

# Declaring and Managing Interests

## Including Managing Conflicts of Interest



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### REVIEWERS

This document has been reviewed by:

NAME	TITLE/RESPONSIBILITY	DATE	VERSION
Peter McKenzie	Corporate Operations Manager	November 2014	1.1
Jim Oatridge	Lay Member for Audit and Governance	December 2014	1.1
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## 1. Introduction and Purpose

- 1.1. This policy is a key element of the Group's Business Conduct Policies<sup>1</sup> and is available on the group's website at [www.wolverhamptonccg.nhs.uk](http://www.wolverhamptonccg.nhs.uk). It sets out how NHS Wolverhampton Clinical Commissioning Group (CCG) will manage conflicts of interest arising from the business of the organisation and should be read alongside the constitution (including the standing orders in Appendix E) and the Codes of conduct for staff and Governing Body Members and clinical leads.
- 1.2. The policy has been drafted in accordance with relevant legislation and guidance including:-
- NHS England Code of Conduct: "Managing conflicts of interest where GP practices are potential providers of CCG-commissioned services" (October 2012)
  - NHS England: "Managing conflicts of interest: Statutory Guidance for CCGs"
  - The National Health Service (Procurement, Patient Choice and Competition) Regulations 2013, SI 2013/257
  - Royal College of General Practitioners' ethical commissioning guidance (October 2011)
  - The four principles set out in the NHS England Towards Establishment: Creating responsive and accountable CCGs, Technical appendix 1:-
    - Doing business properly
    - Being proactive not reactive
    - Assuming that individuals will seek to act ethically and professionally, but may not always be sensitive to all conflicts of interest
    - Being balanced and proportionate
- 1.3. The CCG is responsible for the stewardship of vast public resources and the commissioning of healthcare services for the community. It is therefore determined to inspire confidence and trust by demonstrating integrity by ensuring all of the group's decisions are taken and demonstrably seen to be taken for the right reasons and in line with the following principles:-
- The interests of patients remain paramount at all times;
  - The Group's business is conducted in an impartial and honest manner;
  - Public funds are used to the best advantage of the service, always ensuring value for money;
  - No employees or appointees abuse their position for personal gain or to the benefit of their family or friends;
  - No employees or appointees seek to advantage or further private or other interests in the course of their duties.
- 1.4. This ethos underpins this policy, by setting out steps to avoid any potential or real situations where there could be suggestions of undue bias or influence in the decision making of the CCG. This is of particular significance in relation to decisions with financial implications, as the group is mindful of its responsibilities under The National Health Service (Procurement, Patient Choice and Competition) Regulations 2013<sup>2</sup>, which stipulate that the Group:

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<sup>1</sup> Paragraph 8.1.2 of the group's constitution

<sup>2</sup> [SI 2013/257](#)

- when procuring health care services, must treat providers equally and not treat a provider or type of provider more favourably, in particular on the basis of ownership - Regulation 3(2)(b);
- must not award a contract for the provision of health care services where conflicts or potential conflicts between commissioning and providing the services affect or appear to affect the integrity of that contract award – Regulation 6(1);
- must maintain a record of how it managed any such conflicts of interest in relation to each such contract that it has entered into – Regulation 6(2);
- must provide Monitor with any specified information in its possession for the purposes of an investigation into any complaint received by Monitor regarding the Group's failure to comply with the above – Regulation 13(4).

## 2. Scope of Policy

2.1. This policy applies to:-

- Member practices in their capacity as members of the group, not as providers of primary medical care;
- Governing Body Members and members of the Group's committees;
- Employees of the group; and
- Any individuals contracted to work on the group's behalf or otherwise provide services or facilities to it.

2.2. In addition, anyone engaging with the Group in relation to the actual or potential provision of services or facilities to it will be required to comply with this policy as regards the declaration of any relevant actual or potential conflict of interest.

