

## Clinical Commissioning Group

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### Conflicts of Interest Policy

1	<b>SUMMARY</b>	This policy defines NHS Enfield Clinical Commissioning Group's procedure for Conflicts of Interest.			
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7	<b>EQUALITY IMPACT ANALYSIS COMPLETED:</b>	<b>Policy Screened</b>	<b>Not required</b>	<b>Template completed</b>	<b>Yes</b>
8	<b>RATIFYING COMMITTEE(S) &amp; DATE OF FINAL APPROVAL:</b>	Governing Body Meeting – 30 July 2014 Audit Committee – 10 September 2014 Reviewed by Audit Committee – 27 May 2015 Approved by Governing Body – 10 June 2015			
9	<b>VERSION:</b>	<b>1.2</b>			
10	<b>AVAILABLE ON:</b>	<b>Intranet</b>	<b>Yes</b>	<b>Website</b>	<b>Yes</b>
11	<b>RELATED DOCUMENTS:</b>	ECCG Clinical Procurement Framework, NHS England: Managing conflicts of interests: Statutory Guidance for CCG's (18 December 2014), Standing Orders, Prime Financial Policies, Scheme of Reservation and Delegation, Standards of Business Conduct Policy, Anti Bribery and Anti Fraud Policy			
12	<b>DISSEMINATED TO:</b>	All NHS Enfield CCG Governing Body members, staff and member practices			
13	<b>DATE OF IMPLEMENTATION:</b>	24 June 2015			
14	<b>DATE OF NEXT FORMAL REVIEW:</b>	Audit Committee 27 May 2015 Governing Body 10 June 2015			

## Document Control

Date	Version	Action	Author
12.06.14	1	Proposed NCL Col Policy Issued by Baker Tilly	Baker Tilly
11.07.14	1.1	Revised Col Policy as amended following meeting of NCL Governance Leads – 28 April 2015	Baker Tilly/ NCL Governance Leads
18.05.15	1.2	Revised Enfield CCG Version of NCL Col Policy adapted to include the name of “Enfield CCG”, the name of key designations within ECCG as defined within the ECCG Constitution.	Baker Tilly/ NCL Governance Leads/ Assistant Director Quality

**“The CCG incorporates and support the human rights of the individual as set out in the European Convention on Human Rights and the Human Rights Act 1998**

# **NHS ENFIELD CLINICAL COMMISSIONING GROUP**

## **CONFLICTS OF INTEREST POLICY**

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## **1 Introduction**

Managing conflicts of interest appropriately is essential for protecting the integrity of NHS Enfield Clinical Commissioning Group from perceptions of wrongdoing or impropriety. The CCG must meet the highest level of transparency to demonstrate that conflicts of interest are managed in a way that does not undermine the probity and accountability of the CCG.

This policy sets out the approach that the CCG will implement to identify, manage and record any potential or actual conflicts of interests that may arise as part of the commissioning of healthcare for Enfield CCG .

This policy is issued in accordance with statutory guidance under Sections 14O and 14Z8 of the National Health Service Act 2006 (as amended by the Health and Social care Act 2012). The act sets out clear requirements for CCGs to make arrangements for managing actual and potential conflicts of interests, to ensure they do not affect, or appear to affect, the integrity of the CCGs decision making processes. These requirements are supplemented by procurement-specific requirements in the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013.

This policy has been drafted with consideration given to the NHS England Guidance on Co-Commissioning, released in December 2014.

This policy should be read in conjunction with the CCG's Constitution, the CCG's Gifts, Hospitality and Sponsorship Policy.

## **2 Scope**

This policy applies to all CCG members, staff, officers, office holders, Governing Body members and members of its committees and sub committees including all groups relating to commissioning, contracting and procurement processes and where decision making is required by those members.

The CCG will ensure that North and East London Commissioning Support Unit (CSU) and other Contractors are aware of the contents of this policy if applicable.

Where an individual fails to comply with this policy disciplinary action may be taken in accordance with the CCG's Disciplinary Policy and its Constitution. The CCG's disciplinary policy is located on the staff intranet and on the CCG's website.

## **3 Purpose**

The aim of this policy is to protect both the organisation and individuals involved from impropriety or any appearance of impropriety by setting out how the CCG will manage conflicts of interest to ensure there is confidence in the commissioning decisions made and to ensure the integrity of the clinicians involved with the work of the CCG.

Conflicts of interest may arise where an individual's personal interests, loyalties or those of a connected person (a relative or close friend) conflict

with those of the CCG, or might be perceived to conflict with those of the CCG. Such conflicts may create problems such as inhibiting free discussion which could result in decisions or actions being made that are not in the interests of the CCG, and risk giving the impression that the CCG has acted improperly.

The CCG Governing Body's responsibility includes the stewardship of significant public resources and the commissioning of health and social care services to the population of Enfield. The Governing Body is therefore determined to ensure the organisation inspires confidence and trust amongst its members, officers, office holders, staff, stakeholders, suppliers and the public by demonstrating integrity and avoiding any potential or real situations of undue bias or influence in the decision-making of the CCG.

