

# NHS North Cumbria CCG

# Business Code of

# Conduct Policy

Approved October 2017

## Business Code of Conduct Policy

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## Document History

Version	Date	Significant Changes
Draft Version 1:	August 2015	Circulated to NECS Procurement Team and Internal Audit for Comment <small>(Please note this policy was put on hold early 2016 pending NHSE Statutory Guidance being revised)</small>
Draft Version 2:	October 2016	Introduction reworded to include links to relevant supporting documents All Sections – reworded to align to NHSE Statutory Guidance 2016 – Managing Conflicts of Interest in CCGs
Final Version 1:	November 2016	Inclusion of: <ul style="list-style-type: none"> <li>• Document History</li> <li>• Appendix B: Template for Declaration of Interests for CCG Members &amp; Employees</li> <li>• Appendix C: Template for Declarations of Gifts &amp; Hospitality</li> <li>• Equality Impact Assessment</li> </ul>
Revised Draft Version 2	September 2017	Revised and updated in line with NHS England’s Managing Conflicts of Interest: Revised Statutory Guidance for CCGs 2017
Final Version 2:	October 2017	Minor typing errors amended

# 1. Introduction

- 1.1 The policy describes the principles and processes which employees, the Governing Body, members of NHS North Cumbria CCG (CCG), and contractors should follow in regard to the declaration of conflicts of interest.
- 1.2 The CCG is required to make arrangements to manage conflicts of interest and potential conflicts of interest to ensure that decisions made by the CCG will be taken and seen to be taken without any possibility of the influence of inappropriate or disproportionate interest derived from a direct or indirect commercial or personal pecuniary, indirect pecuniary, non-pecuniary, or personal interest.
- 1.3 The CCG is required to have in place a Conflicts of Interest Guardian (akin to a Caldicott Guardian) and this role is undertaken by the CCG's Lay Member for Finance and Governance. In collaboration with the CCG's Governing Body Support Officer, 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
  - Be a safe point of contact for employees or workers of the CCG to raise any concerns in relation to this policy,
  - Support the rigorous application of conflict of interest principles and policies,
  - Provide independent advice and judgement where there is any doubt about how to apply conflicts of interest policies and principles in an individual situation and,
  - Provide advice on minimising the risks of conflicts of interest
- 1.4 All individuals within the scope of this policy working for, or with the CCG must abide by the following:
  - The Nolan Principles (attached as Appendix A)
  - The Good Governance Standards for Public Services, Office for Public Service (2004). Office for Public Management (OPM) and Chartered Institute for Public Finance and Accountancy (CIPFA) (available via link below:)  
<http://www.opm.co.uk/wp-content/uploads/2014/01/Good-Governance-Standard-for-Public-Services.pdf>
  - The seven key principles of the NHS Constitution (available via link below:)  
<http://www.nhs.uk/NHSEngland/thenhs/about/Pages/nhscoreprinciples.aspx>
  - The Equality Act 2010 (available via link below:)  
[http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&sqi=2&ved=0ahUKewiN2b\\_suevPAhXEOxoKHbl1A6EQFggcMAA&url=http%3A%2F%2Fwww.legislation.gov.uk%2Fukpga%2F2010%2F15%2Fcontents&usq=AFQjCNGCOGbCdpf6Mc2iRLavN7uS6owW](http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&sqi=2&ved=0ahUKewiN2b_suevPAhXEOxoKHbl1A6EQFggcMAA&url=http%3A%2F%2Fwww.legislation.gov.uk%2Fukpga%2F2010%2F15%2Fcontents&usq=AFQjCNGCOGbCdpf6Mc2iRLavN7uS6owW)

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- The UK Corporate Governance Code 2016 (available via link below):  
<https://frc.org.uk/Our-Work/Publications/Corporate-Governance/Final-Draft-UK-Corporate-Governance-Code-2016.pdf>
- Standards for Members of NHS Boards and CCG Governing Body in England (available via link below):  
<http://www.professionalstandards.org.uk/docs/default-source/publications/standards/standards-for-members-of-nhs-boards-and-ccgs-2013.pdf?sfvrsn=2>
- The Bribery Act 2010 (available via the link below):  
<http://www.legislation.gov.uk/ukpga/2010/23/contents>

They must at all times comply with the CCG's Constitution and be aware of their responsibilities as outlined in it.

