

WOLVERHAMPTON CCG

GOVERNING BODY 12 JULY 2016

Title of Report:	Managing Conflicts of Interest
Report of:	Corporate Operations Manager
Contact:	Peter McKenzie, Corporate Operations Manager
(add board/ committee) Action Required:	<input checked="" type="checkbox"/> Decision <input checked="" type="checkbox"/> Assurance
Purpose of Report:	To recommend a revision to the Policy for Declaring and Managing Interests following changes to the statutory guidance for managing conflicts of interest for CCGs that has been issued by NHS England and to ask the Governing Body to agree in principle to the appointment of an additional Lay Member in response to the Guidance.
Public or Private:	This Report is intended for the public domain
Relevance to CCG Priority:	Developing and Strengthening Leadership Capacity and Capability.
Relevance to Board Assurance Framework (BAF):	
<ul style="list-style-type: none"> • Domain 1: A Well Led Organisation 	Compliance with the new guidance will continue to be a key element of assurance discussions around the CCG's governance arrangements.
<ul style="list-style-type: none"> • Domain 3: Financial Management 	The effectiveness of the operational arrangements for managing potential conflicts of interests is a key element of robust financial management procedures, particularly in relation to procurement.
<ul style="list-style-type: none"> • Domain 5: Delegated Functions 	The new guidance includes specific provisions in relation to the operation of co-commissioning



1. BACKGROUND AND CURRENT SITUATION

- 1.1. At the 31 March 2016 meeting of the NHS England Board, a draft of new statutory guidance on managing conflicts of interests was issued in draft for consultation purposes. A final version of the guidance was published on 30 June 2016.
- 1.2. The new guidance requires a number of changes to the CCG's policy for Declaring and Managing Interests and makes a strong recommendation that the CCG should recruit an additional Lay Member of the Governing Body.

2. KEY REVISIONS TO STATUTORY GUIDANCE

- 2.1. The new guidance highlights seven key areas where revisions have been made to the previous statutory guidance from December 2014:-
 - A recommendation to increase the number of lay members on the Governing Body to support management of conflict of interest;
 - The introduction of a 'conflict of interest guardian' role;
 - A requirement to include a robust process for managing breaches within the conflict of interest policy;
 - Strengthened provisions around decision making when conflicts of interest arise in Governing Body or committee meetings;
 - Strengthened provisions around the management of gifts and hospitality;
 - A requirement for annual audit of conflicts of interest management to be reported through the Annual Governance Statement; and
 - A requirement for all CCG staff, Governing Body and committee members and GP members to complete mandatory online training on conflicts of interest.Further detail on each of these key issues is given below.

2.2. Increasing the number of Lay Members on the Governing Body

The guidance recognises the key role that lay members play in supporting the CCG in managing conflicts of interest, particularly in being able to provide an independent voice in decision making. This is particularly important in areas where clinical members of the Governing Body face conflicts of interest as a result of their responsibilities in member practices. It also recognises that, as the role of CCGs in commissioning Primary Care services increases, the workload of lay members in such decision making will increase considerably.

As a result, the guidance strongly recommends that CCGs should consider the appointment of an additional lay member. CCGs who choose not to comply with this recommendation will have to account to NHS England for the reasons why through the assurance process. It highlights that a number of CCGs have already appointed additional lay members to their Governing Body and suggests that, where capacity



exists, CCGs should consider whether they could make further appointments. It is suggested that the additional lay member would be able to act as the Vice-Chair of the relevant committee for commissioning primary care.

2.3. Conflict of Interest Guardian

The guidance outlines that, as part of their responsibilities, CCG Audit Chairs should have a defined role in the management of conflicts of interest, acting as a conduit for public concerns, a point of contact for whistleblowing and – with the support of an internal governance lead – support the application of the guidance across the CCG. The guidance describes this as acting as the Conflict of Interest Guardian.

The CCGs existing policy and constitution detail the responsibilities of the Chair of the Audit and Governance Committee in respect of managing conflicts of interest. These align closely with the new requirements in the guidance.

2.4. Robust Process for Managing Breaches

As part of the drive in the new guidance towards greater transparency, there are new requirements to provide greater detail around how breaches of conflict of interest policies will be managed. This includes ensuring that the breach is recorded, investigated, reported both internally and externally to NHS England and the sanctions that will be applied as a result. The guidance also makes it clear that any breaches of the policy must be published on the CCG website.

2.5. Decision Making when conflicts arise

One area in which the current guidance for CCGs has been criticised is that it is not always explicit in describing actions that should be taken when conflicts of interest arise, particularly at meetings. The new guidance addresses this by setting out in greater detail the steps that should be taken, including the fact that the default position should be that those with an interest should not participate in discussions or decision making. To support this process, a checklist has been provided within the guidance to support chairs (who have the ultimate responsibility for determining actions to be taken in response to potential conflicts).

