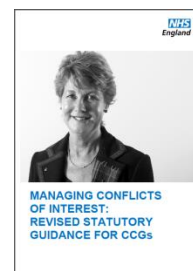


In June, 2016 NHS England provided revised statutory guidance on managing conflicts of interest (Col) for CCGs. NHS England has also developed two additional documents to supplement the main guidance which includes:

- A number of two page role specific summaries which highlight what those specific individuals need to know about the new guidance.
- A series of case studies raising awareness of the different types of conflicts of interest and how they could be managed.

This guidance reaffirms the 2014 guidance but has also introduced key changes. This briefing paper has been produced to summarise key actions, including *must do's* and *recommendations/best practice* suggestions, that CCGs need to take to ensure compliance with the NHS England statutory guidance. Many of the systems / processes will already be in place but will still require reviewing and strengthening. The guidance produced by NHS England will be referred to as 'statutory guidance' throughout this briefing paper.



Must do's

INTERESTS/CONFLICTS - IDENTIFICATION / MANAGEMENT / DECLARATION / RECORDING

- Produce clear guidance for employees, members, and Governing Body and Committee Members on what might constitute Col and provide examples of conflicts and situations in which they may arise.
- Identify a lead/team within the CCG to undertake day to day specific responsibilities in respect of Col. This is usually the Head of Governance and team.
- Declare interest as soon as possible and *by law* within 28 days after interest arises.
- Collate declarations of interest every six months and if no interest or changes then a 'nil return' should be recorded.
- Interests need to be declared on appointment, six monthly, at meetings and on changing roles or responsibilities.
- Register of Interests (or multiple registers) to be kept for: *all* CCG employees, members of Governing Body and all *members* of the CCG (i.e. each practice – this will include GP partners or directors and any individual directly involved with the business or decision making of the CCG). Minimum information to be included are provided in the guidance.
- Publish Register(s) of Interests in a prominent place on CCG's website.
- Interests should remain on the public Register for a minimum of 6 months after they expire and CCGs should retain a private record for a minimum of 6 years after the date they expire. The public Register should state that historic interests are retained by the CCG and provide contact details.
- Certain information can be redacted from the *public Register*, subject to criteria contained within the guidance, but this must be requested in writing and agreed by the Col Guardian. CCG should still maintain a full un-redacted version.
- All persons making a declaration in the Register should be made aware that the Register will be

published. This should be done by a fair processing notice that details the identity of the data controller, the purposes for holding and publishing and contact details of the data protection officer. This also includes notice to individuals named as a result of a relationship with the person declaring an interest.

- The Register should be published as part of CCGs' Annual Report and Annual Governance Statement. A web link to registers is sufficient.

APPOINTMENTS AND ROLES AND RESPONSIBILITIES

- Clear and robust organisational policies are required to effectively manage issues arising from secondary employment. This should include processes for individuals to obtain prior permission before engaging in secondary employment and the CCG reserving the right to refuse permission if it believes a conflict will arise that cannot be effectively managed.
- CCG constitutions should include a statement of conduct expected of individuals in the CCG, which reflects safeguards included in the statutory guidance.
- CCG should nominate a Col Guardian: most likely candidate is the Audit Committee Chair, subject to the Chair having no Provider interests.
- Primary Care Commissioning Committees (PCCC) should have a lay chair and lay vice chair. Audit Chair should not also be chair of the PCCC.
- CCGs should review governance structures and policies, specifically in terms of membership of the Governing Body and Committees, but also to ensure that arrangements support how concerns may be raised and how non-compliance will be managed.

MANAGING CONFLICTS OF INTEREST AT MEETINGS

- Committee and Governing Body Chairs should ask for declarations of conflicts of interest with business being transacted in meetings at the *start* of each meeting.

- Interests which are relevant to meetings should be declared regardless of whether they have been declared previously.
- CCGs with joint or delegated commissioning models should ensure that the interests of all members of the PCCC are recorded on the Register of Interests.
- Meetings of the PCCC should be held in public unless a CCG concludes that this would not be in the public interest. Possible reasons for exclusion of the public are detailed within the guidance.
- PCCCs must be constituted to have a lay and executive majority. This ensures that the meeting will be quorate if all GPs had to withdraw from the decision-making process due to Col.
- CCG Constitutions must be updated to include the establishment of a PCCC.
- If a conflict is declared or arises during a meeting, minutes must record minimum details as noted in the statutory guidance.