## 2. Who this policy applies to (Scope)

### 2.1 This policy applies to:

- All full and part time employees including:
  - Any staff on sessional or short term contracts;
  - Any students and trainees (including apprentices);
  - Agency staff;
  - Seconded staff; and
  - Self-employed consultants or other individuals working for the CCG under a contract for service
- All Members of the CCG's Governing Body, its Committee's, sub-committees or sub-groups including:
  - Co-opted members
  - Appointed deputies; and
  - Any members of committees/groups from other organisations.
- All Members of the CCG (i.e. each practice) including:
  - GP partners (or where the practice is a company, each director);
  - Any individual directly involved with the business or decision-making of the CCG.

### 3. Standards of Business Conduct

Effective handling of conflicts of interest is crucial for the maintenance of public trust in the commissioning system. In managing conflicts of interest, the CCG will adhere to NHS England's Managing Conflicts Of Interest: Revised Statutory Guidance for CCGs (2017). This guidance has been issued as statutory guidance under sections 14O and 14Z8 of the NHS Act 2006 (as amended by the Health and Social Care Act 2012). The Act sets out requirements for CCGs to make arrangements for managing conflicts of interest and potential conflicts of interest to ensure they do not affect, or appear to affect, the integrity of the CCG's decision-making processes. The CCG's Conflicts of Interests Guardian (Audit Committee Chair) and Accountable Officer will be required to verify to NHS England that the CCG has complied with this statutory guidance, and this will form part of an annual certification and CCG assurance.

### 4. Definition of an Interest

- 4.1 A conflict of interest occurs where an individual's ability to exercise judgement, or act in a role is, could be, or is seen to be impaired or otherwise influenced by his or her involvement in another role or relationship. In some circumstances, it could be reasonably considered that a conflict exists even when there is no actual conflict. It is important to still manage these perceived conflicts in order to maintain public trust.
- 4.2 Conflicts of interest can arise in many situations, environments and forms of commissioning, with an increased risk in primary care commissioning (including commissioning of new care models – see Appendix K of NHS England's Managing Conflicts of Interest: Revised Statutory Guidance for CCGs 2017), out-of-hours commissioning and involvement with integrated care organisations, as clinical commissioners may here find themselves in a position of being both a commissioner and a provider of services. Conflicts of interest can arise throughout the whole commissioning cycle from needs assessment, to procurement exercises, to contract monitoring.
- 4.3 Interests can be captured in four different categories:
  - I. **Financial interests:** This is where an individual may get direct financial benefits from the consequences of a commissioning decision. This could, for example, include being:
    - A director, including a non-executive director, or senior employee in a private company or public limited company or other organisation which is doing, or which is likely, or possibly seeking to do, business with health or social care organisations.
    - A shareholder (or similar ownership interests), a partner or owner of a private or not-for-profit company, business, partnership or consultancy which is doing, or which is likely, or possibly seeking to do, business with health or social care organisations.
    - A management consultant for a provider.

This could also include an individual being:

- In secondary employment (see paragraph 8.14);
- In receipt of secondary income from a provider;
- In receipt of a grant from a provider;
- In receipt of any payments (for example honoraria, one-off payments, day allowances or travel or subsistence) from a provider;
- In receipt of research funding, including grants that may be received by the individual or any organisation in which they have an interest or role; and
- Having a pension that is funded by a provider (where the value of this might be affected by the success or failure of the provider).

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

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

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

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

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

- A member of a lobby or pressure group with an interest in health.