This policy reflects the Appointment Commission's Code of Accountability and Code of Conduct for NHS Boards and the 'Seven Principles of Public Life' from the Nolan Committee included in Appendix 1.

## **4 Roles and Responsibilities**

### **4.1 All CCG staff, officers, office holders and the Governing Body**

It is the responsibility of all CCG staff, officers, office holders and Governing Body members to:

- Familiarise themselves and comply with this policy;
- Line Managers must ensure that employees are aware of the policy and processes to be followed for declaring interests. Line managers must consider any declarations of interest made by their employees and put in place mitigating arrangements in accordance with the instructions of the Chief Officer where appropriate. Where this is not clear, they should consult the Board Secretary
- Declare any relevant interests or complete nil returns on their appointment within the CCG and on an annual basis. In addition, it is the responsibility of each member of the CCG to notify the Board Secretary of any changes in between this time frame;
- At each Governing Body meeting members are asked to advise the Chair of any changes to the Conflicts of Interest Register; Ensure that he / she does not place him / herself in a position where private interests and NHS duties might conflict.
- Avoid undertaking duties, remunerated or otherwise, outside of his / her employment with the CCG if there is any actual or potential conflict with, or prejudice of, the standards set out in this document;
- Take account of the CCG's Policies and practice with regards to gifts and hospitality and whistleblowing procedures.

## 4.2 Director of Quality and Integrated Governance

The **Director of Quality and Integrated Governance** has overall responsibility for ensuring compliance with the following which will be discharged by the Board Secretary to:

- Oversee the arrangements for the management of conflict of interest and advise the Governing Body as required.
- Review this policy every two years, or in light of changes in legislation / guidance published in relation to conflicts of interest and make recommendations to the Governing Body for any required changes.
- Ensure that the Register of Interest and Register of Procurement decisions is reviewed regularly, and updated as necessary.
- Ensure that for every interest declared, arrangements are in place to manage the conflicts of interests or potential conflict of interest, to ensure the integrity of the group's decisions making process.
- Ensure the Gifts and Hospitality Register is maintained and report to the Audit Committee at least annually on the register.
- Ensure the declarations of interest are published on the CCG website and made available on request.

## 4.3 Commissioning Leads and Procurement Leads

- Commissioning Leads and Procurement Leads and any staff leading on any relevant procurements within the CCG must ensure that bidders, contractors and direct service providers adhere to this policy, and that the service re-design and procurement processes used by the CCG reflect the procedures set out in this policy.

## 4.4 Chair of Audit Committee

- The Chair of the Audit Committee has a lead role in ensuring that the Governing Body and the wider CCG behaves with the utmost probity at all times. The Chair of Audit Committee oversees key elements of governance including the appropriate management of conflicts of interest.

## 4.5 Lay Member for Governance and Audit Committee

- The Lay Member for Governance and Audit will assist the Governing Body on conflict of interest matters and will also provide direct formal attestation to NHS England alongside the Chief Officer. In addition they will provide a view of the working of the CCG with a strategic and impartial focus and will take the Chair's role for discussions and decisions where the Chair has made a declaration of interest and has to withdraw from a meeting due to the conflict.

## 4.6 General Practitioners (GPs)

Following guidance from The General Medical Council (GMC) the CCG will ensure that any GPs with a responsibility for or involvement in commissioning of services must:

- Satisfy themselves that all decisions made are open, fair and transparent and comply with legislation.
- Keep up to date and follow the guidance and codes of practice that govern the commissioning of services.
- Formally declare any interest that they, or someone close to them, including their business partner, or their employer has in a provider company.
- Take steps to manage any conflict between their duties as a GP and their commissioning responsibilities, for example by excluding themselves from the decision making process and any subsequent monitoring arrangements.

## **5 Definition of a conflict of Interest**

A conflict of interest occurs where an individual's ability to exercise judgement or act in a role is, or could be, impaired or otherwise influenced by, his or her involvement in another role or relationship. The individual does not need to exploit his or her position or obtain an actual benefit, financial or otherwise. A potential for competing interests and/or a perception of impaired judgement, or undue influence can also be a conflict of interest.

Conflicts can arise in a number of different ways; such as a direct financial gain or commercial advantage, an indirect financial interest (e.g. payment to a spouse) or a non-financial interest (e.g. kudos or reputation). Conflicts of loyalty may arise (e.g. in respect of an organisation of which the individual is a member or has an affiliation).

Conflicts can arise from personal or professional relationships with others, e.g. where the role or interest of a family member, friend or acquaintance may influence an individual's judgement or actions, or could be perceived to do so.

For a commissioner, a conflict of interest may therefore arise when their judgements as a commissioner could be, or be perceived to be, unduly influenced and impaired by their own concerns and obligations as a provider. In the case of a GP involved in commissioning, an obvious example is the awareness of a new contract with a provider in which the individual GP has a financial stake. However, the same considerations and the approaches set out in this guidance apply when deciding whether to extend a contract.