2.3. A conflict of interest is defined as a situation in which:-

- There is a real possibility that any interest will lead an individual to act in a way that is not impartial and independent in carrying out their duties on behalf of the group;
- There is a real possibility that any interest held by a close personal relation, business associate or other person known to an individual will lead an individual to act in a way that is not impartial and independent in carrying out their duties on behalf of the group;
- A fair minded and informed observer would conclude that one of the above interests exists and that there was a real possibility that the interest could lead the individual to act in a way that is not impartial or independent in carrying out their duties on behalf of the group.

2.4. As highlighted above, when considering conflicts of interest, there may be circumstances when it is not necessary for an actual conflict to exist. It may be sufficient that there is a perceived conflict, where there is a reasonable perception that the individual is influenced or could be open to influence.

2.5. The definition of close personal relations includes spouses, civil partners, partners, parents, children (adult and minor) and siblings. It also includes other people living in the same household as the individual. For the avoidance of doubt, GPs on the Governing Body, other GPs in their practice will be considered to be business associates for the purpose of this policy.

- 2.6. Further details on the interests that must be registered is given in Section 3 of this policy, but in general potential conflicts of interest may arise from:-
- **direct pecuniary interests:** where an individual or their close personal relations may financially benefit from the consequences of group decision (for example, a decision to commission a provider of services);
  - **indirect pecuniary interests:** for example, where an individual is a partner, member or shareholder in an organisation that will benefit financially from the consequences of a commissioning decision;
  - **non-pecuniary interests:** where an individual holds a non-remunerative or not-for profit interest in an organisation, that will benefit from the consequences of a commissioning decision (for example, where an individual is a trustee of a voluntary provider that is bidding for a contract);
  - **a non-pecuniary personal benefit:** where an individual may enjoy a qualitative benefit from the consequence of a commissioning decision which cannot be given a monetary value (for example, a reconfiguration of hospital services which might result in the closure of a busy clinic next door to an individual's house);
- 2.7. Failure to comply with this policy is taken very seriously by the group and may have significant consequences including investigations into potential gross misconduct for employees or as a breach of the code of conduct for governing body members. Failure to comply with this policy by member practices will be treated as a dispute in line with paragraph 7.10 of the Constitution.

### 3. Registration of Interests

- 3.1. It is the responsibility of all individuals to whom this policy applies to ensure that they are not placed in a position which creates a potential conflict between their private interests and their CCG duties. The CCG needs to be aware of all situations where individuals' interests may have the potential to cause a conflict so all persons covered by the policy are required to declare any relevant interest held by themselves or any person defined by paragraph 2.5 above using the Declaration of Interest Form (Appendix A).
- 3.2. With regard to declaring and registering them, relevant interests that may impact on the work of CCG may include:
- Roles and responsibilities held within member practices
  - Directorships, including non-executive directorships held in private companies or public limited companies (with the exception of those of dormant companies) which may seek to do business with the CCG (or, where relevant, its providers)
  - Ownership or part ownership of companies, businesses or consultancies which may seek to do business with the CCG (or, where relevant, its providers)
  - Significant share holdings (more than £25,000 or 1% of the nominal share capital) in organisations which may seek to do business with the CCG (or, where relevant, its providers)
  - Employment with an organisation which currently does or may seek to do business with the CCG (or, where relevant, its providers)