2.6. Gifts and Hospitality

The management of gifts and hospitality – particularly from the pharmaceutical industry – have been an area of concern as the new guidance has been developed. The guidance sets out new requirements in this area to increase transparency by requiring the register of gifts and hospitality for the CCG (including member practices) to be published on the CCG's website. An outline of requirements for this register (which mirror the CCG's current register) are included as an appendix to the guidance.



The guidance also suggests that CCG's reflect on their working relationship with the pharmaceutical industry, including the practice of receiving corporate sponsorship for CCG events. The Audit and Governance committee have discussed this issue and it is an area that may merit further consideration.

2.7. Annual Audit of Conflict of Interest Management

Requirements around the auditing of conflict of interest management have also been strengthened. As this will link into NHS England assurance of governance arrangements, a national template for the remit for this audit work is due to be produced. It is suggested that the audit takes place in Quarter 3 or 4 of the year and that the outcomes are reported as part of the end of year assurance assessment by NHS England and included in the annual governance statement. Details of how conflicts of interest have been managed in procurement work and registers of interests will also form part of the annual accounts and be signed off by external auditors.

2.8. Online Conflict of Interest Training

The final change highlighted in the guidance is the requirement for training on conflict of interests to be offered to staff, governing body members, committee members and member practices. An online training package is being developed by NHS England that will ensure individuals understand what conflicts of interest are, the importance of managing conflicts, recognising their own interests and how to report concerns that conflicts have not been managed appropriately. Completion of this online training will be mandatory for the individuals concerned and compliance rates must be included in the audit of conflicts of interest management.

3. OTHER CHANGES IN THE GUIDANCE

- 3.1. As well as the key changes that NHS England have chosen to highlight, the guidance also refines the definitions of both what interests are relevant and who needs to declare them. The new categories are split into 'Financial Interests', 'Non-Financial Professional Interests', 'Non-Financial Personal Interests' and 'Indirect Interests'. This includes the existing definitions (employment, shareholdings etc.) and there are examples given in the other categories to support individuals in making declarations.
- 3.2. Clarity is also provided around the individuals covered by the policy, particularly within member practices. As outlined in the current policy, all CCG employees, Governing Body Members and individuals acting on the CCG's behalf are required to register their interests and the new guidance sets out that GP Partners (or Directors where the practice is a company) and any staff at member practices involved in CCG decision making must also make a declaration.



- 3.3. It is suggested that, in developing internal arrangements to manage conflicts of interest, CCGs should reflect on the interests held by individuals prior to making appointments. The CCG has already considered this when making appointments to the Governing Body but can formalise these provisions in response to the guidance. For employees, the guidance also suggests that explicit permission should be sought prior to taking up any secondary employment.
- 3.4. The guidance explicitly outlines that conflicts of interest must be managed throughout the commissioning cycle, giving brief examples of points where individual's interests could create a conflict. To mitigate against this, the guidance includes provisions that suggest it would be good practice to publish a list of planned procurements in addition to the register of procurement decisions. There is a clear steer in the guidance that the register should be based on a broad definition of procurement decisions, suggesting that decisions such as those to extend existing contracts should be included in the register as well as awards of new contracts.
- 3.5. The guidance also includes links to case studies and scenarios and NHS England has published a number of summary guides for different audiences (copies of the summaries for GPs and Lay Members are attached for information).

4. NEXT STEPS

4.1. Declaring and Managing Interests Policy

The attached version of the Declaring and Managing Interests policy has been revised in line with the newly issued guidance. Many of the principles outlined in the guidance were already incorporated in the CCG's policies and practices, however elements have been re-emphasised. The new policy includes details of the defined role and responsibilities for the Conflict of Interest Guardian, a process for managing breaches of the policy, details of training arrangements and the revised categorisation of interests are all included in this policy.

Due to the late publication of the guidance by NHS England, the policy has not been subject to review by the Audit and Governance Committee, or any engagement with staff. The Governing Body is therefore asked to approve the Policy in principle, subject to a review by the Audit and Governance Committee and engagement with CCG staff via the Staff Forum. The Governing Body is also asked to delegate responsibility to the Corporate Operations Manager to make any minor and consequential changes to the policy required following these review in consultation with the Conflicts of Interest Guardian. Should any major revisions be required, the policy will be considered at the September Governing Body meeting.

4.2. Lay Member Recruitment

Discussions have taken place to determine the most appropriate response to this element of the guidance for the CCG. The Governing Body will recall that in January, the Finance and Performance Committee agreed to appoint an additional



independent member of the committee to support the on-going development of its assurance and scrutiny role. At that point it was recognised that the independent members of the Audit and Governance Committee both had the requisite skills and experience to perform this new role and it was agreed that, prior to conducting an external recruitment process to appoint an independent member, they should be approached to determine if they were interested in the role.