Important things to remember are that:

- A perception of wrongdoing, impaired judgement or undue influence can be as detrimental as any of them actually occurring.
- If in doubt, it is better to assume a conflict of interest and manage it appropriately, rather than ignore it;
- For a conflict to exist, financial gain is not necessary.

*The above text in this section is taken from the NHS England Guidance on Co-Commissioning.*

## **5.1 Privileged Information**

An individual must not use confidential information acquired in the pursuit of their role within the CCG to benefit them or another connected person.

Members of the CCG, Staff and the Governing Body should take care not to provide any third party with a possible advantage by sharing privileged, personal or commercial information, or by providing information that may be commercially useful in advance of that information being made available publically (such as informing a potential supplier of an up procurement in advance of other potential bidders), or any other information that is not otherwise available and in the public domain.

## **5.2 Identifying Conflicts of Interests**

A conflict of interest will include:

- A direct pecuniary interest: where an individual may financially benefit from the consequences of a commissioning decision (for example, as a provider of services);
- An indirect pecuniary interest: 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;
- A non-pecuniary interest: 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);
- Any duty whatsoever imposed on any member of the Governing Body or its sub-committees, CCG members/clinicians by any other codes of conduct to which the member is subject;
- Any other interest whatsoever that should be dutifully declared under the Health and Social Care Act 2012 and guidance issued by NHS England and the Department of Health;

5.2.1 Interests may be pecuniary or non-pecuniary and those which should be regarded as 'relevant and material' are defined as:

- Role 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);

- Ownership or part ownership of companies, businesses or consultancies which may seek to do business with the CCG;
- Significant share holdings in organisations which may seek to do business with the CCG;
- 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 other employment, business involvement or relationship or those of a spouse or partner that conflicts, or may potentially conflict with the interests of the CCG. Further relationships may also be of relevance, for example if a sibling, parent, child or relative has an interest in a potential provider of services;
- Any individual covered by this policy who comes to know that the CCG has entered into or proposes to enter into a contract in which he /she or any person connected with them has any pecuniary interest, direct or indirect, the Board member or Executive member shall declare his / her interest by giving notice in writing of such fact to the Board Secretary;
- Positions of authority in an organisation (e.g. charity or voluntary organisation) in the field of health and social care;
- Any interest that they are (if registered with the GMC) required to declare, in accordance with paragraph 55 of the GMC's publication Management for Doctors or any successor guide;
- Any interest that they (if they are registered with the NMC), would be required to declare in accordance with paragraph 7 of the NMC's publication Code of Professional Conduct or any successor code.

5.2.2 It is not possible to define all instances in which an interest may be a real or perceived conflict. However, if an individual is unsure as to whether an interest should be declared then advice should be sought from the Board Secretary, who will co-ordinate advice from the Chief Officer, the Chair and consult the Lay Member for Audit and Governance if in doubt, who will

provide an independent view if required. If in doubt, the individual concerned should assume that a potential conflict of interest exists.

### **5.3 Secondary Employment**

5.3.1 All CCG members, Staff, Governing Body members and members of the CCG committees and sub committees must ensure that Secondary Employment is declared.

5.3.2 Additional work or employment is considered as 'secondary' even where the CCG may not be considered by an individual as their main or 'primary' employment or work. Individuals are not precluded from having secondary employment - however the CCG must be informed of such employment.

Secondary employment is defined as:

- Paid employment or work outside of the CCG
- Voluntary employment or work outside of the CCG
- Self-employment / Private Work
- Reservist occupations
- Bank/locum/agency work outside of the CCG

The CCG is aware that they will be a secondary employer for most GPs.

5.3.3 Permission to engage in secondary employment should be sought from a line manager and will normally be granted if working hours for the Secondary Employment are conducted entirely outside of an individuals contracted hours of work.

5.3.4 Secondary employment should not be undertaken whilst on sick leave from the CCG unless prior permission has been obtained in writing from an individual's line manager following advice from Occupational Health. Failure to obtain prior permission may be classed as gross misconduct and lead to disciplinary action. Further information can be found in the CCG's Managing Absence and Disciplinary Policy.

## **6 Register of Interests**

6.1 The CCG will maintain a register of interest which will be published on the CCG's website.

6.2 The Register will be maintained and regularly updated by the Board Secretary.

- 6.3 The CCG will record all nil returns on the register of interests.
- 6.4 When conflicts are entered onto the register sufficient information about the nature of the interest and the details of those holding the interest will be recorded, as will details of deliberations and subsequent decisions about how to manage these conflicts. The CCG will ensure that, when members 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 decisions made by the CCG. .
- 6.5 The CCG will ensure that declarations of interest are made and regularly confirmed or updated. This includes the following:

**On appointment:** applicants for any appointment to the CCG or its Governing Body should be asked to declare any relevant interests as part of the election/recruitment process. When an appointment is made, a formal declaration of interests should be made and recorded.

