ENCLOSURE: P

Agenda Item: 18/15

NHS Bexley Clinical Commissioning Group

Governing Body (public) meeting

DATE: 29 January 2015

Title	**Managing Conflicts of Interest**	
Recommended action for the Governing Body	That the Governing Body: **NOTE** the Conflicts of Interest updated guidance **DISCUSS** and **AGREE** recommendations for a conflicts of interest Panel.	
Executive summary	The CCG's constitution in Section 8 provides for conflicts of interests and how the CCG manages issues relating to conflicts of interest. The management of conflicts of interest is something that the CCG needs to keep at the forefront of our minds. As the proposals are developing with NHS Bexley CCG and other CCGs to be involved in co-commissioning; NHS England has issued a new statutory guidance as it is anticipated that issues of conflicts of interest will increase. The new guidance provides an update on managing conflicts of interests and on co-commissioning. As part of the statutory guidance the audit committee chair and accountable officer will be required to provide direct formal attestation to NHS England that the CCG has complied with this guidance. Subsequently, this attestation will form part of an annual certification. CCG approaches to management of conflicts of interest will also be considered on an on-going basis as part of CCG assurance. Further details will be issued early in 2015 as to the forms that the initial attestation, the annual certification and on-going assurance will take. As a good practice develops it is therefore recommended to set up a new Panel (Conflict of Interest Panel) to be responsible for all issues relating to conflicts of interests within the organisation.	
Which objective does this paper support?	**Patients:** Improve the health and wellbeing of people in Bexley in partnership with our key stakeholders	✓

Excellent healthcare – locally delivered

	People: Empower our staff to make NHS Bexley CCG the most successful CCG in (south) London		✓
	Pounds: Delivering on all of our statutory duties and become an effective, efficient and economical organisation		✓
	Process: Commission safe, sustainable and equitable services in line with the operating framework and which improves outcomes and patient experience		✓
Organisational implications	Key risks (corporate and/or clinical)	Failure to manage effectively conflicts of interest within the CCG.	
	Equality and diversity	Failure to manage effectively conflicts of interest may impact on equality and diversity.	
	Patient impact	Delivery of services and patient care may be impacted by failure to manage effectively conflicts of interest.	
	Financial	Failure to effectively manage conflicts of interests my lead to changes of commissioning decisions and financial impact on the CCG.	
	Legal issues	Challenges may result as a result of failure to manage effectively conflicts of interests.	
	NHS constitution	Conflicts of interest may result in a breach of the NHS Constitution.	
Consultation (public, member or other)	None identified		
Audit (considered/approved by other committees/groups)	The terms of reference for the Conflicts of Interest Panel will be submitted to the Governing Body for ratification.		
Communications plan	The terms of reference for the Conflicts of Interest Panel will be published on the intranet once it has been approved.		
Author	Elinam Attipoe, Corporate Governance and Risk Manager		
	Clinical lead Dr Howard Stoate	Executive sponsor Simon Evans-Evans Director of Governance and Quality	
Date	15 January 2015		

NHS
Bexley
Clinical Commissioning Group

Managing Conflicts of Interests: Statutory Guidance for CCGs

Introduction

If conflicts of interests are not managed effectively by CCGs, confidence in the probity of commissioning decisions and the integrity of clinicians involved could be seriously undermined. However with good planning and governance CCGs should be able to avoid these risks.

As a result of the above NHS England issued a new guidance for CCGs to assist with managing conflicts of interests as part of the day to day activities. Effective handling of 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.

With the introduction of co-commissioning and CCGs who have opted to take the opportunity will be able to commission care for their patients and populations in more coherent and joined-up ways however they will be 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 from NHS England.

In light of this new development, NHS England, in consultation with national stakeholders, has developed strengthened statutory guidance for the management of conflicts of interest. This guidance builds on and incorporates relevant aspects of existing NHS England guidance. The new guidance will supplant previously issued NHS England guidance for CCGs.

