

East Lancashire Clinical Commissioning Group

Agenda Item No: 7.2

REPORT TO:	GOVERNING BODY	
MEETING DATE:	26 January 2015	
REPORT TITLE:	Conflict of Interest Policy	
SUMMARY OF REPORT:	The Remuneration Committee have approved the revised Conflict of Interest Policy in light of recent NHS England statutory guidance and to support the application of delegated commissioning.	
REPORT RECOMMENDATIONS:	The revised policy is presented to the Governing Body for ratification.	
FINANCIAL IMPLICATIONS:	None	
REPORT CATEGORY:	Formally Receipt	Tick √
	Action the recommendations outlined in the report.	√
	Debate the content of the report	
	Receive the report for information	
AUTHOR:	Debra Atkinson, Corporate Business Manager	
	Report supported & approved by your Senior Lead	Y
PRESENTED BY:	Angela Brown Director of Corporate Business	
OTHER COMMITTEES/ GROUPS CONSULTED:	Remuneration Committee	
EQUALITY ANALYSIS (EA)	Has an EA been completed in respect of this report?	N
RISKS:		
CONFLICT OF INTEREST:	Is there a conflict of interest associated with this report?	N
PATIENT ENGAGEMENT:	Has there been any patient engagement associated with this report.	N
PRIVACY STATUS OF THE REPORT:	Can the document be shared?	Y
Which Strategic Objective does the report relate to		Tick
1	Commission the right services for patients to be seen at the right time, in the right place, by the right professional.	
2	Optimise appropriate use of resources and remove inefficiencies.	
3	Improve access, quality and choice of service provision within Primary Care	
4	Work with colleagues from Secondary Care and Local Authorities to develop seamless care pathways	

**NHS EL CCG Governing Body
26 January 2015**

Conflict of Interest Policy

1. Background

1.1 In May 2014 NHS England offered CCGs the opportunity to take on an increased responsibility for the commissioning of Primary Care. For CCGs who opt to take on increase responsibility they are exposing themselves to a greater risk of conflicts of interest both real and perceived, especially if they are opting to take on delegated budgets and functions.

1.2 NHS England has developed strengthened statutory guidance for the management of conflicts of interest which builds on existing guidance. This was issued on 23 December and the guidance incorporates the safeguards for the management of conflicts of interest set out in the previously issued guidance, including:

- the nature of conflicts of interest;
- arrangements for declaring interests;
- maintaining a register of interests;
- keeping a record of the steps taken to manage a conflict;
- excluding individuals from decision-making where a conflict arises; and
- engagement with a range of potential providers on service design.

1.4 In addition, it sets out:

- the additional factors that the CCG must address when commissioning primary medical care services under delegated commissioning arrangements.
- the steps that CCG will take to assure the Audit Committee, Health and Wellbeing Board(s), NHS England and, where necessary, their auditors, that these services are appropriately commissioned from GP practices;
- procedures for decision-making in cases where all the GPs (or other practice representatives) sitting on a decision-making group have a potential financial interest in the decision;
- arrangements for publishing details of payments to GP practices;
- the potential role of commissioning support services; and
- the supporting role of NHS England.

2. Co Commissioning Application

2.1 On 9 January 2015 East Lancashire CCG submitted an expression of interest for delegated commissioning and a requirement of this application was to include a Draft Conflict of Interest Policy that has been revised in line with NHS England's recently published statutory guidance on managing conflicts of interest. The revised policy is attached as **Appendix A**.

2.2 The CCG Remuneration Committee have considered and approved the draft policy. In order to provide assurance to NHS England the draft policy requires ratification by the Governing Body.

3. Recommendations

3.1 Members are asked to:

Consider the draft Conflicts of Interest Policy and ratify the decision of the Remuneration Committee.