**Quarterly:** The Board Secretary shall request members of the Governing Body to review their declarations contained in the Register of Interests on at least a quarterly basis.

**At meetings:** all attendees should be asked under a standing item on the agenda of the meeting, to declare any interest they have in any agenda item before it is discussed or as soon as it becomes apparent. Declarations of interest made should be recorded in the minutes of the meeting.

**On changing role or responsibility:** Where an individual changes role or responsibility within the CCG or its Governing Body, any change to the individual's interests should be declared.

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

- 6.5.1 In keeping with regulations, individuals who have a conflict should declare these as soon as they become aware of any actual or potential conflict.
- 6.5.2 The declaration of interest form (Appendix 2) should be completed and sent to the Board Secretary including a signature.
- 6.5.3 Where an individual is unable to provide a declaration in writing, e.g. if a conflict becomes apparent in the course of a meeting, they will make an oral declaration before witnesses, which will be recorded in the minutes of the meeting, and complete a written declaration form as soon as possible thereafter but no later than 28 days. If the individual, for any reason, has

difficulty making a declaration in writing then they should contact the Board Secretary for further guidance.

6.5.4 If an individual fails to declare an interest or the full details of an interest, this may result in disciplinary action being undertaken. Please see the Enfield CCG Constitution and Disciplinary Policy for more information.

## **6.6 Register of Procurement Decisions**

6.6.1 The CCG recognises that particular care must be exercised when procuring services including the commissioning of services from GP practices. For that reason, this policy incorporates the Procurement Template developed by NHS England which must be completed in each case where GP practices, consortia or organisations in which GPs have a financial interest are, or may be a tenderer (See Appendix 3).

6.6.2 The CCG is prohibited by law from awarding any contract where the integrity of the procurement process or the award has been, or appears to have been, affected by a conflict of interest. Further information can be found in section 7.4.

6.6.3 The CCG's register of procurement decisions will include;

- Details of any decisions made;
- Who was involved in the decision making process (i.e. 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.

6.6.4 The Register will be updated whenever a procurement decision is made.

6.6.5 The Register will form part of the CCG's annual accounts and will thus be reviewed by external auditors.

## **7 Managing and declaring interests**

### **7.1 Managing Conflicts of Interests during Meetings**

- 7.1.1 Where an individual, employee or person providing services to the CCG attending a meeting is aware of an interest which has not been declared, he or she will declare this immediately at the start of the meeting.
- 7.1.2 Where an individual, employee or person providing services to the CCG is attending a meeting is aware of an interest that has previously been declared in relation to the scheduled or likely business of the meeting, the individual will bring this to the attention of the Chair of the meeting, together with details of arrangements which have been confirmed for the management of the conflict of interest or potential conflict of interest.
- 7.1.3 The Chair of the meeting will determine how the conflict should be managed, and will inform the individual of the decision which may include withholding confidential papers. Where no arrangements have been confirmed, the Chair of the meeting may require the individual to withdraw from the meeting or part of it. The individual will then comply with these arrangements, which must be formally recorded in the minutes of the meeting.
- 7.1.4 Where the Chair of any meeting of any group including committees or sub-committees of the Governing Body has a personal interest, previously declared or otherwise, in relation to the scheduled or likely business of the meeting, he or she must make a declaration and the deputy Chair will act as Chair for the relevant part of the meeting. Where arrangements have been confirmed for the management of the conflict of interest or potential conflict of interest in relation to the Chair, the meeting must ensure these are followed. Where no arrangements have been confirmed, the Deputy Chair may require the Chair to withdraw from the full meeting or part of it. Where there is no Deputy Chair, the members of the meeting will select one.
- Declarations of interests, and the arrangements agreed to manage them, will be recorded formally in the minutes of the meeting.
- 7.1.5 If more than 50% of the members of a meeting are required to withdraw from a meeting or part of it, owing to the arrangements agreed for the management of conflicts of interests or potential conflicts of interests, the Chair (or Deputy Chair) will determine whether or not the discussion can proceed. In making this decision, the Chair will consider whether the meeting is quorate.
- 7.1.6 Where the meeting is not quorate, discussions may take place but any decisions will be deferred until such time as a quorum can be convened. Where a quorum cannot be convened from the membership of the meeting, owing to the arrangements for managing conflicts of interest or potential conflicts of interests the Chair may adjourn the meeting to permit the co-option of additional members. Where this is not possible the matter shall be

referred to the Procurement Committee. The Procurement Committee shall decide whether to:

7.1.6.1 Make the decision on the matter under consideration on behalf of the Governing Body or committee; or

7.1.6.2 Make a recommendation to the Governing Body or committee on the matter under consideration.

7.1.7 The Governing Body or a committee may choose to refer a matter to the Procurement Committee when there is a conflict of interest or a potential conflict of interest but the conflict of interest is such that it does not render a meeting inquorate. Unless the Governing Body or committee specifically reserves the decisions on the matter to itself the Procurement Committee shall decide whether to:

7.1.7.1 Make a decision on the matter under consideration on behalf of the Governing Body; or

7.1.7.2 Make a recommendation to the Governing Body or the relevant committee on the matter under consideration.

## **7.2 Managing conflicts of interest where all / or most of the GPs have an interest**

7.2.1 Where certain members of the CCG have a material interest, they will 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).