- Membership of or a position of trust in a charity or voluntary organisation in the field of health and social care
  - Receipt of research funding/ grants from the CCG
  - Interests in pooled funds that are under separate management (any relevant company included in this fund that has a potential relationship with the CCG must be declared)
  - Formal interest with a position of influence in a political party or organisation
  - Current contracts with the CCG in which the individual has a beneficial interest
  - The receipt of individual Gifts and Hospitality worth over £25 or several gifts worth over £100 in a 12 month period from a single source (see Section 6 for more details)
  - Any other employment, business involvement or relationship that conflicts, or may potentially conflict with the interests of the CCG.
- 3.3. As outlined in the constitution, the arrangements for appointing members to the Governing Body will include a requirement to declare any potential conflicts of interest. The Accountable Officer (in consultation with the statutory Lay Members of the Governing Body) will then assess whether any identified conflicts would prevent the individual concerned making a full and proper contribution to the governing body. If such significant conflicts do exist, the individual concerned will be excluded from the appointment process.
- 3.4. Induction arrangements for staff, Governing Body Members and committee members will include training on the arrangements for managing conflicts of interest. In addition, advice on the registration of interests is available to all individuals covered by this policy from the Corporate Operations Manager. This will include any clarification of the categories listed above and advice on whether situations not covered by the above categories should be registered.
- 3.5. The Group will use these declarations to maintain and publish on its internet site Registers of Interests for:
- the members of the Group;
  - the members of its Governing Body;
  - other members of any committees or sub-committees;
  - other employees and anyone else required to declare interest under a contract for their services.
- 3.6. If an individual feels that information relating to an interest that must be registered is sensitive they can request that the information not be included the public register. Such requests must be made in writing to the Chief Finance and Operating Officer, who will determine whether the request is valid and maintain a separate register of any information not included on the public version.
- 3.7. For the purposes of paragraph 3.6, information is considered to be sensitive if making it open to public inspection could lead to the individual or a close personal relation suffering violence or intimidation.
- 3.8. On at least an annual basis, all those persons covered by this policy will be formally reminded of the need to declare interests and to confirm the accuracy of the interests



already registered against their name. The Registers will also be reviewed quarterly by the Corporate Operations Manager to ensure that they accurately reflect all of the declarations of interest submitted or withdrawn since the previous such review.

- 3.9. Any person covered by this policy who becomes aware that they have a relevant interest because:
- their personal circumstances change;
  - they become aware, either in the course of any transaction (including conversations between two or more individuals, e-mails, correspondence and other communications) on behalf of the Group or when they find out about a decision to be made by the Group that they have a relevant interest that they had not previously recognised and declared;
- must inform the Corporate Operations Manager of the change in their interests, as soon as practicable after they become aware of it to ensure that this interest is registered within 28 days.

#### **4. General Principles for Managing Potential and Actual Conflicts of Interest**

- 4.1. The Group's constitution sets out the responsibility of the Lay Member for Audit and Governance to ensure arrangements are in place to manage conflicts of interests<sup>3</sup>. All individuals covered by this policy must comply with the arrangements outlined below and any instructions given to them under those arrangements. As highlighted in Paragraph 2.7 above, failure to comply will be considered as a serious issue with potential disciplinary consequences.
- 4.2. When an actual or potential conflict of interest is identified, the individual with the conflict of interest will normally be instructed to withdraw from any activity, transactions or meetings relating to the conflict on a permanent basis. Where the conflict only becomes apparent in the course of activity, transactions or meetings, the individual must withdraw at the point the conflict is identified and their interest communicated to all relevant parties.
- 4.3. As a consequence of paragraph 4.2, individuals with a conflict of interest should also not be party to any information relating to the matter in which they have a conflict other than information that is publicly available. This means that, if they are a member of a committee or governing body, they should not receive copies of any private papers relating to the matter in which they have a conflict of interest.
- 4.4. For decisions that affect all of the practices in the Group, any individual with a resulting conflict of interest can be involved in developing relevant proposals and their discussion at Committees and Governing Body level. They will not be able to vote on the decision and another non-conflicted party must be involved in formally putting recommendations to any Committee or the Governing Body.
- 4.5. In addition, in regard to conflicts as regards any decision required of the Group with regard to services actually or potentially provided by the members of the group the

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<sup>3</sup> Paragraphs 8.4.2 to 8.4.4, Sections 4 and 5 are approved by the Lay Member as the Group's arrangements under these paragraphs



Group will follow the NHS England Code of Conduct and use the template in Appendix B for all relevant commissioning decisions. In particular the Group will:

- arrange for access to robust, independent advice and support with regard to procurement and contract management;
- publish the details of all contracts, including their value, on the Group's website as soon as they are agreed;
- publish on the Group's website the types of services being commissioned through Any Qualified Provider and the agreed price for each service;
- liaise with NHS England when commissioning any service from a primary care provider that is related to the services that some or all GP practices provide under the GP contract

4.6. A register of all procurement decisions made by the Group will be maintained and published on the Group's website and made available for inspection at the Group's offices. This register will include the details of the decision, who was involved in making the decision (including whether this involved the Governing Body or a Committee) and a summary of any conflict of interests that were declared and how they were managed.