MANAGING CONFLICTS OF INTEREST THROUGHOUT THE COMMISSIONING CYCLE

- At the start of a commissioning cycle, the relevant interests of all individuals involved should be identified and arrangements put in place to manage any Col.
- When designing service requirements, CCGs should demonstrate appropriate public and patient involvement (this is a legal requirement). They should engage with Providers where possible and ensure that they can demonstrate that the three main principals of procurement law (equal treatment; non-discrimination and transparency) have been followed.
- CCGs should use the Procurement template contained in the statutory guidance (or similar document) to provide evidence of deliberations on Col.
- CCGs must maintain a Register of Procurement Decisions (information from the Procurement template could be used to populate this) which must be updated whenever a procurement decision is taken. This could be either procuring a new service or any extension or material variation to a current contract. Minimum information requirements are included in statutory guidance.
- The Register of Procurement Decisions must be published in a prominent place on a CCG's website and made available upon request at CCG headquarters.
- Commissioners are required under Regulation 84 of the Public Contract Regulations 2015 to make and retain records of contract award decisions and key decisions that are made during the procurement process (there is no obligation to publish them). Such records must include "communications with economic operators and internal deliberations" which should include decisions made in relation to actual or perceived conflicts of interest declared by bidders. These records must be retained for a period of at least three years from the date of contract award.

- Conflicts of interests must also be considered as part of contract management. Contract monitoring meetings must consider conflicts of interests which are then recorded and managed in line with the statutory guidance. This equally applies where a contract is held jointly with another organisation such as the Local Authority or with other CCGs under lead commissioner arrangements. Individuals involved in monitoring contracts should not have any interests. Col must be considered when disseminating any contract or performance information and reports.

CCG IMPROVEMENT & ASSESSMENT FRAMEWORK

- On an annual basis, CCGs must confirm, via self-certification, that;
 - the CCG has a clear policy for the management of conflicts of interest in line with the statutory guidance and a robust process for the management of breaches;
 - the CCG has a minimum of three lay members;
 - the CCG audit chair has taken on the role of the Conflicts of Interest Guardian;
 - There is an agreed level of compliance with the mandated conflicts of interest on-line training, as of 31 January (annually).
- On a quarterly basis, CCGs need to confirm, via self-certification, that they;
 - have processes in place to ensure individuals declare any interests which may give rise to a conflict or potential conflict as soon as they become aware of it, and in any event within 28 days, ensuring accurate up to date registers are complete for: conflicts of interest, procurement decisions and gifts and hospitality;
 - have made these registers available on their website and, upon request, at the CCG's HQ;
 - are aware of any breaches of their policies and procedures in relation to the management of conflicts of interest and how many (to include details of how they were managed; confirmation that anonymised details of the breach have been published on the CCG website; and confirmation that they been communicated to NHS England).
- Where a CCG has decided not to comply with one or more of the requirements of the statutory guidance this should be discussed in advance with NHS England. CCGs must also include within their self-certification statements the reasons for deciding not to do so, on a "comply or explain" basis.

INTERNAL AUDIT

- There will be a required annual audit of Col within Internal Audit Plans and findings from the review will be included within CCGs' Annual Governance Statements.
- The results of the audit will be discussed in the end of year governance meeting with NHS regional teams.

RAISING CONCERNS AND BREACHES

- Processes for managing breaches of statutory guidance should be included in CCG guidance.
- Anonymised breaches must be published on the CCG website.
- CCGs must demonstrate action to raise awareness of how breaches can be reported (suspected or known breaches).
- Arrangements must be in place to ensure that contact with the Conflicts of Interest Guardian is strictly confidential.
- The CCG's Col policy should make it clear that anyone who wishes to report a suspected or known breach of the policy, who is not an employee or worker of the CCG, should also ensure that they comply with their own organisation's whistleblowing policy, providing protection against detriment or dismissal.