Debra Atkinson
Corporate Business Manager

Appendix A

Draft Document

CONFLICT OF INTEREST POLICY

Ref:	ELCCG_Corp_02
Version:	Version 3
Supersedes:	Version 2 of same policy
Name and Role of Senior Officer:	Mark Youlton Chief Finance Officer
Approved by:	Remuneration Committee
Ratified by:	Governing Body
Date ratified:	<i>To be completed by Corporate Team</i>
Review date:	
Target audience:	All CCG staff

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Introduction

1. All Clinical Commissioning Groups (CCGs) manage conflicts of interest as part of their day-to-day activities. Effective handling of such conflicts is crucial for the maintenance of public trust in the commissioning system. Importantly, it also serves to give confidence to patients, providers, Parliament and tax payers that CCG commissioning decisions are robust, fair, transparent and offer value for money.
2. The aims of this guidance are to:
 - a enable the CCG and clinicians in commissioning roles to demonstrate that they are acting fairly and transparently and in the best interest of their patients and local populations;
 - b ensure that the CCG operates within the legal framework, but without being bound by over-prescriptive rules that risk stifling innovation;
 - c safeguard clinically led commissioning, whilst ensuring objective investment decisions;
 - d provide the public, providers, Parliament and regulators with confidence in the probity, integrity and fairness of commissioners' decisions; and
 - e uphold the confidence and trust between patients and GP, in the recognition that individual commissioners want to behave ethically but may need support and training to understand when conflicts (whether actual or potential) may arise and how to manage them if they do.
3. The guidance incorporates the safeguards for the management of conflicts of interest set out in the previously issued guidance, including:
 - the nature of conflicts of interest;
 - arrangements for declaring interests;
 - maintaining a register of interests;
 - keeping a record of the steps taken to manage a conflict;
 - excluding individuals from decision-making where a conflict arises; and
 - engagement with a range of potential providers on service design.
4. In addition, it sets out:
 - the additional factors that the CCG must address when commissioning primary medical care services under delegated commissioning arrangements.
 - the steps that CCG will take to assure the Audit Committee, Health and Wellbeing Board(s), NHS England and, where necessary, their auditors, that these services are appropriately commissioned from GP practices;

- procedures for decision-making in cases where all the GPs (or other practice representatives) sitting on a decision-making group have a potential financial interest in the decision;
- arrangements for publishing details of payments to GP practices;
- the potential role of commissioning support services; and
- the supporting role of NHS England.

DRAFT

What are conflicts of interest?

5. 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, for a conflict of interest to occur.

“For the purposes of Regulation 6 [*National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013*¹], a conflict will arise where an individual's ability to exercise judgement or act in their role in the **commissioning of services** is impaired or influenced by their interests in the **provision of those services**.”

Monitor - Substantive guidance on the Procurement, Patient Choice and Competition Regulations (December 2013)

6. As well as direct financial interests, conflicts can arise from an indirect financial interest (e.g. payment to a spouse) or a non-financial interest (e.g. reputation). Conflicts of loyalty may arise (e.g. in respect of an organisation of which the individual is a member or with which they have 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. Depending upon the individual circumstances, these factors can all give rise to potential or actual conflicts of interest.
7. For a commissioner, a conflict of interest may therefore arise when their judgment as a commissioner could be, or be perceived to be, 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 award of a new contract to 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.

Legislative framework

8. The starting point is section 14O of the Act. This sets out the minimum requirements in terms of what both NHS England and CCGs must do in terms of managing conflicts of interest. For all CCGs, this means that they must:
 - Maintain appropriate registers of interests;
 - Publish or make arrangements for the public to access those registers;