4.7. Where, due to the specific nature of the interests involved, a different approach is required, the Lay Member for Audit and Governance (or their nominee) will communicate the arrangements for managing the actual or potential conflict of interest to all relevant parties within 7 days of a conflict being identified<sup>4</sup>.

4.8. As outlined in the constitution, alternative arrangements may include the following actions:

- referring the matter to the group's governing body to progress;
- inviting one or more of the following, who do not have the conflict of interest, to attend the relevant meeting to provide additional scrutiny to the matter and advice to those who can participate:
  - A practice representative;
  - A member of a relevant Health and Wellbeing Board;
  - A member of a governing body of another clinical commissioning group.

This list is not exhaustive, and any arrangements will be recorded and communicated in line with the requirements of paragraph 4.7 above and paragraph 8.4.10 of the Constitution.

## **5. Declarations of Interests at Meeting**

5.1. The agenda for meetings of the Group, the Governing Body and their Committees and Locality Boards will contain a standing item at the commencement of each meeting, requiring members and other invited attendees to declare any interests relating specifically to the agenda items being considered.

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<sup>4</sup> This may include circumstances covered by paragraphs 8.4.9 and 8.4.10 of the constitution when a quorum of the Governing Body or a Committee cannot be reached due to the existence of conflicts of interest.

- 5.2. Participants must be specific when declaring interests. They should state which agenda item their interest relates to, the nature of the interest and whether or not their interest creates a potential conflict of interest.
- 5.3. If a member or other invited attendee becomes aware of an interest during the course of the discussion on a particular item they must declare it as soon as they become aware of it and, if it has not previously been included in the register of interests, take the steps outlined in paragraph 3.9 to ensure the interest is registered.
- 5.4. Where the interest declared constitutes an actual or potential conflict of interest, the participant in question will leave the room prior to the item being discussed and not take part in the discussion or any vote that takes place<sup>5</sup>.
- 5.5. If there is any doubt as to whether an interest that has been declared constitutes a conflict of interest advice should be sought from the Corporate Operations Manager. In general terms, it is often safest to assume that a conflict does exist and act accordingly, particularly where the interest relates to a decision to be made at the meeting. If the Chair has to make a ruling on any potential or actual conflicts, their ruling will be final.
- 5.6. If the application of paragraph 5.4 above means that a meeting cannot be quorate for any decision, that matter will be deferred until the meeting is quorate or dealt with under paragraphs 8.4.9 to 8.4.10 of the constitution as necessary.
- 5.7. Paragraphs 8.4.9 and 8.4.10 of the constitution cover situations where a quorum could never be reached due to actual or perceived conflicts of interest. It sets out the responsibility of the chair of the meeting to consult with the Lay Member for Audit and Governance on alternative actions that could be taken.
- 5.8. If a part of a meeting of the Governing Body cannot be quorate due to conflicts of interest, standing order 3.6.2 will apply and the relevant parts of such meetings will be chaired by the Deputy Chair or, in their absence, another non-conflicted member selected from among and by the non-conflicted members present. Those members allowed to vote will do so having ensured that they have received independent advice<sup>6</sup>, either before or at the relevant meeting.
- 5.9. All declarations of interest, any subsequent action taken and any other relevant information – including any advice given will be recorded in the minutes of the meeting.

## **6. Gifts and Hospitality**

- 6.1. In general terms, in order to support the broad aims of this policy, offers of gifts and hospitality beyond those defined in paragraph 6.4 should be politely but firmly declined as accepting such offers could lead to similar claims of undue influence as

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<sup>5</sup> Unless alternative arrangements have been put in place by the Lay Member for Audit and Governance under paragraphs 8.4.3 or the Chair under Paragraphs 8.4.9 and 8.4.10 of the Constitution

<sup>6</sup> In line with paragraph 8.4.10(b) of the constitution

with other conflicts of interest. It is an offence under the Bribery Act 2010 for anyone to request, agree to receive or receive any financial or other advantage as an inducement to or reward for improper behaviour by them or anyone else.