7.2.2 In many cases, for example, where a limited number of GPs have an interest, it will probably be straightforward for relevant individuals to be excluded from decision-making.

7.2.3 In cases where all of the GPs or other practice representatives on a decision-making body could have a material interest in a decision, particularly where the CCG is proposing to commission services on a single tender basis from all GP practices in the area, or where it is likely that all or most practices would wish to be qualified providers for a service under Any Qualified Practitioner (AQP) framework, the CCG:

- May refer the decision to the Governing Body and exclude all GPs or other practice representatives with an interest from the decision-making process, i.e. so that the decision is made only by the non-GP members of the Governing Body including the lay members and the registered nurse and secondary care doctor;
- Shall consider co-opting individuals from a Health and Wellbeing Board or from another CCG onto the Governing Body, or inviting the Health and Wellbeing Board or another CCG to review the proposal, to provide additional scrutiny, although such individuals would only have authority to participate in decision-making if provided for in the CCG's constitution;
- May Co-opt other relevant non conflicted members;
- Refer the matter to the Procurement Committee. The Procurement Committee shall decide whether to:

- Make the decision on the matter under consideration on behalf of the Governing Body; or
- Make a recommendation to the Governing on the matter under consideration.

### **7.3 Managing conflicts of interest for GPs that are potential providers of CCG-commissioned services**

7.3.1 The CCG may commission primary care services, including incentive schemes, from General Practices. If a practice, or group of practices, provides a service, the CCG will need to demonstrate to the Audit Committee (and to the external and internal auditors) that the service:

- Clearly meets local health needs, and has been planned appropriately;
- goes beyond the scope of the General Medical Services (GMS)/Personal Medical Services (PMS) contract;
- offers best value for money; and
- has been commissioned via the appropriate procurement process as set out in the CCGs Clinical Procurement Framework/Policy.

7.3.2 A General Practice or group of practices may belong to a provider consortium in which GPs have a financial interest.

7.3.3 Where General Practices including provider consortia or organisations in which GPs have a financial interest are potential providers of CCG-commissioned services, the CCG will seek to assure itself of the factors set out in and to use the NHS England's Code of Conduct for managing conflicts of interest and the procurement should be approved by the appropriate Committee.

### **7.4 Managing Conflicts of Interest during Procurement**

7.4.1 The CCG recognises the importance of making decisions about the services it procures in a way that does not call into question the motives behind the procurement decisions that have been made. The CCG will ensure that they recognise and manage conflicts or potential conflicts of interest that may arise in relation to procurement.

7.4.2 Anyone participating in the procurement, or otherwise engaging with the CCG, in relation to the provision of services or facilities, will be required to make a declaration of interest which will include nil returns. This includes those who will take part in any tender evaluation or decision making with regards to the award of a contract. Where these functions are undertaken by the CSU, declarations from CSU employees involved in the process should also be obtained and made available to the CCG.

7.4.3 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 rights of patients to make choices about their healthcare.

The Regulations set out that commissioners must:

- Manage conflicts or potential conflicts of interest when 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.

7.4.4 Potential conflicts will vary to some degree depending on the way in which a service is being commissioned e.g.:

- **Competitive Tender** - Where a CCG is commissioning a service through Competitive Tender (i.e., seeking to identify the best provider or set of providers for a service) a conflict of interest may arise where GP practices or other providers in which CCG members have an interest are amongst those bidding.
- **Any Qualified Provider** - Where the CCG is commissioning a service through a AQP contract, a conflict could arise where one or more GP practices (or other providers in which CCG members have an interest) are amongst the qualified providers from whom patients can choose.
- **Single tender** - Where the CCG is procuring services from a GP practice where there are no other capable providers, i.e. this is the appropriate procurement route and the proposed service goes beyond the scope of the services provided by GP practices under their GP contract.

7.4.5 The CCGs will ensure that details of all contracts, including the contract value, are published on its website as soon as contracts are agreed. Where the CCG decides to commission services through Any Qualified Provider (AQP), it should publish on its website the type of services they are commissioning and the agreed price for each service. Further, the CCG will ensure that such details are also set out in its annual report. Further information can be obtained from the CCG's Clinical Procurement Policy

## **7.5 Declarations on changing role / responsibility, or any other change of circumstances**

7.5.1 When an individual changes role or responsibility within the CCG, or its Governing Body, such changes to the individual's interests should be declared immediately.

7.5.2 Whenever an individual's circumstances change in a way that affects the CCG or sets up a new business or relationship, a further declaration would

need to be made to reflect the change in circumstances. This could involve a conflict of interest ceasing to exist or a new one materialising.

