor – Substantive Guidance on the Procurement, Patient Choice and Competition Regulations (2013)
- Good Medical Practice, General Medical Committee (2013) (updated April 2014)
- Ensuring Transparency and Probity, British Medical Association (2011)
- The Good Governance Standards for Public Services, Office for Public Management and Chartered Institute of Public Finance and Accountancy (2004)
- Seven Principles of Public Life, Committee on Standards in Public Life, (1995)

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## APPENDIX A

### Nolan Principles – The 7 Principles of Public Life

The 'Nolan Principles' set out the ways in which holders of public office should behave in discharging their duties. The seven principles are:

1. **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.
2. **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.
3. **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.
4. **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.
5. **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.
6. **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.
7. **Leadership** – Holders of public office should promote and support these principles by leadership and example.

Source: *The First Report of the Committee on Standards in Public Life* (1995)

## APPENDIX B

### Declaration of Interests Form

This form is required to be completed in accordance with the individual CCG's Constitutions, and s140 of the NHS Act 2006 (as amended by the Health and Social Care Act 2012) and the NHS (Procurement, Patient Choice and Competition) (No2) Regulations 2013 and related guidance.

*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 and General Data Protection Regulations. Information may be disclosed to third parties in accordance with the Freedom of Information Act 2000 and, in the case of 'decision making staff' (as defined in the statutory guidance on managing conflicts of interest for CCGs) may be published in registers that the CCG holds. All interests will remain on the register for 6 months after the interest has expired. In addition the CCGs will retain a private record of all expired interests for a total of 6 years.*

*'Decision taking staff' (see Section 7.4 of the Conflicts of Interest Policy for the definition) and CCG members should be aware that the information provided in this form will be added to the CCG's registers which are held in hardcopy for inspection by the public and published on the CCG's website. Decision making staff must make any third party whose personal data they are providing in this form aware that the personal data will held in hardcopy for inspection by the public and published on the CCG's website and must inform the third party that the CCG's privacy policy is available on the CCG's website. If you are not sure whether you are a 'decision making' member of staff, please refer to Section 7.4 of the CCGs' Conflicts of Interest Policy or speak to your line manager before completing this form.*

<b>Name:</b>				
<b>Position within, or relationship with, the CCGs (or NHS England in the event of joint committees):</b>				
<b>Detail of interests held (complete all that are applicable):</b>				
<b>Type of Interest*</b> <b>*See reverse of form for details</b>	<b>Description of Interest (including for indirect Interests, details of the relationship with the person who has the interest)</b>	<b>Date interest relates From and To</b>		<b>Actions to be taken to mitigate risk (to be agreed with line manager or a senior CCG manager - see Note 1)</b>

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*Note 1: Where deemed possible and necessary, specific actions to mitigate risks will be agreed between individuals and the CCG and / or their line manager and recorded on this form and on the Register of Interests.*

*Note 2: Where there are no interests to declare, please record this above and return the form to the CCG.*

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, where an indirect interest has been declared, I will make the relevant individual or organisation (s) aware that the CCGs hold this information.

**I do / do not [delete as applicable]** give my consent for this information to be published on registers that the CCG holds and on the CCGs website (see Note 3 below for details of exceptions to publication). If consent is NOT given please give reasons:

**Signed:** ..... **Date:**.....

**Signed:** ..... **Date:**.....

**Position:** .....

**(Line Manager or Senior CCG Manager – signature only required if specific actions are agreed to mitigate risks)**

*Note 3: 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 registers. 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 CCGs Conflicts of Interest Guardian who will seek appropriate legal advice where required and the CCGs will retain a confidential, un-redacted version of the register.*

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Please return completed forms to: **Kelly Singleton, Kelly.Singleton@bradford.nhs.uk; NHS Airedale, Wharfedale and Craven CCG, NHS Bradford City CCG and NHS Bradford District CCGs, Douglas Mill, Bowling Old Lane, Bradford, BD5 7JU.**

***Emailed forms from an individual's email address will be accepted in lieu of paper copies.***

If you have any queries regarding the completion of this form or as to whether or not an interest should be declared, please contact Sarah Dick, Head of Governance for a confidential discussion via **sarah.dick@awcccg.nhs.uk** or **01274 256093**.