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

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

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

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

- 4.4 Clear guidance will be available to all CCG employees, members and Governing Body and committee members on what might constitute a conflict of interest, which provides examples of situations may arise. This will form part of the induction process and the guidance sheets will be available through the CCG website (see link below):

<http://www.northcumbriaccg.nhs.uk/about-us/how-we-make-decisions/declaration-of-interests/index.aspx>

## 5. Training

- 5.1 The CCG will ensure that training is offered to all those required to declare an interest (as defined in Section 2 of this policy). This training will include:

- What is a conflict of interest
- Why is conflict of interest management important
- What should you do if you have a conflict of interest relating to your role, the work you do or the organisation you work for (who to tell, where it should be recorded, what actions you may need to take and what implications it may have for your role)
- How conflicts of interest can be managed
- What to do if you have concerns that a conflict of interest is not being declared or managed appropriately

- What are the potential implications of a breach of the CCG's rules and policies for managing conflicts of interest

5.2 Mandatory online training will need to be completed by all CCG staff (as defined in Section 2 of this policy). This will need to be completed on a yearly basis to raise awareness of the risks of conflicts of interest and to support staff in managing conflicts of interest. The annual training will be mandatory and will need to be completed by all staff by 31 January of each year. The CCG will record staff completion rates as part of its annual conflicts of interest audit.

## 6. Principles for Managing Conflicts of Interest

6.1 In managing conflicts of interest, the CCG will use the principles developed by NHS Clinical Commissioners, the Royal College of General Practitioners, the British Medical Association, and NHS England as follows:

- Doing business appropriately - if commissioners get their needs assessments, consultation mechanisms, commissioning strategies and procurement procedures right from the outset, then conflicts of interest become much easier to identify, avoid and/or manage, because the rationale for all decision-making will be clear and transparent and should withstand scrutiny
- Being proactive, not reactive - commissioners should seek to identify and minimise the risk of conflicts of interest at the earliest possible opportunity, for instance by: considering potential conflicts of interest when electing or selecting individuals to join the Governing Body or other decision-making bodies; ensuring individuals receive proper induction and training so that they understand their obligations to declare conflicts of interest. They should establish and maintain registers of interests, and agree in advance how a range of possible situations and scenarios will be handled, rather than waiting until they arise
- Assuming that individuals will seek to act ethically and professionally, but may not always be sensitive to all conflicts of interest - rules should assume people will volunteer information about conflicts and, where necessary, exclude themselves from decision-making, but there should also be prompts and checks to reinforce this
- Being balanced and proportionate - rules should be clear and robust but not overly prescriptive or restrictive. They should ensure that decision-making is transparent and fair, but not constrain people by making it overly complex or cumbersome

## 7. Maintaining a Register of Interest

7.1 The CCG will maintain a register of its decision makers. The CCG will publish this register on the CCG's website.

7.2 All Individuals specified in section 2 must declare any conflict or potential conflict (using the CCG's Declaration of interests for members/employees form, incorporated into this Policy at Appendix B) in relation to a decision to be made by the CCG as soon as they become aware of it, and in any event within 28 days of becoming aware of it. Any declaration made by a CCG decision maker will be recorded in the register as soon the CCG has become aware of it.



- 7.3 Individuals must ensure that, when they declare interests, this includes the interests of all relevant individuals within their own organisations (e.g. partners in a GP practice), who have a relationship with the CCG and who would potentially be in a position to benefit from the CCG's decisions.
- 7.4 When entering an interest on its register of interests, the CCG must ensure that it includes sufficient information about the nature of the interest and the details of those holding the interest.
- 7.5 The CCG will ensure that, as a matter of course, declarations of interest are made and regularly confirmed or updated. This includes the following circumstances:
- On appointment - applicants for any appointment to the CCG or its Governing Body will be asked to declare any relevant interests. When an appointment is made, a formal declaration of interest will be made and recorded.
  - Annually – Declaration of Interests forms will be required from all relevant individuals (as defined in Section 2 of this policy).
  - At meetings - all attendees will be asked to declare any interest they have in any agenda item before it is discussed or as soon as it becomes apparent. Even if an interest is declared in the register of interests, it will be declared in meetings where matters relating to that interest are discussed. Declarations of interest will be clearly recorded in minutes of meetings and should state the nature of the interest and whether or not it is a financial or non-financial interest.
  - Whenever an individual's role, responsibility or circumstances change in a way that affects the individual's interests (e.g. where an individual takes on a new role outside the CCG or enters into a new business or relationship), a further declaration should be made to reflect the change in circumstances as soon as possible, and in any event within 28 days.