## **8 Designing services and conflicts of interest**

8.1.1 The CCG recognises the benefits to be gained from engagement with relevant providers, especially clinicians, in confirming the design of service specifications. However, the CCG also recognises that conflicts of interest can occur if a commissioner engages selectively with only certain providers (be they incumbent or potential new providers) in developing a service specification for a contract for which they may later bid for in a competitive process.

8.1.2 The same difficulty could arise in developing a specification for a service that is to be commissioned using the 'Any Qualified Provider' process, for example where there is not a competitive procurement but patients can instead choose from any qualified provider that wishes to provide the service and can meet NHS standards and prices.

8.1.3 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 way in which these outcomes are to be achieved. As well as supporting innovation, this helps prevent bias towards particular providers in the specification of services.

8.1.4 The CCG will seek to follow the principles set out in the Office of Government Commerce (OGC) guidance on pre-procurement engagement with potential bidders, in engaging with potential providers when designing service specifications.

8.1.5 The CCG will consider the following points when engaging with potential service providers:

- Use engagement to help shape the requirement but take care not to gear the requirement in favour of any particular provider(s).
- Ensure at all stages that potential providers are aware of how the service will be commissioned, e.g. through competitive procurement or through the 'Any qualified provider' process.
- Work with participants on an equal basis, e.g. ensure openness of access to employees and information.
- Be transparent about procedures.
- Maintain commercial confidentiality of information received from providers.

8.1.6 The CCG shall use engagement with potential providers to:

- Frame the requirement;
- Focus on desired outcomes rather than specific solutions; and
- Consider a range of options for how a service is specified.

8.1.7 Other practical steps the CCG may also consider using shall include:

- Advertising the fact that a service design/re-design exercise is taking place widely (e.g. on NHS Supply2Health) and inviting comments from any potential providers and other interested parties (ensuring a record is kept of all interactions) – i.e. do not be selective in who works on the service specifications unless it is clear conflicts will not occur.
- As the service design develops, engaging 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 workshops with interested parties.
- If appropriate, engaging the advice of an independent clinical adviser on the design of the service.
- When specifying the service, specifying desired (clinical and other) outcomes instead of specific inputs.

8.1.8 Where an individual has declared a relevant and material interest or position in the context of the specification for, or award of, a contract the individual concerned will be expected to act in accordance with the arrangements for the management of conflicts of interest outlined in this policy and may be excluded from the decision making process in relation to the relevant specification or award.

## **9 Declarations of Interests on Application for Appointment or Election/appointment to the CCG**

9.1.1 Individuals will be required to declare any relevant interests. This includes:

- Lay member appointments to the Governing Body;
- Other appointments of external individuals to the Governing Body, its committees, and other working or project groups;
- General medical practitioners, practice nurses and practice managers standing for election to the Governing Body;
- All staff and individuals contracted to work for the CCG, especially those operating at senior level or Governing Body level.

9.1.2 The purpose of such declarations will be to enable the Governing Body and its committees to determine on a case by case basis, whether any of the declared interests are such that they could not be managed under this policy and mean that the individual should be excluded from being appointed to the Governing Body or to a committee or sub-committee of the CCG as the declared interest is so related to a significant area of the business that the individual would be prevented from making a full and proper contribution to the CCG. In so doing they will take into consideration the materiality of the declared interest and the extent to which the individual (or a family member) could benefit from any decision that the Governing Body might make.

- 9.1.3 Any individual who has a material interest in an organisation that provides or is likely to provide substantial business to the CCG (either as a provider of healthcare or commissioning support services) shall not be appointed as an appointed voting member of the Governing Body if the nature of their interest is such that they are likely 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 Failure to disclose / declare**

- 10.1.1 The CCG takes the failure to disclose such information as required by this policy seriously.
- 10.1.2 It is an offence under the Fraud Act 2006 for personnel to fail to disclose information to the CCG in order to make a gain for themselves or another, or to cause a loss or expose the organisation to a loss. Therefore, if an individual becomes aware that someone has failed to disclose relevant and material information, they should raise the matter with the Chief Finance Officer. The Anti-Fraud and Anti-Bribery Policy will be consulted and an appropriate referral made to the Local Counter Fraud Specialist where applicable.
- 10.1.3 Breaches of this policy may result in a Governing Body member being removed from office in line with the CCG's Constitution. A contractor may be prevented from obtaining further work with the CCG or an employee may face disciplinary action and dismissal.

## **11 Bribery Act 2010**

- 11.1.1 The Bribery Act 2010 came into force on 1st July 2011 and repeals, in their entirety, the Prevention of Corruption Acts 1906 to 1916 and the common law offence of Bribery. It creates three relevant offences of bribing another person, being bribed and the failure of commercial organisations to prevent bribery.
- 11.1.2 Office holders, officers, Staff, Members, Committee and Sub-committee members of the CCG and members of the Governing Body (and its committees) should be aware that in committing an act of bribery they may be subject to a penalty of up to ten years' imprisonment, a fine, or both. They may also expose the organisation to a conviction punishable with an unlimited fine.
- 11.1.3 They should also be aware that a breach of this Act, or of this guidance, renders them liable to disciplinary action by the CCG whether or not the breach leads to prosecution. Where a material breach of this guidance is found to have occurred, the likely sanction will be dismissal.
- 11.1.4 In short, the offences cover the offering, promising or giving of a financial or other advantage and the requesting, agreeing to receive or accepting of a financial or other advantage where the overall intention of such an action is to bring about an improper performance or a relevant function or activity.