- 6.2. For the purposes of this policy, the offer of a discount that would not normally be available to the individual is to be considered the offer of a gift.
- 6.3. All relevant offers of gifts or hospitality should be declared to the Corporate Operations Manager, who will maintain a register of gifts and hospitality both received and declined and who will advise individuals when the receipt of gifts or hospitality becomes a relevant interest as defined in paragraph 3.2 above.
- 6.4. Gifts of low intrinsic value (less than £25 per item) such as pens, diaries, calendars and mouse mats need not be refused and do not need to be declared in most cases. However if several such gifts are received from the same or related source over any 12-month period and their cumulative value exceeds £100, they should be declared.
- 6.5. Hospitality provided to individuals in connection with events, meetings or working visits at another organisation is acceptable without being declared, provided it is similar to the scale of hospitality which the Group would be likely to offer to a representative of another organisation attending one of its events or visiting the Group for similar reasons.
- 6.6. Where the Group receives or solicits offers of sponsorship for meetings, training events or publications this Policy requires that:-
  - the sponsor's involvement must be made public without giving their advertising or promotional material undue significance;
  - nothing said or issued during a meeting or training event or written in the publication must give any explicit or implicit suggestion that the Group is endorsing the products or services of the sponsor;
  - receipt of the sponsorship must be declared and recorded in the gifts and hospitality register;
  - sponsorship should not be sought from and should be declined if offered by any organisation if it is known or considered likely that they will be submitting a competitive bid to the Group within three months either side of the sponsored event or publication.
- 6.7. Employees of the group should only accept sponsorship to fund their attendance at relevant conferences, courses or work-related visits with the prior approval of their line manager, who needs to ensure there can be no perception of a conflict of interest in relation to the motives of the organisation making the offer. All such offers, whether accepted or not, should be declared and recorded in the gifts and hospitality register.
- 6.8. The Group might wish to sponsor (i.e. contribute part of the funding for) local events or publications in which they have no other involvement but which contribute to the aim of the Group. This must be done such that the Group is not seen to be endorsing everything said at the event or in the publication and with due regard to the timing of the event/publication and any actual or potential commercial relationship between the Group and the organisation being sponsored.

- 6.9. If an employee or representative of the Group is asked to contribute on behalf of the Group to a conference or other event arranged by another organisation, the invitation is accepted as part of the individual's job or role with the Group and the contribution delivered during time for which they are already being paid, it is not appropriate for them to be paid for doing so. The Group may wish to reimburse any related expenses, particularly any overnight accommodation and related meals, if they are not funded by the organisers of the event. Anyone accepting such an invitation needs to ensure that doing so does not create any potential conflict with any other relationship between the Group and the event organisers. Expenses and hospitality directly associated with contributing to an event in this way need not be declared, provided that the event takes place in the UK.
- 6.10. Such an offer can also be accepted by an individual in their own right, to be carried out in their own time and with any views expressed to be explicitly those of the individual, not necessarily the Group. It is then acceptable for them to be paid for their contribution provided that this does not create any conflict of interest with their role within the Group or any potential relationship with the other organisation. All related expenses must be met by the individual or the event organisers; if the latter, any such expenses, except reimbursement of travel expenses within the UK, should be declared and recorded in the gifts and hospitality register.
- 6.11. The Group and its members must follow the toolkit issued by the Department of Health and Association of the British Pharmaceutical Industry (ABPI)<sup>7</sup> whenever any joint working is undertaken with pharmaceutical companies. This defines the difference between sponsorship (where pharmaceutical companies simply provide funds for a specific event or work programme) and joint working, where goals are agreed jointly by the NHS organisation and company, in the interest of patients, and shared throughout the project. Whenever the group engages in any joint work with a pharmaceutical company a working agreement must be drawn up and management arrangements conducted with participation from both parties in an open and transparent manner.

