Conflicts of Interest Policy

Effective from 16 March 2016
## Conflicts of Interest Policy - Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Introduction</td>
<td>4</td>
</tr>
<tr>
<td>2. Aims and Objectives</td>
<td>4</td>
</tr>
<tr>
<td>3. Scope of the Policy</td>
<td>5</td>
</tr>
<tr>
<td>4. Accountability</td>
<td>6</td>
</tr>
<tr>
<td>5. Managing Conflicts of Interest</td>
<td>7</td>
</tr>
<tr>
<td>5.1 Definition of Conflict of Interest</td>
<td></td>
</tr>
<tr>
<td>5.2 When to Make a Declaration</td>
<td></td>
</tr>
<tr>
<td>5.3 Register of Interests</td>
<td></td>
</tr>
<tr>
<td>5.4 Excluding Individuals from meetings or decision making when a conflict of interest arises</td>
<td></td>
</tr>
<tr>
<td>5.5 Procurement and Conflicts of Interest</td>
<td></td>
</tr>
<tr>
<td>5.6 Member Practices</td>
<td></td>
</tr>
<tr>
<td>5.7 Contractors and People who Provide Services to NHS Greater Huddersfield CCG</td>
<td></td>
</tr>
<tr>
<td>5.8 Code of Conduct for managing Conflicts of Interest where GP practices are potential providers of CCG commissioned services</td>
<td></td>
</tr>
<tr>
<td>5.9 Managing Conflicts of Interest on an Ongoing Basis</td>
<td></td>
</tr>
<tr>
<td>6. Public Sector Equality Duty</td>
<td>16</td>
</tr>
<tr>
<td>7. Implementation and Dissemination</td>
<td>16</td>
</tr>
<tr>
<td>8. Monitoring Compliance with and the Effectiveness of Procedural documents</td>
<td>17</td>
</tr>
<tr>
<td>9. References</td>
<td>17</td>
</tr>
<tr>
<td>10. Associated Documentation</td>
<td>17</td>
</tr>
</tbody>
</table>

### Appendices

<table>
<thead>
<tr>
<th>Appendix</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appendix 1</td>
<td>Written Declaration In Meeting Template 19</td>
</tr>
<tr>
<td>Appendix 2</td>
<td>Declaration of Interests Guidance and Form 20</td>
</tr>
<tr>
<td>Appendix 3</td>
<td>Declaration of Interests Flowchart 22</td>
</tr>
<tr>
<td>Appendix 4</td>
<td>Bidder’s Declaration Form 23</td>
</tr>
<tr>
<td>Appendix 5</td>
<td>Template for Commissioning Services from GP Practices 26</td>
</tr>
<tr>
<td>Appendix 6</td>
<td>Conflict of Interest Scenarios 28</td>
</tr>
</tbody>
</table>
1 Introduction

NHS Greater Huddersfield Clinical Commissioning Group (CCG), as commissioners of healthcare, needs to manage conflicts of interest in a way that demonstrates transparency, probity and accountability. This is particularly so when dealing with member practices, as, where GPs are both providing and commissioning healthcare, there is increased risk that decisions related to how care is provided and by who, may be influenced by private interests. This may call the probity of the CCG into question.

The CCG will manage conflicts of interest appropriately as it is essential to ensure that commissioning decisions made can withstand scrutiny and challenge. This will also protect the CCG, its staff and GP practices from any perceptions of wrongdoing.

The new national policy direction of co-commissioning between CCGs and NHS England provides the opportunity to commission care for patients and their local population in a more coherent and joined up way. However it also potentially opens CCGs up to greater risks of conflicts of interest and reinforces the need for the CCG to have robust and transparent arrangements in place to actively manage conflicts of interest and protect the integrity of the commissioning system.

Statutory Requirement and Guidance on Managing Conflicts of Interest

There are two separate pieces of legislation that require the CCG to manage conflicts of interest. These are:

i. The Health and Social Care Act 2006 (Section 140, conflicts of interest, of the 2006 Act, as inserted by section 25 of the 2012 Act (Health and Social Care Act 2012)

This legislation requires NHS Greater Huddersfield Clinical Commissioning Group (CCG) to make arrangements to manage conflicts of interest, including potential conflicts of interest.

ii. The NHS (Procurement, Patient Choice and Competition) Regulations 2013

This sets out that commissioners must:

- manage conflicts and potential conflicts of interest when awarding a contract by prohibiting the award of a contract when the integrity of the award has been, or appears to have been, affected by a conflict;