¹ <http://www.legislation.gov.uk/ukxi/2013/257/contents/made>

- Make arrangements requiring the prompt declaration of interests by the persons specified (members and employees) and ensure that these interests are entered into the relevant register;
 - Make arrangements for managing conflicts and potential conflicts of interest (e.g. developing appropriate policies and procedures); and
 - Have regard to guidance published by NHS England and Monitor in relation to conflicts of interest.
9. Section 14O is supplemented by the procurement specific requirements set out in the National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013. In particular, regulation 6 requires the following:
- The CCG must not award a contract for the provision of NHS health care services where conflicts, or potential conflicts, between the interests involved in commissioning such services and the interests involved in providing them affect, or appear to affect, the integrity of the award of that contract; and
 - The CCG must keep a record of how it managed any such conflict in relation to NHS commissioning contracts it enters into. (As set out below, details of this should also be published by the CCG.)
10. An interest is defined for the purposes of regulation 6 as including an interest of the following:
- a member of the commissioner organisation;
 - a member of the governing body of the commissioner;
 - a member of its committees or sub-committees or committees or subcommittees of its governing body
 - an employee or
 - a contractor of services (sub-contractor)
11. As with section 14O, regulation 6 sets out the basic framework within which the CCG must operate. The detailed requirements are set out in the guidance issued by Monitor (*Substantive guidance on the Procurement, Patient Choice and Competition Regulations*) and, in particular, section 7 of that statutory guidance.
12. Monitor's view is that care must be taken to ensure that conflicts do not affect, or appear to affect, the integrity of the award of commissioning contracts. It is important to ensure that the management of conflicts of interest includes the management of perceived conflicts and that there is an appropriate record of how such issues are managed, particularly in the context of specific procurement decisions. Please see below for further guidance on how such information should be recorded and published. Clear and robust decision making processes must be put in place to deliver co-commissioning and give the public and providers confidence in the integrity of the decisions made.

Principles and general safeguards

13. The general safeguards that will be needed to manage conflicts of interest will vary to some extent, depending on at what stage in the commissioning cycle decisions are being made. The following principles will need to be integral to the commissioning of all services, including decisions on whether to continue to commission a service, such as by contract extension.
14. Conflicts of interest can be managed by:
 - **Doing business appropriately.** If commissioners get their needs assessments, consultation mechanisms, commissioning strategies and procurement procedures right from the outset, then conflicts of interest become much easier to identify, avoid and/or manage, because the rationale for all decision-making will be clear and transparent and should withstand scrutiny;
 - **Being proactive, not reactive.** Commissioners should seek to identify and minimise the risk of conflicts of interest at the earliest possible opportunity, for instance by:
 - considering potential conflicts of interest when electing or selecting individuals to join the governing body or other decision-making bodies;
 - ensuring individuals receive proper induction and training so that they understand their obligations to declare conflicts of interest.

They should establish and maintain registers of interests, and agree in advance how a range of possible situations and scenarios will be handled, rather than waiting until they arise;
 - **Assuming that individuals will seek to act ethically and professionally, but may not always be sensitive to all conflicts of interest.** Rules should assume people will volunteer information about conflicts and, where necessary, exclude themselves from decision-making, but there should also be prompts and checks to reinforce this;
 - **Being balanced and proportionate.** Rules should be clear and robust but not overly prescriptive or restrictive. They should ensure that decision-making is transparent and fair, but not constrain people by making it overly complex or cumbersome;
 - **Openness.** Ensuring early engagement with patients, the public, clinicians and other stakeholders, including local Healthwatch and Health and Wellbeing Boards, in relation to proposed commissioning plans;

- **Responsiveness and best practice.** Ensuring that commissioning intentions are based on local health needs and reflect evidence of best practice – securing ‘buy in’ from local stakeholders to the clinical case for change;
- **Transparency.** Documenting clearly the approach taken at every stage in the commissioning cycle so that a clear audit trail is evident;
- **Securing expert advice.** Ensuring that plans take into account advice from appropriate health and social care professionals, e.g. through clinical senates and networks, and draw on commissioning support, for instance around formal consultations and for procurement processes;
- **Engaging with providers.** Early engagement with both incumbent and potential new providers over potential changes to the services commissioned for a local population;
- **Creating clear and transparent commissioning specifications** that reflect the depth of engagement and set out the basis on which any contract will be awarded;
- **Following proper procurement processes and legal arrangements,** including even-handed approaches to providers;
- **Ensuring sound record-keeping, including up to date registers of interests;** and
- **A clear, recognised and easily enacted system for dispute resolution.**

15 These general processes and safeguards should apply at all stages of the commissioning process, but will be particularly important at key decision points, e.g., whether and how to go out to procurement of new or additional services.

Maintaining a register of interests and a register of decisions

Statutory requirements

The CCG must maintain one or more registers of interest of: the members of the group, members of its governing body, members of its committees or sub-committees of its governing body, and its employees. The CCG must publish, and make arrangements to ensure that members of the public have access to these registers on request.