This could involve a conflict of interest ceasing to exist or a new one materialising. It is the responsibility of all individuals who are required to make a declaration of interest (as defined in Section 2 of this policy), that if their circumstances change, then they need to make a further declaration as soon as possible and in any event with 28 days, rather than waiting to be asked. All changes should be sent to the CCG's Governing Body Support Officer.

## 8. Register(s) of Gifts and Hospitality

- 8.1 All CCGs are required to maintain one or more registers of gifts and hospitality for the individuals listed in Section 2 of this policy. The CCG should ensure that robust processes are in place to ensure that such individuals do not accept gifts or hospitality or other benefits, which might reasonably be seen to compromise their professional judgement or integrity.
- 8.2 All the individuals listed in Section 2 of this policy need to consider the risks associated with

accepting offers of gifts, hospitality and entertainment when undertaking activities for or on behalf of the CCG or their GP practice. This is especially important during procurement exercises, as the acceptance of gifts could give rise to real or perceived conflicts of interests, or accusations of unfair influence, collusion or canvassing. The overarching principles are:

- CCG staff should not accept gifts that may affect, or be seen to affect, their professional judgement. This overarching principal should apply in all circumstances.
- Any personal gift of cash or cash equivalents (e.g. vouchers, tokens, offers of remuneration to attend meeting whilst in a capacity working for or representing the CCG) must always be declined, whatever their value and whatever their source, and the offer which has been declined must be declared to the Governing Body Support Officer to be included in the Gifts and Hospitality Register.

### **Gifts**

- 8.3 A 'gift' is defined as any item of cash or goods, or any service, which is provided for personal benefit, free of charge or at less than its commercial value.
- 8.4 Gifts of a low value (up to £6), such as promotional items, offered to CCG staff, Governing Body and Committee Members and individuals with GP member practices by suppliers or contractors lined (currently or prospectively) to the CCG's business can be accepted and do not need to be declared, but all other gifts from suppliers or contractors must be declined. The person to whom the gift(s) were offered should also declare the offer to the Governing Body Support Officer so the offer which has been declined can be recorded on the Gifts and Hospitality Register.
- 8.5 Gifts offered from other sources under £50 can be accepted from non suppliers and non contractors, and do not need to be declared. Gifts with a value of over £50 can be accepted on behalf of an organisation, but not in a personal capacity. The person to whom the gift(s) were offered should also declare the offer to the Governing Body Support Officer so the offer which has been declined can be recorded on the Gifts and Hospitality Register.
- 8.6 Multiple gifts from the same source over a 12 month period should be treated in the same way as single gifts over £50 where the cumulative value exceeds £50. Again these should be declared to the Governing Body Support Officer for inclusion in the register.

### **Hospitality**

- 8.7 A blanket ban on accepting or providing hospitality is neither practical nor desirable from a business point of view. However, individuals should be able to demonstrate that the acceptance or provision of hospitality would benefit the NHS or CCG.
- 8.8 Hospitality under £25 can be accepted and does not need to be declared. Hospitality between £25 and £75 can be accepted, but must be declared.
- 8.9 Modest offers to pay some or all of the travel and accommodation costs related to attendance at events may be accepted and must be declared to the Governing Body Support Officer. Offers

which go beyond modest or are of a type that the CCG itself might not usually offer, need to be approved by the CCGs Chief Finance Officer and should only be accepted in exceptional circumstance. Where this happens a clear reason should be recorded as to why it was permissible to accept travel and accommodation of this type and it must be reported to the Governing Body Support Officer for inclusion in the Gifts and Hospitality Register.

8.10 Subject to 8.8, 8.9 and 8.10 above there is a presumption that offers of hospitality which go beyond modest or of a type that the CCG itself might offer, should be politely refused. A non-exhaustive list of examples includes:

- Hospitality of a value of above £75; and
- In particular, offers of foreign travel and accommodation.