The organisation may be liable where a person associated with it commits an act of bribery.

## **12 Related Documents**

The following documents contain information that relates to this policy:

- Anti-Fraud and Anti-Bribery Policy;
- Clinical Procurement Policy;
- The Enfield Clinical Commissioning Group Constitution.

## **13 Dissemination**

13.1 This policy will be published on the CCG's intranet and website for access by all CCG Staff and other relevant individuals.

13.2 A copy of this policy will be emailed to Governing Body members by the Board Secretary to highlight the new policy and ask for any amended interests to be declared in a timely manner.

## **14 Advice**

Advice on declaration of interests can be sought from the following postholders and their contact details are appended for internal users of the Policy:

Board Secretary

Assistant Director of Quality, Governance and Risk

Director of Quality and Integrated Governance

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## **15 Review and Compliance Monitoring**

### **15.1 Review**

A bi-annual review of the policy will be undertaken by the Audit Committee.

### **15.2 Compliance Monitoring**

The Audit Committee will require assurance annually on compliance with the policy as part of its assurance programme.

## **Appendix 1**

### **The Nolan Principles**

**Selflessness** – holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.

**Integrity** – holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

**Objectivity** – in carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

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

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

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

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

## **Appendix 2**

### **Declarations of Interest form for members / employees**

This form is required to be completed in accordance with the CCG's Constitution and section 14O of *The National Health Service Act 2006, the NHS (Procurement, Patient Choice and Competition) regulations 2013 and the Substantive guidance on the Procurement, Patient Choice and Competition Regulations*

#### **Notes:**

- Each CCG must make arrangements to ensure that the persons mentioned above declare any interest which may lead to a conflict with the interests of Enfield CCG and/or NHS England and the public for whom they commission services in relation to a decision to be made by Enfield CCG and/or NHS England or which may affect or appear to affect the integrity of the award of any contract by Enfield CCG and/or NHS England.
- A declaration must be made of any interest likely to lead to a conflict or potential conflict as soon as the individual becomes aware of it, and within 28 days.  
If any assistance is required in order to complete this form, then the individual should contact the Board Secretary
- The completed form should be sent by both email and signed hard copy to the Board Secretary
- Any changes to interests declared must also be registered within 28 days by completing and submitting a new declaration form.
- The register will be published on the Enfield CCG website.
- Any individual – and in particular members and employees of Enfield CCG and/or NHS England- must provide sufficient detail of the interest, and the potential for conflict with the interests of Enfield CCG and/or NHS England and the public for whom they commission services, to enable a lay person to understand the implications and why the interest needs to be registered.
- If there is any doubt as to whether or not a conflict of interests could arise, a declaration of the interest must be made.

Interests that must be declared (whether such interests are those of the individual themselves or of a family member, close friend or other acquaintance of the individual) include:

- Roles and responsibilities held within member practices;
- Directorships, including non-executive directorships, held in private companies or PLCs;
- Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with Enfield CCG and /or with NHS England;
- Shareholdings (more than 5%) of companies in the field of health and social care;

- A position of authority in an organisation (e.g. charity or voluntary organisation) in the field of health and social care;
- Any connection with a voluntary or other organisation (public or private) contracting for NHS services;
- Research funding/grants that may be received by the individual or any organisation in which they have an interest or role;
- Any other role or relationship which the public could perceive would impair or otherwise influence the individual's judgment or actions in their role within Enfield CCG.

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

### **Declarations of Interest form for members / employees**

<b>Name</b>		
<b>Position within or relationship with, the CCG or NHS England:</b>		
<b>Interests</b>		
<b>Please confirm if you do not have any declarations to declare.</b>		
<b>Type of Interest</b>	<b>Details</b>	<b>Personal interest or that of a family member, close friend or other acquaintance?</b>
<b>Roles and responsibilities held within member practices</b>		
<b>Directorships, including non-executive directorships, held in private companies or PLCs</b>		
<b>Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the CCG and/or with NHS England</b>		
<b>Shareholdings (more than 5%) of companies in the field of health and social care</b>		
<b>Positions of authority in an organisation (e.g. charity or voluntary organisation) in the field of health and social care</b>		

<b>Any connection with a voluntary or other organisation contracting for NHS services</b>		
<b>Research funding/grants that may be received by the individual or any organisation they have an interest or role in</b>		
<b>Other Specific interest (s)?</b>		
<b>Any other role or relationship which the public could perceive would impair or otherwise influence the individual's judgment or actions in their role within the CCG and/or with NHS England.</b>		

To the best of my knowledge and belief, the above information is complete and correct. I undertake to update as necessary the information provided and to review the accuracy of the information provided regularly and no longer than annually. I give my consent for the information to be used for the purposes described in the CCG's Constitution and published accordingly.