The CCG must make arrangements to ensure individuals declare any conflict or potential conflict in relation to a decision to be made by the group as soon as they become aware of it, and in any event within 28 days. CCGs must record the interest in the registers as soon as they become aware of it.

16. When members declare interests, this must include the interests of all relevant individuals within their own organisations (e.g. partners in a GP practice), who have a relationship with the CCG and who would potentially be in a position to benefit from the CCG's decisions.
17. When entering an interest on its register of interests, the CCG will ensure that it includes sufficient information about the nature of the interest and the details of those holding the interest.
18. The CCG will ensure that, as a matter of course, declarations of interest are made and regularly confirmed or updated. This includes the following circumstances:

On appointment:

Applicants for any appointment to the CCG or its governing body will be asked to declare any relevant interests. When an appointment is made, a formal declaration of interests will again be made and recorded.

At meetings:

All attendees will be asked to declare any interest they have in any agenda item before it is discussed or as soon as it becomes apparent. Even if an interest is declared in the register of interests, it should be declared in meetings where matters relating to that interest are discussed. Declarations of interest will be recorded in minutes of meetings.

Quarterly:

The CCG has a system in place to satisfy themselves on a quarterly basis that their register of interests is accurate and up to date.

On changing role or responsibility:

Where an individual changes role or responsibility within a 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.

19. In keeping with the regulations, individuals who have a conflict should declare this as soon as they become aware of it, and in any event not later than 28 days after becoming aware.
20. Whenever interests are declared, they should be reported to the Board Administration Manager, who will then update the register accordingly.

Note: Monitoring compliance with this policy will be considered as part of any legal or professional body investigation. Failure to declare an interest where this policy deems it to be appropriate may result in the board member being removed from office in line with the CCG's constitution. Failure to comply with this policy will be addressed under the disciplinary processes of the CCG, or otherwise as set out in the CCG's Standing Orders for Members of the Governing Body.

See Annexes 1 and 2 for declaration of interest's templates

Register of procurement decisions

21. The CCG will also maintain a register of procurement decisions taken, including:
 - the details of the decision;
 - who was involved in making the decision (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 by the CCG.
22. The register will be updated whenever a procurement decision is taken.
23. In the interests of transparency, the register of interests and the register of decisions will be publicly available and easily accessible to patients and the public including by:

- ensuring that both registers are available in a prominent place on the CCG’s website; and
 - making both registers available upon request for inspection at the CCG headquarters.
24. Individuals without internet access will be invited to view the register(s) at the CCG’s headquarters.
25. The registers will form part of the CCG’s annual accounts and will thus be signed off by external auditors.

Procurement issues

26. The NHS Act, the Health and Social Care Act (“the HSCA”) and associated regulations set out the statutory rules with which commissioners are required to comply when procuring and contracting for the provision of clinical services. They need to be considered alongside the Public Contract Regulations² and, where appropriate, EU procurement rules. Monitor’s *Substantive guidance on the Procurement, Patient Choice and Competition Regulations* advises that the requirements within these create a framework for decision making that will assist commissioners to comply with a range of other relevant legislative requirements.
27. The Procurement, Patient Choice and Competition Regulations place requirements on commissioners to ensure that they adhere to good practice in relation to procurement, do not engage in anti-competitive behaviour that is against the interest of patients, and protect the right of patients to make choices about their healthcare.
28. The regulations set out that commissioners must:
- manage conflicts and potential conflicts of interests 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.

General considerations and use of the template

29. The most obvious area in which conflicts could arise is where a CCG commissions (or continues to commission by contract extension) healthcare services, including GP services, in which a member of the CCG has a

financial or other interest. This may most often arise in the context of co-commissioning of primary care, particularly with regard to delegated or joint arrangements, but may also arise in respect of any commissioning issue where GPs are current or possible providers. The CCG will use the procurement template at **annex 3** when drawing up commissioning plans for services where this potentially is the case.

30. The CCG will make evidence of its deliberations on conflicts publicly available. The template evidences this and supports CCGs in fulfilling their duty in relation to public involvement. It provides appropriate assurance:
- that the CCG is seeking and encouraging scrutiny of its decision-making process;
 - to Health and Wellbeing Boards, local Healthwatch and to local communities that the proposed service meets local needs and priorities; it will enable them to raise questions if they have concerns about the approach being taken;
 - to the audit committee and, where necessary, external auditors, that a robust process has been followed in deciding to commission the service, in selecting the appropriate procurement route, and in addressing potential conflicts; and
 - to NHS England in their role as assurers of the co-commissioning arrangements.