## Types of Interest

Type of Interest	Description
<b>Financial Interests</b>	<p>This is where an individual may get direct financial benefits from the consequences of a commissioning decision. This could, for example, include being:</p> <ul style="list-style-type: none"> <li>• A director, including a non-executive director or senior employee in a private company or public limited company or other organisation which is doing, or which is likely, or possibly seeking to do, business with a health or social care organisation.</li> <li>• 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 a health or social care organisation.</li> <li>• A management consultant for a provider</li> </ul> <p>This could also include an individual (or their practices, in the case of GPs) being:</p> <ul style="list-style-type: none"> <li>• In secondary employment (see Section 7.2)</li> <li>• In receipt of secondary income from a provider.</li> <li>• In receipt of a grant from a provider.</li> <li>• In receipt of payments (for example, Honoria, one-off payments, day allowances or travel or subsistence) from a provider.</li> <li>• In receipt of funding from the pharmaceutical or med-tech industry as part of a joint working arrangement.</li> <li>• In receipt of research funding, including grants that may be received by the individual or any organisation in which they have an interest or role; and</li> <li>• Having a pension that is funded by a provider (where the value of this might be affected by the success or failure of the provider).</li> </ul>
<b>Non-Financial Professional Interests</b>	<p>This is where an individual may obtain a non-financial professional benefit from the consequences of a commissioning decision, such as increasing their professional reputation or status or promoting their professional career. This may, for example, include situations where the individual is:</p> <ul style="list-style-type: none"> <li>• An advocate for a particular group of patients;</li> <li>• A GP with special interests e.g., in dermatology, acupuncture etc.</li> <li>• A member of a particular specialist professional body (although routine GP membership of the RCGP, BMA or a medical defence organisation would not usually by itself amount to an interest which needed to be declared);</li> <li>• An advisor for Care Quality Commission (CQC) or National Institute for Health and Care Excellence (NICE);</li> <li>• A medical researcher.</li> </ul>

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Type of Interest	Description
<b>Non-Financial Personal Interests</b>	<p>This is where an individual may benefit personally in ways which are not directly linked to their professional career and do not give rise to a direct financial benefit. This could include, for example, where the individual is:</p> <ul style="list-style-type: none"> <li>• A voluntary sector champion for a provider;</li> <li>• A volunteer for a provider;</li> <li>• A member of a voluntary sector board or has any other position of authority in or connection with a voluntary sector organisation;</li> <li>• Suffering from a particular condition requiring individually funded treatment;</li> <li>• A member of a lobby or pressure groups with an interest in health.</li> </ul>
<b>Indirect Interests</b>	<p>This is where an individual has a close association with an individual who has a financial interest, a non-financial professional interest or a non-financial personal interest in a commissioning decision (as those categories are described above). For example, this should include:</p> <ul style="list-style-type: none"> <li>• Spouse / partner;</li> <li>• Close relative e.g., parent, grandparent, child, grandchild or sibling;</li> <li>• Close friend;</li> <li>• Business partner.</li> </ul>

***If there is any doubt as to whether or not an interest is relevant, a declaration of the interest should be made***

## APPENDIX C

### Conflicts of Interests Check List for Meeting Chairs

Meeting Chairs have responsibility for ensuring the appropriate management of conflicts of interest during the course of CCG meetings (see below for a definition and examples of 'interests'). In particular they must ensure:

- They are familiar with the contents of the Registers of Interests as pertinent to their Group or Committee. The CCGs' Registers of Interests can be accessed here:

AWC <http://www.airedalewharfedalecravenccg.nhs.uk/about-us-/publication-scheme/lists-and-registers/>

BC <https://www.bradfordcityccg.nhs.uk/about-us/publication-scheme/lists-and-registers/>

BD <http://www.bradforddistrictscg.nhs.uk/about-us/publication-scheme/lists-and-registers/>

- They prepare for the meeting mindful of any actual or potential conflicts of interest that may arise relevant to the business of that meeting. Where conflicts of interest are known in advance, the individual concerned must not receive the supporting papers or minutes of the meeting which relate to the matter(s) which give rise to the conflict.
- That declarations of interest are always an item on the agenda.
- That the meeting is quorate and that this is recorded in the minutes.
- That members are asked to declare any interests that are likely to lead to a conflict or potential conflict that could impact (or has the potential to impact) on any items on the agenda. This should be repeated again at individual item(s) where it is considered a conflict is likely to or could potentially arise.
- Any declaration must be made clearly noted in the minutes both at the start of the meeting and at the relevant item. If there is any doubt as to whether or not a conflict of interest could arise, a declaration should be made and noted in the minutes.

The minutes must specify how the Chairs have decided to manage the declared interest. 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;

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- 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. The conflicts of interest [case studies](#) include examples of material and immaterial conflicts of interest.