There may be some limited and exceptional circumstances where accepting the types of hospitality referred to in this paragraph may be contemplated. Express prior approval should be sought from the CCG Chief Finance Officer before accepting such offers, and the reasons for acceptance should be recorded in the CCGs register of gifts and hospitality. Hospitality of this nature should be declared to the Governing Body Support Officer, and recorded on the register, whether accepted or not. In addition, particular caution should be exercised where hospitality is offered by suppliers or contractors linked (currently or prospectively) to the CCG's business. Offers of this nature can be accepted if they are modest and reasonable but advice should always be sought from the CCG Finance Officer as there may be particular sensitivities, for example if a contract re-tender is imminent. All offers of hospitality from actual or prospective suppliers or contractors (whether or not accepted) should be declared and recorded.

### **Sponsored Events**

8.11 Sponsorship of NHS events by external parties is valued. Offers to meet some or part of the costs of running an event secures their ability to take place, benefiting NHS staff and patients. However there is the potential for conflicts of interest between the organiser and the sponsor, particularly regarding the ability to market commercial products or services. Therefore when sponsorships are offered, the following principles must be adhered to:

- Sponsorship of CCG events by appropriate external bodies should only be approved if a reasonable person would conclude that the event will result in clear benefit for the CCG and the NHS;
- During dealings with sponsors there must be no breach of patient or individual confidentiality or data protection rules and legislation;
- No information should be supplied to the sponsor from which they could gain a commercial advantage, and information which is not in the public domain should not normally be supplied;
- At the CCG's discretion, sponsors or their representatives may attend or take part in the event but they should not have a dominant influence of the content or the main purpose of the event;

- The involvement of a sponsor in an event should always be clearly identified in the interest of transparency;
- CCG's should make it clear that sponsorship does not equate to endorsement of a company or its product and this should be made visibly clear on any promotional or other materials relating to the event;
- Staff should declare involvement with arranging sponsored events to the Governing Body Support Officer.

### **Other Forms of Sponsorship:**

- 8.12 Organisations external to the CCG or NHS may also sponsor posts or research. However, there is the potential for conflicts of interest to occur, particularly when research funding by external bodies does not or could lead to real or perceived commercial advantage, or if sponsored posts cause a conflict of interest between the aims of the sponsor and the aims of the organisation, particularly in relation to procurement and competition. Any proposed sponsorship of this form should be approved by the CCG's Governance Lead and also notified to the Governing Body Support Officer to ensure that any potential conflicts of interest are managed effectively and that the process is transparent.
- 8.13 Secondary Employment - Any individual under contract with the CCG must ensure they inform the CCG if they are employed or engaged in, or wish to be employed or engaged in, any employment or consultancy work in addition to their CCG work. This is to ensure that the CCG is aware of any potential conflict of interest.
- 8.14 If during the course of their employment, individuals wish to engage in secondary employment, prior permission from a senior manager will be required. The CCG reserve the right to refuse permission where it believes a conflict will arise which cannot be effectively managed.

### **Declaration of offers and receipt of gifts and hospitality**

- 8.15 A form for declaring gifts and hospitality is attached as Appendix C. All hospitality or gifts declared to the Governing Body Support Officer and must be promptly transferred to a register of gifts and hospitality. This should include any gifts and hospitality declared in meetings. The register will include:
- Recipient's name;
  - Current position(s) held by the individual (within the CCG);
  - Date of offer and/or receipt;
  - Details of the gifts of hospitality
  - The estimated value of the gifts or hospitality
  - Details of the supplier/offeror (e.g. their name and the nature of their business);

- Details of previous gifts and hospitality offered or accepted by this offeror/ supplier;
- Details of the officer reviewing/approving the declaration made and date;
- Whether the offer was accepted or not; and
- Reasons for accepting or declining the offer.

### **Publication of registers**

8.16 The CCG will publish the register(s) of interest and register(s) of gifts and Hospitality, referred to above, and the Register of procurement decisions described below on its website (see link below).

<http://www.northcumbriaccg.nhs.uk/about-us/how-we-make-decisions/declaration-of-interests/index.aspx>

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

8.18 All persons who are required to make a declaration of interest(s) or a declaration of gifts or hospitality will be made aware that the register(s) will be published in advance of publication. This will be done by the provision of a fair processing notice that details the identity of the data controller, the purposes for which the registers are held and published, and contact details for the Senior Information Responsible Officer (SIRO). This information will additionally be provided to individuals identified in the registers because they are in a relationship with the person making the declaration.