- keep appropriate records of how they have managed any conflicts in individual cases

iii. NHS England published detailed guidance for CCGs on the discharge of their functions and requires each CCG to have regard to the guidance. This includes:

1 Next Steps towards Primary Care Co-Commissioning (NHS England)
• **Managing Conflicts of Interests: Guidance for clinical commissioning groups, March 2013.**
• **Code of Conduct: Managing conflicts of interest where GP practices are potential providers of CCG-Commissioned services, April 2013.**

In addition, NHS England has issued statutory guidance on managing conflicts of interest which takes account of the actual and potential conflicts of interest associated with co-commissioning or the delegation of primary medical services commissioning.²

NHS Greater Huddersfield CCG’s Constitution defines what constitutes a conflict of interest and sets out arrangements for the management of conflicts of interest. This should be read in conjunction with this policy.

Managing conflicts of interest appropriately is needed to protect the integrity of the NHS commissioning system and to protect clinical commissioning groups and GP practices from any perceptions of wrong doing. This ensures that decisions made by the group will be taken, or seen to be taken, without any possibility of the influence of external or private interest.

2 **Aims and Objectives**

Conflicts of interest are inevitable in public life. This policy provides advice on recognising where and how conflicts of interest arise and managing these within a proper governance framework to ensure that conflicts of interest do not affect, or appear to affect, the integrity of the CCG’s decision-making process.

This policy establishes how NHS Greater Huddersfield CCG will ensure that best practice is followed in managing potential conflicts of interest. The policy further sets out the safeguards which will be put in place by NHS Greater Huddersfield CCG to ensure transparency, fairness and probity in decision making, including:

• Arrangements for declaring interests
• Maintaining a register of interests
• Keeping a record of steps taken to manage conflicts
• Excluding individuals from decision-making when a conflict arises
• Engagement with a range of potential providers on service design
• Managing situations where individuals have failed to declare an interest
• Additional factors that CCGs should address when commissioning primary medical care services, either under joint commissioning or delegated commissioning arrangements

This policy reflects the seven principles of public life established by the Nolan Committee which are as follows:

• Selflessness
• Integrity
• Objectivity

² Managing Conflicts of Interest: Statutory Guidance for CCGs, NHS England (December 2014)
- Accountability
- Openness
- Honesty
- Leadership

The policy further follows the advice from NHS England that conflicts of interest can be managed by:

- Doing business properly
- Being proactive not reactive
- Assuming that individuals will seek to act ethically and professionally, but may not always be sensitive to conflicts of interest
- Being balanced and proportionate

The benefits of managing conflicts of interest are:

- Maintaining confidence and trust between patients and GPs
- Enabling CCGs and member practices to demonstrate that they are acting fairly and transparently and that members of CCGs will always put their duty to patients before any personal financial interest
- Ensuring that CCGs operate within the legal framework

3 **Scope of the Policy**

This policy applies to NHS Greater Huddersfield CCG and applies to all employees, members of the CCG, co-opted members and members of the Governing Body and its committees who must comply with the arrangements outlined in this policy.

**NHS England staff**

In its own commissioning decisions and day-to-day business, NHS England is bound by the code set out in its Standards of Business Conduct (as supplemented by the Standing Orders). However, when serving on a joint committee with NHS Greater Huddersfield CCG, NHS England staff will also need to adhere to this policy.

*Where an individual fails to comply with this policy disciplinary action may be taken or the individual removed from office.*

Furthermore individuals contracted to work on behalf of NHS Greater Huddersfield CCG or otherwise providing services or facilities to the group will be made aware of their obligation with regard to declaring interests including potential conflicts of interest. This will be written into their contract for services.

The policy should be read in conjunction with the following policies:

- NHS Greater Huddersfield CCG Constitution
- Anti-Fraud, Bribery and Corruption Policy
- Standards of Business Conduct Policy
- Procurement Policy
- Code of Conduct for NHS Managers
- General Medical Council Good Medical Practice 2006
4 Accountability

Clinical Commissioning Group Governing Body. The CCG Governing Body will oversee this policy and will ensure that there are systems and processes in place to support all member practices and individuals who hold positions of authority or who can make or influence decisions to:

- Declare their interests through a public Register of Interest which is published and made available to the public via the GHCCG website or on request.
- Declare any relevant interests through discussions and proceedings so that any comments they make are fully understood by all others within that context.
- Ensure that where any conflict could have an effect on any decision or process the individual concerned will have no part in making or influencing the relevant decision.