CONFLICTS OF INTEREST TRAINING

- Anyone involved in CCG business needs to undertake mandatory on-line training to be provided by NHS England, supplemented by face to face training for CCG leads in key decision making roles.
- Mandatory training will need to be completed on a yearly basis (by 31 January each year). CCGs should record completion rates as part of their annual conflicts of interest audit.

GIFTS & HOSPITALITY

- A Register (or Registers) of Gifts and Hospitality should be maintained for all CCG employees, members of the Governing Body and all members of the CCG (i.e. each practice, including GP partners, directors and any individual directly involved with business or decision making of the CCG). Minimum information requirements are included in statutory guidance.
- Registers should include gifts/hospitality offered regardless of whether taken or declined.
- Items of little financial value (i.e. less than £10), such as diaries, calendars, stationery and other gifts acquired from meetings, events or conferences, and items such as flowers and small tokens of appreciation from members of the public to staff for work well done, do not need to be declared or included in the Register.
- Any personal gift of cash or cash equivalents (e.g. vouchers, tokens, offers of remuneration to attend meetings whilst in a capacity working for or representing the CCG) must *always* be declined, whatever their value and should be declared and recorded in the Register.
- Hospitality offered by suppliers or contractors linked to the CCG's business should always be declared and recorded.
- Commercial sponsorship should be declared regardless of whether accepted or declined. Advice

should be sought from the CCG on whether such a sponsorship should be accepted.

- Register of Gifts and Hospitality should be published in a prominent place on the CCG's website.
- Requests for the redaction of information from the Public Register of Gifts and Hospitality must be requested in writing and agreed by the Col Guardian. CCG must maintain a full un-redacted version.
- A fair processing notice must be issued detailing the identity of the data controller, the purposes for which the Registers are held and published and contact details of the data protection officer, covering those making the declaration and those associated with the declaration.
- The Gifts and Hospitality Register must be published as part for CCGs' Annual Report and Annual Governance Statement. A web link to registers can be provided.

Recommendations / Best Practice

- NHS England strongly recommends a minimum of 3 lay members on the Governing Body, or more, if possible. CCGs can also consider sharing lay members.
- All 3 lay members should attend PCCC meetings.
- Audit Chair should not Chair the PCCC unless there are exceptional circumstances, in which case this should be recorded and appropriate safeguards established.
- Committee and Governing Body Chairs and Heads of Governance should take the opportunity to review agendas in advance of meetings to identify potential Col and discuss mitigation. This could include not sending papers to conflicted individuals.
- Committee Chairs should have access to declaration of interest checklists prior to meetings which should include details of any declarations already made by members.
- GPs on PCCC should not have voting rights.
- The Chair of any sub-committees of the PCCC should be a lay member.
- The minutes of any sub-committees of the PCCC should be submitted to the PCCC and include details of any conflicts and how these were managed.
- Although it is not a requirement to keep a register of services that may be procured in the future, it is good practice to ensure planned service developments and possible procurements are transparent and available for the public to see.
- Ask bidders to declare any conflicts of interest. If declared, they do not need to be included in the Register of Procurement Decisions which is published, however, an audit trail should be kept by the CCG.

KEY ACTIONS FOR CCGS

- CCGs should review current policies for the management of Conflicts of Interest and ensure that these are updated in line with the revised Statutory Guidance. An internal 'mapping' document would be useful to identify specific changes affecting the CCG, including an action plan to address these changes, where this is required.
- Training needs for all members of the CCG should be identified and arrangements put in place to ensure that this training is provided promptly.
- CCGs should ensure that revised policies are disseminated to all staff and members of the CCG.
- Audit Committees should request updates from the Operational Leads for Col regarding progress with the implementation of actions required.
- Where CCGs do not comply with the Statutory Guidance, the decision process for non-compliance must be clearly documented and agreed by the Governing Body (Comply or Explain).
- If not already included in the Annual Internal Audit Plan, discussions should be held with Internal Audit regarding arrangements for the required annual independent review of arrangements for the management of Col.

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