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

## **9. Register of procurement decisions, procurements and designing service requirements**

9.1 The CCG will, through the North of England Commissioning Support procurement team, maintain a register of procurement decisions taken, including the details of the decision; who was involved in making the decision (e.g. Governing Body or committee members and others with decision-making responsibility); and a summary of any conflicts of interest in relation to the decision and how this was managed by the CCG. The register will form part of the CCG's annual accounts and

will be signed off by external auditors.

- 9.2 The CCG recognises the importance of managing any conflicts or potential conflicts of interest that may arise in relation to procurement. The Procurement, Patient Choice and Competition Regulations place requirements on commissioners to ensure that they adhere to good practice in relation to procurement, do not engage in anti-competitive behaviour that is against the interest of patients, and protect the right of patients to make choices about their healthcare. The regulations set out that commissioners must manage conflicts and potential conflicts of interests when procuring/awarding a contract by prohibiting the award of a contract where the integrity of the award has been, or appears to have been, affected by a conflict; and keep appropriate records of how they have managed any conflicts in individual cases.
- 9.3 An area in which conflicts could arise is where the CCG commissions (or continues to commission by contract extension) healthcare services, including GP services, in which a member of the CCG has a financial or other interest. This may arise in the context of co-commissioning of primary care. The CCG will use the factors set out in the procurement template when drawing up plans to commission services where this potentially is the case. Bidders, potential contractors, and potential service providers must declare any conflict or potential conflict.
- 9.4 The CCG will engage where appropriate, relevant providers, especially clinicians, in confirming that the design of service specifications will meet patient need. Such engagement must be done transparently and fairly. However, conflicts of interest may occur if the CCG engages selectively with only certain providers (be they incumbent or potential new providers) in developing a service specification for a contract for which they may later bid. The CCG will seek, as far as possible, to specify the outcomes that they wish to see delivered through a new service, rather than the process by which these outcomes are to be achieved. As well as supporting innovation, this helps prevent bias towards particular providers in the specification of services. Such engagement should follow the three main principles of procurement law, namely equal treatment, non-discrimination and transparency. This includes:
- Ensuring that the same information is given to all
  - Advertise that a service design/re-design exercise is taking place widely and invite comments from any potential providers and other interested parties (ensuring a record is kept of all interactions)
  - As the service design develops, engage with a wide range of providers on an ongoing basis to seek comments on the proposed design, e.g. via the CCG's website or via workshops with interested parties
  - Use engagement to help shape the requirement to meet patient need but take care not to gear the requirement in favour of any particular provider(s)
  - If appropriate, seek the advice of an independent clinical adviser on the design of the service
  - Be transparent about procedures
  - Ensure at all stages that potential providers are aware of how the service will be commissioned
  - Maintain commercial confidentiality of information received from providers

- 9.5 The CCG, through NECS, will manage conflicts of interest on an ongoing basis as part of the regular monitoring of a contract that has been awarded to a provider in which an individual commissioner has a vested interest.
- 9.6 The CCG, through NECS, will ensure that details of all contracts, including the contract value, are published on the CCG's website as soon as contracts are agreed. Where the CCG decides to commission services through Any Qualified Provider (AQP), the CCG, through NECS, will publish on the website the type of services being commissioned and the agreed price for each service. The CCG will ensure that such details are also set out in the annual report. Where services are commissioned through an AQP approach, the CCG will ensure that there is information publicly available about those providers who qualify to provide the service.