The Governing Body will take such steps as it deems appropriate, and request information it deems appropriate from individuals to ensure that all conflicts of interest and potential conflicts of interest are declared.

Accountable Officer. This is the person with overall responsibility for this policy ensuring that a process for managing conflicts of interest is in place. The Accountable Officer should consult with the Clinical Lead.

The Accountable Officer will ensure that for every interest declared, either in writing or by oral declaration, arrangements are put in place to manage the conflict of interest or potential conflict of interests to ensure the integrity of the CCG’s decision making process.

Where necessary the Accountable Officer will put in writing to the relevant individual arrangements for managing the conflict of interests or potential conflicts of interest within a week of declaration. This will confirm the following:

a) When an individual should withdraw from a specified activity, on a temporary or permanent basis;

b) Monitoring of the specified activity undertaken by the individual, either by a line manager, colleague or other designated individual.

Governance & Corporate Manager. This is the person responsible for maintaining the registers of interests and ensuring that these are publicly available.

Heads of Service. Must ensure that members of staff are aware of this policy and processes to be followed.

All employees. To ensure openness and transparency in business transactions, all employees and appointments to the CCG are required to:

- ensure that the interests of patients remain paramount at all times;
- be impartial and honest in the conduct of their own official business;
- use public funds entrusted to them to the best advantage of the service, always ensuring value for money;
- ensure they do not abuse their official position for personal gain or the benefit of their family or friends;
- ensure that they do not seek to advantage or further private or other interests in the course of their official duties.

It is the responsibility of all employees and appointees to familiarise themselves with this policy and to comply with the provisions of it.

**Transactions in support of commissioning functions**

In any transaction undertaken in support of the CCG’s exercise of its commissioning functions (including conversations between two or more individuals, e-mails, correspondence and other communications), individuals must ensure, where they are aware of an interest, that they conform to the arrangements confirmed for the management of that interest. Where an individual has not had confirmation of arrangements for managing the interest, they must declare their interest at the earliest possible opportunity in the course of that transaction, and declare that interest as soon as possible thereafter. The individual must also inform either their Head of Service (in the case of employees), or the Chair of the Governing Body, of the transaction.

5. **Managing Conflicts of Interest**

NHS England, in Managing Conflicts of Interest: Guidance for Clinical Commissioning Groups (March 2013), describes a conflict of interest as follows:

“a conflict of interest occurs where an individual’s ability to exercise judgement or act in one 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 from 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. These are all conflicts of interest.

For a GP or any other individual involved in commissioning, a conflict of interest may, therefore, arise when their own judgement as an NHS commissioner could be, or be perceived to be, influenced and impaired by their own concerns and obligations as a healthcare or related provider, as a member of a particular peer, professional or special interest group, or as a friend or family member”.

NHS Greater Huddersfield CCG  Conflicts of Interest Policy March 2016 v4.0  8
CCGs need to provide clear guidance to their members and employees on what might constitute a conflict of interest, providing examples that are likely to arise. The 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.

**Privileged information**

No—no one should use confidential information acquired in the pursuit of their role within the CCG to benefit themselves or another connected person, or create the impression of having done so.

Members of the CCG, employees 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 publicly (such as by informing a potential supplier of an up and coming procurement in advance of other potential bidders), or any other information that is not otherwise available and in the public domain.

NHS Greater Huddersfield CCG will implement the following processes to ensure that conflicts of interest are managed appropriately within the organisation.

### 5.1 Definition of Conflict of Interest

Conflicts of interest may arise where an individual, personal or a connected person’s interests and /or loyalties conflict with those of the CCG. Such conflicts may create problems such as inhibiting free discussion which could result in decisions or actions that are not in the interests of the CCG and its public and risk the impression that the CCG has acted improperly.

NHS Greater Huddersfield CCG’s constitution identifies that a conflict of interest will include:

- 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 would 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);

• where an individual is closely related to, or in a relationship, including friendship, with an individual in the above categories.

It is not possible, or desirable to define all instances in which an interest may be a real or perceived conflict. It is for each individual to exercise their judgement in deciding whether to register any interests that may be construed as a conflict. If any individual is unsure as to whether an interest should be declared then that individual should seek advice from the Governance and Corporate Manager, the Accountable Officer or if relevant from the committee chair.