## **7. Review of Policy**

- 7.1. The Audit and Governance Committee will keep the effectiveness of this policy under review and the lay Member for Audit and Governance will ensure that the arrangements outlined remain fit for purpose in line with the requirements in paragraph 8.4.2 of the Group's Constitution.
- 7.2. The review process will include consideration of any lessons to be learned from any non-compliance with the policy during the year. This may include the committee

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<sup>7</sup> [Moving Beyond Sponsorship](#), 2010, underpinned by important pieces of Guidance. "Best Practice Guidance for Joint Working between the NHS and the Pharmaceutical Industry" was issued by the Department of Health in February 2008. "The ABPI Code of Practice for the Pharmaceutical Industry" and "Guidance Notes on Joint Working between Pharmaceutical Companies, the NHS and Others for the Benefit of Patients"

undertaking an incident review in addition to any disciplinary or conduct procedures undertaken with the individual(s) concerned.

## **8. Further Advice and Guidance**

- 8.1. Further advice on this policy can be obtained from the Corporate Operations Manager in the first instance. Other sources of advice and guidance will include the local Counter Fraud Specialist service and the lay member for audit and governance.

### DECLARATION OF INTERESTS FORM

<b>Name:</b>	
<b>Position within CCG:</b>	

As Highlighted in paragraph 3 of the Declaring and Managing Interests policy, the CCG needs to be aware of relevant interests that may impact on the work of the CCG. If you have any queries about whether an interest needs to be included on this form, please contact Peter McKenzie, Corporate Operations Manager for more information.

Type of Interest	Details	Who holds the interest? (Self or other <sup>8</sup> )
Roles and responsibilities held within member practices		
Directorships, including non-executive directorships held in private companies or public limited companies (with the exception of those of dormant companies) which may seek to do business with the CCG (or where relevant, its providers)		
Ownership or part ownership of companies, businesses or consultancies which may seek to do business with the CCG (or where relevant, its providers)		
Significant share holdings (more than £25,000 or 1% of the nominal share capital) in organisations which may seek to do business with the CCG (or where relevant, its providers)		
Employment with an organisation which currently does or may seek to do business with the CCG (or where relevant, its providers)		

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<sup>8</sup> See Paragraph 2.5



<b>Type of Interest</b>	<b>Details</b>	<b>Who holds the interest? (Self or other<sup>8</sup>)</b>
Membership of or a position of trust in a charity or voluntary organisation in the field of health and social care		
Receipt of research funding/ grants from the CCG		
Interests in pooled funds that are under separate management (any relevant company included in this fund that has a potential relationship with the CCG must be declared)		
Formal interest with a position of influence in a political party or organisation		
Current contracts with the CCG in which the individual has a beneficial interest		
Any Gifts or Hospitality registered in accordance with Section 6 of the Conflicts of Interest Policy		
Any other employment, business involvement or relationship that conflicts, or may potentially conflict with the interests of the CCG.		
Any other information you wish to declare		

**In accordance with the requirements of the requirements of Paragraph 8.4 of the Constitution and Section 3 of the Managing Conflicts of Interest Policy I declare that I hold the above interest and confirm that:-**

- To the best of my knowledge and belief, the above information is complete and correct and that a failure to comply with the requirements of the Conflict of Interest Policy will be treated seriously.**
- I will review and update this information as necessary in accordance with the requirements of Section 3 of the Managing Conflicts of Interest Policy at least annually and within 28 days of my becoming aware of a change of circumstances.**
- I understand that the information contained in this form will be published in the Register of Interests published on the Group's Website.**

**Signed** \_\_\_\_\_

**Date:** \_\_\_\_\_

## Appendix B

### NHS Wolverhampton Clinical Commissioning Group NHS England Challenge Template

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</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 CCG's proposed commissioning priorities?	
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?	
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?	
Why have you chosen this procurement route? <sup>9</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?	

<b>Additional question for AQP or single tender (for services where national tariffs do not apply)</b>	
How have you determined a fair price for the service?	

<b>Additional questions for AQP only (where GP practices are likely to be qualified providers)</b>	
How will you ensure that patients are aware of the full range of qualified providers from whom they can choose?	

<b>Additional questions for single tenders from GP providers</b>	
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?	

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<sup>9</sup> Taking into account S75 regulations and NHS Commissioning Board guidance that will be published in due course, Monitor guidance, and existing procurement rules.