In making this decision the Chairs will need to consider the following points:

- the nature and materiality of the decision
  - the nature and materiality of the declared interest(s)
  - the availability of relevant expertise
  - as a general rule (and subject to the judgement of the Chairs), if an interest involves a financial interest or a significant non-financial interest, the individual should be asked to leave the meeting for the whole item
- Any declaration arising during the course of a meeting / individual item must be minuted and action how to handle it agreed by the Chair and recorded in the minutes. It is imperative that CCGs ensure complete 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).

- Quoracy of the meeting or for individual items must be checked if an interest is declared. If the meeting is no longer quorate (in full or for particular items) or there is insufficient relevant expertise to inform decision-making once those with conflicts of interests are excluded, the Chairs must agree how this should be managed, i.e. defer the item / meeting or refer any decisions for particular items(s) to another Committee for consideration and formal approval.
- Refer to Standard Financial Instructions for Delegated Limits

### **Definition of Conflicts of Interest (Section 5 of the CCG Conflicts of Interest Policy)**

Conflicts of interest may arise where personal interests or loyalties conflict with those of the CCGs. Such conflicts may create problems such as inhibiting free discussions which could result in decisions or actions that are not in the best interests of the CCGs, patients or the public and risk creating the impression that the CCGs have acted improperly.

NHS England defines a conflict of interest as occurring:

*“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 of interest exists even when there is no actual conflict” (i.e. a perceived conflict).*

The latest version of this guidance is *Managing Conflicts of Interest: Revised Statutory Guidance for CCGs, June 2017*. This guidance supersedes the previous version (June 2016) and has been fully aligned with the new cross-

NHS England identifies four categories of conflicts of interest:

#### **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 a health or social care organisation.
- 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

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which is likely, or possibly seeking to do business with a health or social care organisation.

- A management consultant for a provider

This could also include an individual (or their practices, in the case of GPs) being:

- In secondary employment (see Section 7.2)
- In receipt of secondary income from a provider.
- In receipt of a grant from a provider.
- In receipt of payments (for example, Honoria, one-off payments, day allowances or travel or subsistence) from a provider.
- In receipt of funding from the pharmaceutical or med-tech industry as part of a joint working arrangement.
- In receipt of research funding, including grants that may be received by the individual or any organisation in which they have an interest or role; and
- Having a pension that is funded by a provider (where the value of this might be affected by the success or failure of the provider).

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

- An advocate for a particular group of patients;
- A GP with a special interest(s);
- A member of a particular specialist professional body (although routine GP membership of the Royal College of General Practitioners, British Medical Association 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.

**Non-financial personal interests:** This is where an individual may benefit personally in ways which are not directly linked to their professional career or do not give rise to 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 with a voluntary sector organisation.
- A member of a lobby or pressure group with an interest in health.

**Indirect interests:** This is where an individual has a close association with an individual who has a financial interest, a non-financial professional interest or a non-financial personal interest in a commissioning decision, for example:

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- Spouse / partner
- Close relatives e.g. parent, grandparent, child, grandchild or sibling;
- Close friend;
- Business partner. A declaration 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 (this could be done by cross-referring to the separate declarations made by those GP partners).

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

It is not possible to define all instances in which an interest may be a real or perceived conflict.

***If in doubt it is better to assume the existence of a conflict of interest and declare it, rather than ignore it.***

## APPENDIX D

### Bidders / Potential Contractors / Service Providers Declaration Form

This form is required to be completed in accordance with the individual CCG's Constitution, and s140 of the Act 2006 (Health Act 2006) (as amended by section 25 of the Health and Social Care Act 2012) and the NHS (Procurement, Patient Choice and Competition) (No2) Regulations 2013 and related guidance.

#### Notes

- All potential bidders / contractors / service providers, including sub-contractors, members of a consortium, advisers or other associated parties (the Relevant Organisation) are required to identify any potential conflicts of interest that could arise if the Relevant Organisation were to take part in any procurement process and / or provide services under or otherwise enter into any contract with the CCGs.
- If any assistance is required in order to complete this form, then the Relevant Organisation should contact CCGs Contracting Team.
- The completed form should be sent to the CCGs Contracting Team.
- Any changes to interests declared either during the procurement process or during the terms of any contract subsequently entered into by the Relevant Organisation and the CCGs must be notified to the CCGs by completing a new declaration form and submitting it to the CCGs Contracting Team.
- Relevant organisations completing this declaration form must provide sufficient detail of each interest so that a member of the public would be able to understand clearly the interest the organisation and any Relevant Person within it has and the circumstances in which a conflict of interest with the business or running of the CCGs might arise.
- If in doubt as to whether a conflict of interest could arise, a declaration of the interest should be made.