When a CCG is seeking to take on delegated or joint commissioning responsibilities, their audit committee chair and accountable officer will be required to provide direct formal attestation to NHS England that the CCG has complied with this guidance. Subsequently, this attestation will form part of an annual certification. CCG approaches to management of conflicts of interest will also be considered on an ongoing basis as part of CCG assurance. Further details will be issued early in 2015 as to the forms that the initial attestation, the annual certification and ongoing assurance will take.

Equality and diversity are at the heart of NHS England's values. Throughout the development of the policies and processes cited in this document, NHS England has given regard to the need to:

- Reduce health inequalities in access and outcomes of healthcare services
- Integrate services where this might reduce health inequalities

Aims of the new guide

NHS England's aim of issuing this guidance is to:

- Enable CCGs 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;

- Ensure that CCGs operate within the legal framework, but without being bound by over-prescriptive rules that risk stifling innovation;

- Safeguard clinically led commissioning, whilst ensuring objective investment decisions;

- Provide the public, providers, Parliament and regulators with confidence in the probity, integrity and fairness of commissioners' decisions; and

- 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.

The guidance incorporates the safeguards for managing conflicts of interests set out in the previous guidance including:

- The nature of conflicts of interests;
- 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 conflict arises and
- Engagement with a range of potential providers on service design.

Conflicts 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, for a conflict of interest to occur.

"For the purposes of Regulation 6 [*National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 20137*], 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*

It is a perception of wrongdoing, impaired judgement or undue influence that can be as detrimental as any of them actually occurring.

Legislative framework

The starting point for CCGs is section 14O of the Act. This sets out the minimum requirements in terms of what CCGs must do in terms of managing conflicts of interest. CCGs must:

- Maintain appropriate registers of interests;
- Publish or make arrangements for the public to access these registers;
- 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 regards to guidance published by NHS England and Monitors in relation to conflicts of interests.

Section 14O is supplemented by the procurement specific requirements set out in the National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 20139. In particular, regulation 6 requires the following:

- CCGs 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

- CCGs must keep a record of how it managed any such conflict in relation to NHS commissioning contracts it enters into. (As set out in section 8 below, details of this should also be published by the CCG.)

An interest is defined for the purpose 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 sub-committees of its governing body; or
- An employee.

Principles and general safeguards

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 contact extension.

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.

Summary

The guidance in addition to provides information on:

- The statutory requirements of maintaining a register of interests;
- Register of procurement decisions and procurement issues;
- Governance and decision-making processes including the appointment of Governing Body and committee members;
- Approaches to decision-making when a conflict of interest arises;

- Record keeping
- Transparency of GP earnings
- Statement of conduct expected of individuals in the CCG

Due to the CCG constitutional requirement that no meeting is quorate unless 50% of the membership are present and the CCG structures that ensure that the

CCG Constitutional position

Due to the CCG constitutional requirement that no meeting is quorate unless 50% of the membership are present and the CCG structures that ensure that the majority of our committees have a majority of clinicians we could have issues in the way we manage conflicts, as excluding members may make our committees and governing body unable to be quorate over all co-commissioning decisions

The current constitution allows for the CCG

8.4.9. Where 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 interest or potential conflicts of interest, the chair (clinical vice-chair or deputy) will determine whether or not the discussion can proceed.

8.4.9.1. In making this decision the chair will consider whether the meeting is quorate, in accordance with the number and balance of membership set out in the CCG's standing orders. Where the meeting is not quorate, owing to the absence of certain members, the discussion 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 interest, the chair of the meeting shall consult with the governing body on the action to be taken. This may include (Such a position shall be recorded in the minutes of the meeting):

8.4.9.1.1. Deferring the discussion and/or the passing of a resolution. The meeting must then proceed to the next business

8.4.9.2. requiring another of the CCG's committees or sub-committees, the CCG's governing body or the governing body's committees or sub-committees (as appropriate) which can be quorate to progress the item of business, or if this is not possible,

8.4.9.3. 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 CCG can progress the item of business:

8.4.9.3.1. a member of the clinical commissioning group who is an individual;
8.4.9.3.2. an individual appointed by a member to act on their behalf in the dealings between it and the clinical commissioning group;
8.4.9.3.3. a member of a relevant Health and Wellbeing Board;
8.4.9.3.4. a member of a governing body of another clinical commissioning group.