## 10. Governance and Decision-making

- 10.1 The CCG's Audit Committee will regularly review governance structures and arrangements for managing conflicts of interest and potential conflicts of interests to ensure that they do not, and do not appear to, affect the integrity of the CCG's decision-making, and that they reflect current statutory guidance. This review will include consideration of the following:
- The make-up of the Governing Body and committee structures (including the approach for decision-making in delegated commissioning of primary care)
  - Whether there are sufficient management and internal controls to detect breaches of this conflicts of interest policy detailed here and in the CCG's Constitution, including appropriate external oversight and adequate provision for whistleblowing
  - How any non-compliance with these arrangements relating to conflicts of interest will be managed (including how this will be addressed when it relates to contracts already entered into). As well as actions to address non-compliance, the CCG will review any 'lessons learned' from such cases, e.g., by the CCG's Audit Committee conducting an incident review
  - Reviewing and revising approaches to the CCG's register of interests, together with the introduction of a record of decisions
  - Whether any training or other programmes are required to assist with compliance
- 10.2 The CCG will consider whether conflicts of interest should exclude individuals from being appointed to the Governing Body or to a committee or sub-committee of the CCG or Governing Body. The CCG will assess the materiality of the interest, in particular whether the individual (or a family member or business partner) could benefit from any decision the Governing Body might make. If it is related to an area of business significant enough that the individual would be unable to make a full and proper contribution to the Governing Body, that individual should not become a member of the Governing Body. Any individual who has a material interest in an organisation which provides, or is likely to provide, substantial services to the CCG (either as a provider of healthcare or commissioning support services) should not be a member of the Governing Body if the nature of their interest is such that they are likely to need to exclude themselves from decision-making on so regular a basis that it significantly limits their ability to effectively operate as a Governing Body member.

- 10.3 Where certain members of a decision-making body (be it the Governing Body, its committees or

sub-committees, or a committee or sub-committee of the CCG) 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). The Chair of the meeting has responsibility for deciding whether there is a conflict of interest and the appropriate course of corresponding action. All decisions, and details of how any conflict of interest issue has been managed, will be recorded in the minutes of the meeting and published in the register. In the event that the chair of a meeting is conflicted, the Deputy/Vice-Chair of that decision-making body must take the chair's role for discussions and decision-making of that relevant part of the meeting.

- 10.4 Where more than 50% of the members attending a Governing Body or committee are prevented from taking a decision because of conflicted interests, the Chair or Deputy/Vice-Chair will determine whether the discussion can proceed or whether it should be deferred. Decisions could still be made by the remaining members of the Governing Body or committee if the meeting remains quorate. If the meeting is not quorate, the CCG's Chair, Accountable Officer, and Audit Committee Chair will decide how the decision should be taken, or whether the decision will be deferred until such time that a quorum can be convened.

## 11. Raising Concerns

- 11.1 Every individual has a duty to report genuine concerns in relation to the administration of, or non-compliance to the CCG's Business Code of Conduct policy,
- 11.2 Suspicions should not be ignored or investigate directly but be reported in line with the process set out in the CCG's Whistleblowing Policy.
- 11.3 Anyone who is not an employee or worker of the CCG but who wishes to report a suspected or known breach of this policy should ensure that they comply with their own organisation's whistleblowing policy.
- 11.4 All disclosures will be treated with appropriate confidentiality at all times in accordance with the CCG's policies and applicable laws. Anybody making such disclosures may expect an appropriate explanation of any decisions taken as a result of any investigation.
- 11.5 Providers, patients and other third parties can make a complaint to NHS Improvement in relation to a commissioner's conduct under the Procurement Patient Choice and Competition Regulations.

## 12. A Breach of the CCG's Business Code of Conduct Policy

- 12.1 Failure to comply with the CCG's Business Code of Conduct policy can have serious implications for the CCG and any individuals concerned.
- 12.2 Civil implications

The CCG could face civil challenges to decisions it makes. For instance, if breaches occur during a



service re-design or procurement exercise, the CCG risks a legal challenge from providers that could potentially overturn the award of a contract, lead to damages claims against the CCG, and necessitate a repeat of the procurement process. This could delay the development of better services and care for patients, waste public money and damage the CCG's reputation. In extreme cases, staff and other individuals could face personal civil liability, for example a claim for wrong doing in public office.

### 12.3 Criminal implications

Failure to manage conflicts of interest could lead to criminal proceedings including for offences such as fraud, bribery and corruption. This could have implications for the CCG, linked organisations, and the individuals who are engaged by them. This policy should be read in conjunction with the CCG's Counter Fraud, Bribery and Corruption Policy.