Designing service requirements

31. It is good practice to engage relevant providers, especially clinicians, in confirming that the design of service specifications will meet patient need. Such engagement, done transparently and fairly, is entirely legal. However, 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.
32. The CCG will seek, as far as possible, to specify the outcomes that it wishes to see delivered through a new service, rather than the process by which these outcomes are to be achieved. As well as supporting innovation, this helps prevent bias towards particular providers in the specification of services.
33. Such engagement should follow the three main principles of procurement law, namely equal treatment, non-discrimination and transparency. This includes ensuring that the same information is given to all.

34. Other steps include:

- advertise the fact that a service design/re-design exercise is taking place widely and invite comments from any potential providers and other interested parties (ensuring a record is kept of all interactions);
- as the service design develops, engage with a wide range of providers on an ongoing basis to seek comments on the proposed design, e.g. via the commissioner's website or via workshops with interested parties;
- use engagement to help shape the requirement to meet patient need but take care not to gear the requirement in favour of any particular provider(s);
- if appropriate, engage the advice of an independent clinical adviser on the design of the service;
- be transparent about procedures;
- ensure at all stages that potential providers are aware of how the service will be commissioned; and
- maintain commercial confidentiality of information received from providers.

35. When engaging providers on service design, the CCG has ultimate responsibility for service design and for selecting the provider of services. Monitor has issued guidance on the use of provider boards in service design.

36. The CCG will also ensure that it has systems in place for managing conflicts of interest on an ongoing basis, by monitoring a contract that has been awarded to a provider in which an individual commissioner has a vested interest.

Governance and decision-making processes

Statutory requirement

37. The CCG has arrangements for managing conflicts of interest, and potential conflicts of interest, in such a way as to ensure that they do not, and do not appear to, affect the integrity of its decision-making.

38. The CCG has reviewed its governance structures for managing conflicts of interest to ensure that they reflect current guidance and are appropriate, particularly in relation to co-commissioning. This has entailed consideration of the following:

- the make-up of its governing body and committee structures (including, where relevant, the approach set out below for decision-making in delegated commissioning of primary care);
- whether there are sufficient management and internal controls to detect breaches of the CCG's conflicts of interest policy, including appropriate external oversight and adequate provision for whistleblowing;
- how non-compliance with policies and procedures relating to conflicts of interest will be managed (including how this will be addressed when it relates to contracts already entered into). As well as actions to address non-compliance, the CCG has procedures in place to review any lessons to be learned from such cases, by the CCG's audit committee conducting an incident review;
- reviewing and revising approaches to the CCG's registers of interest, together with the introduction of a record of decisions, as set out above;
- Whether any training or other programmes are required to assist with compliance, including participation in training offered by NHS England.

Appointing governing body or committee members

39. The CCG considers on a case by case basis whether conflicts of interest should exclude individuals from being appointed to the governing body or to a committee or sub-committee of the CCG or governing body, as set out in the CCG's constitution.
40. This includes an assessment of the materiality of the interest, in particular whether the individual (or a family member or business partner) could benefit from any decision the governing body might make. This will be particularly relevant for any profit sharing member of any organisation but will also be considered for all employees and especially those operating at senior or governing body level.
41. The extent of the interest also forms part of this consideration process. If it is related to an area of business significant enough that the individual would be unable to make a full and proper contribution to the governing body, that individual cannot become a member of the governing body.
42. Any individual who has a material interest in an organisation which provides, or is likely to provide, substantial services to the CCG (either as a provider of healthcare or commissioning support services) cannot be a member of the governing body if the nature of their interest is such that they are likely to need to exclude themselves from decision-making on so regular a basis that it significantly limits their ability to effectively operate as a governing body

member. Specific considerations in relation to delegated commissioning of primary care are set out below.