Examples of interests that will be deemed to be relevant will include:

• Roles and responsibilities held within member practices.
• Membership of a Partnership (whether salaried or profit sharing) seeking to enter into any contracts with NHS Greater Huddersfield CCG.
• Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with NHS Greater Huddersfield CCG.
• Directorships, including non-executive directorship held in private or public limited companies seeking to enter into contracts with NHS Greater Huddersfield CCG.
• Material Shareholdings of companies in the field of health and social care seeking to enter into contracts with NHS Greater Huddersfield CCG.
• 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 General Medical Council (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 Nursing and Midwifery Council (NMC)) would be required to declare in accordance with paragraph 7 of the NMC’s publication Code of Professional Conduct or any successor Code.
• Any interest which does or might constitute a conflict of interest in relation to the specification for or award of any contract to provide goods or services to NHS Greater Huddersfield CCG.
• Any research funding or grants that may be received by the individual or any organisation that they have an interest or role in.
• Any role or relationship which the public could perceive would impair or otherwise influence the individual’s judgement or actions in their role within the CCG.

If there is any doubt the assumption should be made that a conflict of interest occurs. The question of whether or not to declare an interest is an individual judgement.

NHS employees are advised not to engage in outside employment which may conflict with their NHS work. They are advised to tell their employer if they think they may be risking a conflict of interest in this area.

This policy is not, nor does it purport to be, a full statement of the law.
5.2  Declarations of Interest – When to make a declaration

Where an individual, i.e. an employee, CCG member, member of the Governing Body, or a member of a committee or a sub-committee of the CCG or its Governing Body has an interest, or becomes aware of an interest, which could lead to a conflict of interests in the event of the CCG considering an action or decision in relation to that interest, that must be considered as a potential conflict and is subject to the provisions of this policy.

Individuals should take all reasonable steps to identify conflicts of interest that arise or may arise in the course of the CCG providing any services or the delivery of CCG business.

Declarations of interest must be made orally or in writing as soon as an individual becomes aware of it, and in any event in writing within 28 days of the individual becoming aware of the conflict.

Individuals are not required to declare all interests they may have outside of the CCG, but rather those interests which could relate to or could impact on the CCG business.

Individuals should register all relevant interests as described below and should also declare any personal interest when dealing with or discussing a matter to which it is pertinent.

**On appointment**
All CCG Governing Body and Committee members, advisors to the Governing Body, and employees will be required to complete a Declaration of Interests proforma upon their appointment to their position. The proforma is attached at Appendix 2.

**Annually**
All interests will be declared annually. The Governance & Corporate Manager will co-ordinate the annual declaration process. This will be complemented by a quarterly check that the register of interests is accurate and up to date.

**At meetings**
At meetings all attendees will be asked to declare any interest they have in any agenda items at the start of the meeting or as soon as it becomes apparent. This applies even if the matter is recorded in the Register of Interests. Declarations of interest will be an agenda item at each meeting and any interests declared will be recorded in the minutes. Minutes should clearly specify the nature and extent of the interest, an outline of the discussion, the action taken to manage the conflict and the decisions made with regard to the course of action taken. A written declaration should be made by the individual as soon as possible using the forms within this policy.

Where an interest has been previously declared, in relation to the scheduled or likely business of any meeting where the business to which that interest relates is
discussed, the individual concerned will bring this to the attention to the chair of the meeting, together with details of arrangements which have been confirmed for the management of the interest.

**On changes to role or responsibility**
Where a person’s role changes within NHS Greater Huddersfield CCG, any change to their interests must be declared.

**On any other change of circumstances**
Where an individual’s circumstances change in a manner that affects their interests a further declaration must be made.

Where an interest has been declared, either in writing or orally the declarer will ensure that before participating in any activity connected with the CCG’s exercise of its commissioning functions, they have received confirmation of the arrangements to manage the conflict of interest or potential conflict of interest from the Accountable Officer.

Where an individual is aware of an interest which:

a) has not been declared, either in writing or orally, they will declare this at the start of the meeting;
b) has previously been declared, in relation to the scheduled or likely business of the meeting, the individual concerned 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 conflicts of interest or potential conflicts of interests.

Any declarations of interests, and arrangements agreed in any meeting of the CCG, committees or sub-committees, or the Governing Body, the Governing Body’s committees or sub-committees, will be recorded in the minutes.

If an individual fails to declare an interest that, had it been known, may have affected the decision-making process, disciplinary action or criminal sanctions may be taken.

### 5.3 Register of Interests

NHS Greater Huddersfield CCG must ensure that, when members declare interests, this includes all the interests of the relevant individuals within their organisation (e.g. GP partners in the GP practice) who have a relationship with the CCG and who would potentially be in a position to benefit from the CCG’s decisions.