### 12.4 Disciplinary implications

Individuals who fail to disclose any relevant interests or who otherwise breach the CCG's rules and policies relating to the management of conflicts of interest will be subject to investigation and, where appropriate, to disciplinary action.

CCG staff, Governing Body and Committee Members in particular should be aware that the outcomes of such action may, if appropriate, result in the termination of their employment or position with the CCG.

### 12.5 Managing Breaches of the CCG's Business Code of Conduct Policy

All breaches of the CCG's Code of Business Conduct will be subject to internal investigation in the first instance, notwithstanding any external investigations which may be necessary. Initial internal investigations will be completed in line with the CCG's Whistleblowing Policy and all subsequent actions will be taken in line with relevant CCG Human Resource policies.

12.6 Investigation outcomes in relation to breaches of this policy will be shared with the CCG's Audit Committee who will review any lessons to be learnt and recommendations for action. The Audit Committee will also monitor the implementation of any recommendations raised from the outcomes of investigations.

12.7 Once a breach is confirmed, NHS England will be notified including information of the nature of the breach and the actions taken in response. This information will also be published anonymously on the CCG's website.

## 13. Fraud or Bribery (see also the CCG's Counter Fraud, Bribery and Corruption Policy)

13.1 The CCG has a zero tolerance to Bribery. Any offering, promising, giving, requesting, agreeing to, receiving or accepting of any bribe is contrary to the Bribery Act 2010 and will be dealt with through the CCG's disciplinary processes. Furthermore the CCG requires all individuals to report

any offering, promising, giving, requesting, agreeing to, receiving or accepting of any Bribe, whether real, suspected or otherwise.

13.2 The Bribery Act 2010 defines bribery as the giving or taking of a reward in return for acting dishonestly and or in breach of the law. There are four different classifications of bribery:

- bribing another person;
- being bribed;
- bribing a foreign public official; or'
- failure to prevent bribery.

13.3 Offering, promising, giving, requesting, agreeing to, receiving or accepting of any bribe is expressly forbidden by any employee when conducting business on behalf of the CCG or when representing the CCG in any capacity and is contrary to the Bribery Act 2010. All staff are required to report any such activity real suspected or otherwise to the Head of Governance and Quality or the Corporate Support Officer/Board Secretary.

13.4 Any suspicions or concerns of fraud or bribery can be reported to the Local Counter Fraud Specialist, the Chief Finance Officer or the NHS Fraud and Corruption reporting line on 0800 028 40 60. In such cases that the Chief Finance Officer is implicated then the member of staff should report concerns to the CCG Lay Chair or the Accountable Officer.

## Appendix A: The Seven Principles of Public Life (the Nolan Principles)

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.

# Equality Analysis Initial Assessment

## Title of the change/proposal or policy:

Business Code of Conduct Policy

## Brief description of the proposal:

To ensure that the policy meets the requirements of NHS England's Revised Statutory Guidance (2017) on Managing Conflicts of Interests in CCGs and to ensure that it is fit for purpose and takes account of best practice.

## Name(s) and role(s) of staff completing this assessment:

Brenda Thomas – Governing Body Support Officer

## Date of Assessment:

25 September 2017

## Please answer the following questions in relation to the proposed changes:

### Will it affect employees, customers, and/or the public? Please state which:

Yes it will affect all employees, Members of the CCG's Governing Body and its Committees, Members of the CCG and contractors.

### Is it a major change affecting how a service or policy is delivered or accessed:

No

### Will it have an effect on how other organisations operate in terms of equality:

No

### If you conclude that there will not be a detrimental impact on any equality group, cause by the proposed changes, please stat how you have reached that conclusion:

There is no anticipated impact on any equality group. The policy adheres to the NHS England's Statutory Guidance (2016) on Managing Conflicts of Interests in CCGs and adheres to best practice. This policy makes all reasonable provision to ensure equity of access to all staff and there are no statements, conditions or requirements that disadvantage any particular group of people with a protected characteristic.

**Contact Details:**

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