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

- The Relevant Organisation or any person employed or engaged with a Relevant Organisation (Relevant Person) has provided or is providing services or other work to the CCGs.
- A Relevant Organisation or Relevant Person is providing services or other work for any other potential bidder in respect of this project or procurement process
- The Relevant Organisation or any Relevant Person has any other connect with the CCGs whether personal or professional, which the public could perceive may impair or otherwise influence the CCGs or an any of its member' or employees' judgements, decisions or actions

<b>Name of Relevant Organisation</b>	
<b>Interests</b>	
<b>Type of Interest</b>	<b>Details</b>
Provision of services or other work for the CCG	
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, whether personal or professional, which the public could perceive may impair or otherwise influence the CCG's or any of its members' or employees' judgements, decisions or actions.	

<b>Name of Relevant Person</b>	Complete for all relevant Persons	
<b>Interests</b>		
<b>Type of Interest</b>	<b>Details</b>	<b>Personal interest or that of a family member, close friend or other acquaintance</b>
Provision of services or other work for the CCG		
Provision of services or other work for any other potential bidder in respect of this project or procurement process		

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<b>Name of Relevant Person</b>	Complete for all relevant Persons	
<b>Interests</b>		
<b>Type of Interest</b>	<b>Details</b>	<b>Personal interest or that of a family member, close friend or other acquaintance</b>
Any other connection with the CCG, whether personal or professional, which the public could perceive may impair or otherwise influence the CCG's or any of its members' or employees' judgements, decisions or actions.		

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

**Signed:** .....

**Print Name** .....

**On behalf of** .....

**Date** .....

## APPENDIX E

### Procurement Template When Potentially Purchasing From GP Practices

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

<b>Service:</b>	
Question	Comment/Evidence
<b>Questions for all three procurement routes (Competitive Tender, AQP, Single Tender)</b>	
How does the proposal deliver good or improved outcomes and value for money – what are the estimated costs and the estimated benefits? How does it reflect the CCGs’ proposed commissioning priorities? How does it comply with the CCGs’ commissioning obligations?	
How have you involved the public in the decision to commission this service?	
What range of health professionals have been involved in designing the proposed service?	
What range of potential providers have been involved in considering the proposals?	
How have you involved your Health and Wellbeing Board(s)? How does the proposal support the priorities in the relevant joint health and wellbeing strategy (or strategies)?	
What are the proposals for monitoring the quality of the service?	

<b>Service:</b>	
<b>Question</b>	<b>Comment/Evidence</b>
What systems will there be to monitor and publish data on referral patterns?	
Have all conflicts and potential conflicts of interests been appropriately declared and entered in registers which are publicly available?	
In respect of every conflict or potential conflict, you must record how you have managed that conflict or potential conflict. Has this management of all conflicts been recorded with a brief explanation of how they have been managed?	
Why have you chosen this procurement route? <sup>2</sup>	
What additional external involvement will there be in scrutinising the proposed decisions?	
How will the CCG make its final commissioning decision in ways that preserve the integrity of the decision-making process?	

**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 aware (for services where national tariffs do not apply)**

How have you determined a fair price for the service?

---

2 Taking into account all relevant regulations (e.g. the NHS Procurement, Patient Choice and Competition Regulation 2013 and guidance (e.g. that of Monitor)

**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**

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 (i.e. single tender actions) to GP providers**

Question	Comment/Evidence
What steps have been taken to demonstrate that there are no other providers that could deliver this service?	
In what ways does the proposed service go above and beyond what GP practices should be expected to provide under the GP contract?	
What assurances will there be that a GP practice is providing high-quality services under the GP contract before it has the opportunity to provide any new services?	

## APPENDIX F

### Conflicts of Interest Case Studies

NHS England has developed a series of case studies to accompany the revised statutory guidance on managing conflicts of interest for CCGs. The case studies are intended to raise awareness of the different types of conflicts of interest that could arise in CCGs and to support CCGs to robustly and effectively identify and manage them. The case studies can be accessed here:

<https://www.england.nhs.uk/commissioning/wp-content/uploads/sites/12/2016/06/coi-case-studies-jun16.pdf>



## **New Starter Policy Declaration Form**

I declare that I have read and understood the CCGs:

- Conflicts of Interest & Standards of Business Conduct
- Policy on the Offer and Receipt of Gifts, Hospitality & Sponsorship

Name:

Role:

Signature:

Date:

**Please return this form to HR for retention on your personal file:**  
hrsystemsteam@bdct.nhs.uk