8.4.9.4. Reducing the quorum to 40% to include one clinical member

Recommendations

Recommendation 1: Create a "Conflicts of Interest Panel"

This panel will have oversight of the process and have the power to review how conflicts were managed in any particular incidence for the purpose of learning, in such capacity it will report to the Governing Body, but may be required to share reports with the Audit and Integrated Assurance Committee

Options

1. Structurally the panel can sit before the decision making group, or sit after a decision has been made to ratify that dictions have been taken appropriately. Working on the principle that the CCG has a full list of delegated responsibilities as to where decisions lay, it is recommended that the panel sits feeds into the decision making process rather than ratifies decisions.

2. Where other CCGs have CoI panels, that sit before a decision is made, they fall broadly into two camps

    a. The panel considers the matter in hand, calls in expert option as necessary (including from conflicted parties such as GPs) and makes recommendations to the Decision Making Committee (DMC) whether to accept or reject the proposal

    Within this option it is important that the panel should understand the full impact of the decision and will therefore want to hear from people affected, including those that would be excluded under normal CoI procedures. However, when deciding on the recommendation the panel should make the final decision alone.

or

b. The panel considers the process to make a decision – i.e. whether members of the Decision Making Committee should be excluded, quoracy changed, additional members co-opted etc.

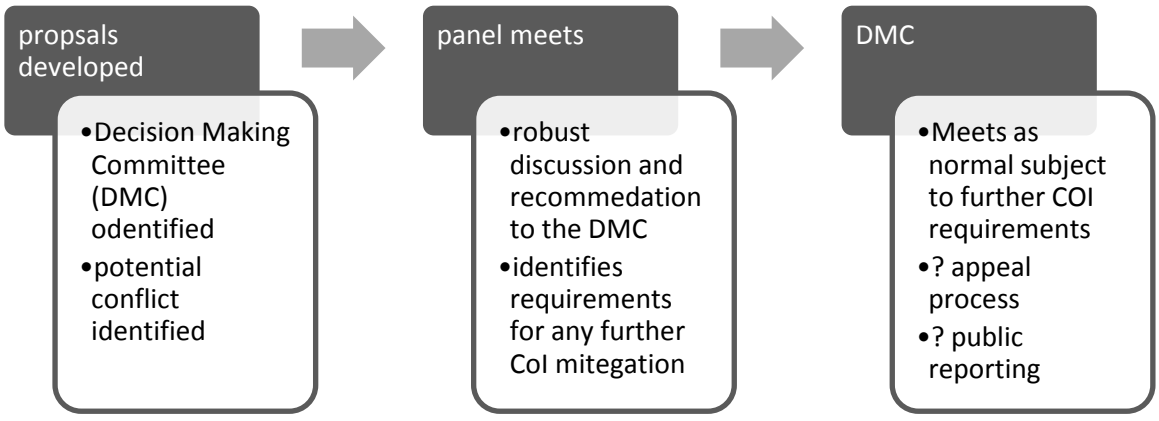
The Bexley Panel could follow option a, or b, or both

Due to the variety of potential conflicts it is recommended that the panel is selected from a range of people, chaired by a statutory member of the Governing Body (preferably non-manger)

Example Panel of 5 persons comprising

2 of Lay member for Governance , Lay Member for PPI, GB Nurse or GB secondary are Dr
1 of Chief Officer, Chief Financial Officer
1 of Non-Voting members of the Governing Body
1 of other CCG managers, non conflicted GP, member of the Patients Council, member of HealthWatch

Example operational arrangements for the panel



The guidance is attached as an appendix for the members' information.