Following the publication of the draft statutory guidance, the appointment process was paused whilst consideration was given to a number of options for meeting the requirement to appoint an additional lay member. Given the agreed need to strengthen the membership of the Finance and Performance committee, the preferred option was to look at expanding the role description for the Independent Member of this Committee to become a Lay Governing Body member for Finance and Performance. The additional responsibilities this will entail include chairing this committee and becoming a member (and deputy chair) of the Joint Primary Care Commissioning Committee. Alternative options considered included developing an alternative role description for the new Lay Member or expanding the existing role of one of the Lay Members of the Audit and Governance Committee to support management of conflicts of interest.

The existing members of the Audit and Governance Committee have been approached to determine whether they would be interested in the expanded role. Mr Peter Price has expressed an interest, in line with the principles for appointment of Lay Members for CCGs and ensuring that such appointments are made on merit, Mr Price has met with the Lay Member for Audit and Governance, the Clinical Lead for Finance and Performance and the Chief Finance and Operating Officer and consideration has been given to Mr Price's considerable experience of NHS Finance and performance matters and his contribution to the work of the Audit and Governance Committee during his membership. On this basis, Mr Price has demonstrated his suitability to fill this post and the Governing Body is asked to agree to appoint him to the post, to be formally effective once the Constitution is varied to reflect the change in Governing Body Membership. Mr Price will take up his duties in shadow form pending this being formalised through the NHS England processes.

4.3. **Internal Audit**

The Audit and Governance committee have agreed an annual work plan for internal audit that includes an audit of conflicts of interest management. This is in line with the new requirement and the internal audit team will conduct the audit in line with template terms of reference that are due to be issued by NHS England in due course.

4.4. **Training**

Once the revised policy for Declaring and Managing interests is approved, the Corporate Operations Manager will develop a training programme for staff, Governing Body members and member practices to highlight the relevant changes.



In addition, NHS England will be producing online training materials in the Autumn that will be mandatory for CCG staff. All staff will need to complete this training by 31 January and training compliance rates must be reported through the internal audit.

5. CLINICAL VIEW

5.1. Not applicable.

6. PATIENT AND PUBLIC VIEW

6.1. Not applicable.

7. RISKS AND IMPLICATIONS

Key Risks

7.1. There is a risk that an ineffective approach to managing potential conflicts of interest would leave the CCG's decisions open to challenge. Adopting the revised policy and appointing an additional lay member will mitigate this risk.

Financial and Resource Implications

7.2. The CCG will be required to appoint an additional Lay Member of the Governing Body to comply with the revised guidance which will have an impact on running costs. The other requirements in the guidance will be met within existing resources.

Quality and Safety Implications

7.3. There are no quality and safety implications relating to this report.

Equality Implications

7.4. There are no equality implications arising from this report.

Medicines Management Implications

7.5. There are no medicines management implications relating to this report.

Legal and Policy Implications

7.6. The CCG's Policy for Declaring and Managing Interests and sections of the constitution that refer specifically to Standards of Business Conduct and the relevant sections of Standing Orders must comply with the statutory guidance.

8. RECOMMENDATIONS

That the Governing Body



- **Agrees in principle** to approve the revised policy for declaring and managing interests, subject to review by the Audit and Governance Committee and staff engagement
- **Delegates authority to the Corporate Operations Manager** (in consultation with the Conflicts of Interest Guardian) to make any minor and consequential amendments to the policy arising from the Audit and Governance Committee review.
- **Agrees** to appoint Mr Peter Price to the new position of Lay Governing Body Member for Finance and Performance, subject to the CCG's constitution being varied to give effect to this change.

Name Peter McKenzie
Job Title Corporate Operations Manager
Date: July 2016

ATTACHED:

Revised Policy for Declaring and Managing Interests
 Summary of Conflict of Interest Statutory Guidance – GPs involved in commissioning
 Summary of Conflict of Interest Statutory Guidance – Lay Members
 Lay Member for Finance and Performance Role Description

RELEVANT BACKGROUND PAPERS

CCG Constitution
 Managing Conflicts of Interest, Statutory Guidance for CCGs, NHS England June 2016
<https://www.england.nhs.uk/commissioning/wp-content/uploads/sites/12/2016/06/revsd-coi-guidance-june16.pdf>



REPORT SIGN-OFF CHECKLIST

This section must be completed before the report is submitted to the Admin team. If any of these steps are not applicable please indicate, do not leave blank.

	Details/ Name	Date
Clinical View	N/a	
Public/ Patient View	N/a	
Finance Implications discussed with Finance Team	Discussed requirement for additional Governing Body lay member with Claire Skidmore	04/04/16
Quality Implications discussed with Quality and Risk Team	N/a	
Medicines Management Implications discussed with Medicines Management team	N/a	
Equality Implications discussed with CSU Equality and Inclusion Service	N/a	
Information Governance implications discussed with IG Support Officer	N/a	
Legal/ Policy implications discussed with Corporate Operations Manager	Report author	05/07/2016
Signed off by Report Owner (Must be completed)	Peter McKenzie	05/07/2016