Name:

Signed:

Date

### **Appendix 3**

#### **Procurement Decision Register**

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

<b>Service</b>	
<b>Question</b>	<b>Comment / Evidence</b>
<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 does it comply with the CCG’s commissioning obligations?</b>	
<b>How have you involved the public in the decision to commission this service?</b>	
<b>What range of health professionals have been involved in designing the proposed service?</b>	
<b>What range of potential providers have been involved in considering the proposals?</b>	
<b>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)?</b>	
<b>What are the proposals for monitoring the quality of the service?</b>	
<b>What systems will there be to monitor and publish data on referral patterns?</b>	
<b>Have all conflicts and potential conflicts of interests been appropriately declared and entered in registers which are publicly available? Have you recorded how you have managed any conflict or potential conflict?</b>	
<b>Why have you chosen this procurement route?</b>	
<b>What additional external involvement will there be in scrutinising the</b>	

proposed decisions?	
How will the CCG make its final commissioning decision in ways that preserve the integrity of the decision-making process and award of any contract?	
<b>Additional question when qualifying a provider on a list or framework or pre selection for tender (including but not limited to any qualified provider) or direct award (for services where national tariffs do not apply)</b>	
How have you determined a fair price for the service?	
<b>Additional questions when qualifying a provider on a list or framework or pre selection for tender (including but not limited to any qualified provider) where GP practices are likely to be qualified providers</b>	
How will you ensure that patients are aware of the full range of qualified providers from whom they can choose?	
Additional questions for proposed direct awards to GP providers	
What steps have been taken to demonstrate that the services to which the contract relates are capable of being provided by only one provider?	
In what ways does the proposed service go above and beyond what GP practices should be expected to provide under the GP contract?	
What assurances will there be that a GP practice is providing high-quality services under the GP contract before it has the opportunity to provide any new services?	

## **Appendix 4**

### **Declaration of Interests for Bidders / Contractors**

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

#### **Notes:**

All potential bidders/contractors/service providers, including sub-contractors, members of a consortium, advisers or other associated parties (Relevant Organisation) are required to identify any potential conflicts of interest that could arise if the Relevant Organisation were to take part in any procurement process and/or provide services under, or otherwise enter into any contract with, the CCG, or with NHS England in circumstances where the CCG is jointly commissioning the service with, or acting under a delegation from, NHS England. If any assistance is required in order to complete this form, then the Relevant Organisation should contact

- The completed form should be sent to the Board Secretary.
- Any changes to interests declared either during the procurement process or during the term of any contract subsequently entered into by the Relevant Organisation and the CCG must notified to the CCG by completing a new declaration form and submitting it to the Board Secretary.
- Relevant Organisations completing this declaration form must provide sufficient detail of each interest so that the CCG, NHS England and also a member of the public would be able to understand clearly the sort of financial or other interest the person concerned has and the circumstances in which a conflict of interest with the business or running of the CCG or NHS England (including the award of a contract) might arise.

If in doubt as to whether a conflict of interests could arise, a declaration of the interest should be made.

- Interests that must be declared (whether such interests are those of the Relevant Person themselves or of a family member, close friend or other acquaintance of the Relevant Person), include the following:
- the Relevant Organisation or any person employed or engaged by or otherwise connected with a Relevant Organisation (Relevant Person) has provided or is providing services or other work for the CCG or NHS England;
- a Relevant Organisation or Relevant Person is providing services or other work for any other potential bidder in respect of this project or procurement process;
- the Relevant Organisation or any Relevant Person has any other connection with the CCG or NHS England, whether personal or professional, which the public could perceive may impair or otherwise influence the CCG's or any of its members' or employees' judgements, decisions or actions.

**Declarations:**

<b>Name of relevant Organisations</b>		
<b>Interests</b>		
<b>Type of Interest</b>	<b>Details</b>	
Provision of services or other work for the CCG or NHS England		
Provision of services or other work for any other potential bidder in respect of this project or procurement process		
Any other connection with the CCG or NHS England, whether personal or professional, which the public could perceive may impair or otherwise influence the CCG's or any of its members' or employees' judgements, decisions or actions		
<b>Name of Relevant Person</b>		
<b>Interests</b>		
<b>Type of Interest</b>	<b>Details</b>	<b>Personal interest or that of a family member, close friend or other acquaintance?</b>
Provision of services or other work for the CCG or NHS England		
Provision of services or other work for any other potential bidder in respect of this project or procurement process		
Any other connection with the CCG or NHS England, whether personal or professional, which the public could perceive may impair or otherwise influence the CCG's or any of its members' or employees' judgements, decisions or actions		

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

Signed:  
On behalf of:  
Date

**Appendix 5**

→ No      → Yes

**Declarations of Interest flow chart**