Decision-making when a conflict of interest arises: general approaches

43. Where certain members of a decision-making body (be it the governing body, its committees or sub-committees, or a committee or sub-committee of the CCG) have a material interest, they should either be excluded from relevant parts of meetings, or join in the discussion but not participate in the decision making itself (i.e., not have a vote).
44. The chair of the meeting has responsibility for deciding whether there is a conflict of interest and the appropriate course of corresponding action. In making such decisions, the chair will consult the member of the governing body who has responsibility for issues relating to conflicts of interest. All decisions, and details of how any conflict of interest issue has been managed, should be recorded in the minutes of the meeting and published in the registers.
45. The CCG will to decide in advance who will take the chair's role for discussions and decision-making in the event that the chair of a meeting is conflicted, or how that will be decided at a meeting where that situation arises.
46. Depending on the nature of the conflict, GPs or other practice representatives could be permitted to join in discussions by the governing body, or such other decision-making body as the CCG has created, about the proposed decision, but should not take part in any vote on the decision.
47. In many cases, e.g., where a limited number of GPs have an interest, it is straightforward for relevant individuals to be excluded from decision making. In the context of delegated commissioning, the committee structure set out below in relation to decision making for primary medical care has been designed to ensure that lay member and executive involvement ensures that robust decisions can be taken even where there are actual or potential conflicts of interest identified.
48. In some cases, all of the GPs or other practice representatives on a decision making body could have a material interest in a decision, e.g., where the CCG is proposing to commission services on a direct award 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 AQP. Where such a situation relates to primary medical services, the arrangements set out below provide a mechanism for decision-making.

49 For decision making where such a conflict arises and which are not covered by the primary medical care arrangements, the CCG adopts the following approach:

- where the initial responsibility for the decision does not rest with the governing body, 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 and executive members and the registered nurse and secondary care doctor;
- where the decision rests with the governing body, consider
 - a) requiring another of the Group's committees or sub-committees, which can be quorate to progress the item of business, or if this is not possible,
 - b) Inviting on a temporary basis one or more of the following to make up the quorum (where these are permitted members of the Governing Body or committee / sub-committee in question) so that the Group can progress the item of business:
 - i) A member of the Group who is an individual
 - ii) An individual appointed by a member to act on its behalf in the dealings between it and the Group:
 - iii) A member of a relevant Health and Wellbeing Board
 - iv) A member of a Governing Body of another clinical commissioning group.
- ensure that rules on quoracy enable decisions to be made.

These arrangements must be recorded in the minutes.

50 Specific issues and potential approaches in relation to delegated or joint commissioning of primary care are set out below.

Decision-making when a conflict of interest arises: primary medical care

51 Procurement decisions relating to the commissioning of primary medical services will be made by a committee of the CCG's governing body.

52. The membership of the committee has been constituted so as to ensure that the majority is held by lay and executive members, including non-GP clinical representatives (ie the CCG's secondary care specialist and Governing Body Nurse Lead).

53. Any conflicts of interest issues will be considered on an individual basis. The specific composition is included in the terms of reference, and these ensure that the chair and vice-chair must always be lay members of the committee.
54. A standing invitation will be made to the CCG's local Healthwatch and Health and Wellbeing Board to appoint representatives to attend commissioning committee meetings, including, where appropriate, for items where the public is excluded from a particular item or meeting for reasons of confidentiality. These representatives do not form part of the membership of the committee. Where there is more than one local Healthwatch or Health and Wellbeing Board for a CCG's area, the CCG will agree with them which should be invited to attend the committee.
55. As a general rule, meetings of these committees, including the decision making and the deliberations leading up to the decision, will be held in public (unless the CCG has concluded it is appropriate to exclude the public).
56. The arrangements for primary medical care decision making do not preclude GP participation in strategic discussions on primary care issues, subject to appropriate management of conflicts of interest. They apply to decision making on procurement issues and the deliberations leading up to the decision.

Record keeping

57. As set out above a clear record of any conflicts of interest is kept by the CCG in its register of interests. It also records procurement decisions made, and details of how any conflicts that arose in the context of the decision have been managed. These registers are available for public inspection as detailed above.
58. The CCG ensures 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), the information published on its website includes the type of services being commissioned and the agreed price for each service. Further, the CCG incorporates all such details in its annual report. Where services are commissioned through an AQP approach information is publicly available about those providers who qualify to provide the service.

Role of commissioning support

59. Commissioning support services (CSSs) can play an important role in helping the CCG to decide the most appropriate procurement route, undertake procurements and manage contracts in ways that manage conflicts of interest and preserve integrity of decision-making. The CCG receives appropriate assurance that a CSS' business processes are robust

and enable the CCG to meet its duties in relation to procurement (including those relating to the management of conflicts of interest).

60. Where a CCG is undertaking procurement, one way to demonstrate that the CCG is acting fairly and transparently is for the CSSs to prepare and present information on bids, including an assessment of whether providers meet prequalifying criteria and an assessment of which provider provides best value for money.
61. A CCG cannot, however, lawfully delegate commissioning decisions to an external provider of commissioning support. Although CSSs are likely to play a key role in helping to develop specifications, preparing tender documentation, inviting expressions of interest and inviting tenders, the CCG itself:
 - determines and signs off the specification and evaluation criteria;
 - decides and signs off decisions on which providers to invite to tender; and
 - makes final decisions on the selection of the provider.

Annexes

Annex 1: Declaration of conflict of interests for bidders/contractors template

Annex 2: Declaration of interests for members/employees template

Annex 3: Procurement template

Annex 1: Declaration of conflict of interests for bidders/contractors template

NHS East Lancashire Clinical Commissioning Group Bidders/potential contractors/service providers declaration form: financial and other interests

This form is required to be completed in accordance with the CCG's Constitution, and 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 Board Administration Manager.
- The completed form should be sent to the Board Administration Manager.
- 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 Administration Manager.
- 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:

Name of Relevant Organisation:	
Interests	
Type of Interest	Details
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	

Name of Relevant Person	<i>[complete for all Relevant Persons]</i>
Interests	

Type of Interest	Details	Personal interest or that of a family member, close friend or other acquaintance?
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:

Annex 2: Declaration of interests for members/employees template

NHS East Lancashire Clinical Commissioning Group Member / employee/ governing body member / committee or sub-committee member (including committees and sub-committees of the governing body) [*delete as appropriate*] declaration form: financial and other interests

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:

- The CCG must make arrangements to ensure that the persons mentioned above declare any interest which may lead to a conflict with the interests of the CCG and /or NHS England and the public for whom they commission services in relation to a decision to be made by the CCG and/or NHS England or which may affect or appear to affect the integrity of the award of any contract by the 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 Administration Manager.
- The completed form should be sent by both email and signed hard copy to the Board Administration Manager.
- 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 CCG website at www.eastlancsccg.nhs.uk
- Any individual – and in particular members and employees of the CCG and/or NHS England- must provide sufficient detail of the interest, and the potential for conflict with the interests of the 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 the 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 the CCG.

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

Declaration:

Name:		
Position within or relationship with, the CCG or NHS England:		
Interests		
Type of Interest	Details	Personal interest or that of a family member, close friend or other acquaintance?
Roles and responsibilities held within member practices		
Directorships, including nonexecutive directorships, held in private companies or PLCs		

<p>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</p>		
<p>Shareholdings (more than 5%) of companies in the field of health and social care</p>		
<p>Positions of authority in an organisation (e.g. charity or voluntary organisation) in the field of health and social care</p>		
<p>Any connection with a voluntary or other organisation contracting for NHS services</p>		
<p>Research funding/grants that may be received by the individual or any organisation they have an interest or role in</p>		
<p>[Other specific interests?]</p>		
<p>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.</p>		

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.

Signed:

Date:

DRAFT

Annex 3: Procurement template

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

NHS East Lancashire Clinical Commissioning Group

Service:	
Question	Comment/Evidence
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?	
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? Have you recorded how you have managed any conflict or potential conflict?	
Why have you chosen this procurement route? ³	
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 and award of any contract?	

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)	
How have you determined a fair price for the service?	

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	
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
--

<p>What steps have been taken to demonstrate that the services to which the contract relates are capable of being provided by only one provider?</p>	
<p>In what ways does the proposed service go above and beyond what GP practices should be expected to provide under the GP contract?</p>	
<p>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?</p>	

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