NHS Greater Huddersfield CCG will maintain a Register of Interests of

a) the members of the group;
b) the members of the NHS Greater Huddersfield CCG Governing Body;
c) the members of its committees or sub committees and the committees or sub-committees of its Governing Body; and
d) its employees.
The Accountable Officer will ensure that the Register of Interests is reviewed regularly and updated whenever a new or revised interest is declared.

Individuals will be required to declare any interest they have, or changes to registered interests, as soon as they are aware of it and no later than 28 days after becoming aware in writing to the Chair of the Governing Body. Where an individual is unable to provide a declaration in writing, for example if a conflict becomes apparent in the course of a meeting, they will make an oral declaration before witnesses (those members present), and provide a written declaration as soon as possible thereafter. A proforma is attached to enable individuals to provide written declarations in or immediately after meetings (Appendix 1).

Individuals will also be expected to confirm their interests annually and the Governance & Corporate Manager will co-ordinate the process of collating declarations and updating the Register. Nil declarations must also be made.

Any individual applying for posts at NHS Greater Huddersfield CCG or seeking appointment to the Governing Body will be required to declare any potential conflicts of interest during the appointment process. Where a question is raised as to whether this could impact upon the ability to make an appointment further guidance should be sought from the Accountable Officer.

The Register of Interests is held by the Governance & Corporate Manager on behalf of the Accountable Officer and will be reviewed on a regular basis to ensure it is accurate and up to date, reported to the Audit Committee and will be publically available on NHS Greater Huddersfield CCG’s website. The Accountable Officer will make themselves available to provide any advice to any individual who believes they have, or may have, a conflict of interest. Where the Accountable Officer wishes to seek advice on their own interests, she/he should consult the lay member leading on audit and conflict of interest matters.

A Declaration of Interests Flowchart is attached at Appendix 3 to illustrate the process set out within the Policy.

5.4 Excluding individuals from meetings or decision making when a conflict of interest arises.

The Chair of each CCG meeting will have responsibility for deciding where there are conflicts of interest during meetings and the course of action which will be taken. During this situation the Chair may decide to consult with the Accountable Officer on the way forward. All decisions will be recorded in the minutes of meetings.

Where no arrangements have been confirmed regarding the management of the conflict of interests 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 will be recorded in the minutes of the meeting.

If an individual leaving the meeting impacts upon quoracy the Chair reserves the right to adjourn and reconvene the meeting when appropriate membership can be ensured.
Where the Chair of any meeting of the group, including committees, sub-committees, or the Governing Body and the Governing Body’s committees and sub-committees, has a personal interest, previously declared or otherwise, in relation to the scheduled or likely business of the meeting, they 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 interests or potential conflicts of interests 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 meeting or part of it. Where there is no Deputy Chair, the members of the meeting will select one.

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 interests or potential conflicts of interests, the Chair (or deputy) will determine whether or not the discussion can proceed.

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 interests, the Chair of the meeting shall consult with the Accountable Officer on the action to be taken.

This may include:

a) requiring another of the CCG’s committees or sub-committees, the 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,

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 CCG who is an individual;
ii) an individual appointed by a member practice to act on its behalf in the dealings between it and the clinical commissioning group;
iii) a member of a relevant Health and Wellbeing Board;
iv) a member of a Governing Body of another CCG.

Any decisions made will be recorded in the minutes of the meeting concerned.

5.5 Procurement and Conflicts of Interest

NHS Greater Huddersfield CCG recognises the importance in making decisions about the services it procures / commissions in a manner which does not call into question the reasons behind the procurement decision which has been made. NHS Greater Huddersfield CCG will commission and procure services in a manner which is open, transparent, fair and non-discriminatory.
NHS Greater Huddersfield CCG’s Procurement Policy provides further detail of the procurement processes to be followed.

The Procurement, Patient Choice and Competition Regulations (no.2) 2013 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 interests of patients and protect the right of patients to make choices about their healthcare.

The Regulations require commissioners to:

- 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.

5.6 **Contractors and people who provide services to the CCG**

Anyone seeking information in relation to procurement, or participating in a procurement, or otherwise engaging with the CCG in relation to the potential provision of services or facilities to the CCG, will be required to make a declaration of any relevant actual or potential conflict of interest.

Bidders will be asked to complete a formal declaration at the invitation to tender stage of the procurement process. This form is enclosed as Appendix 4.

5.7 **Register of procurement decisions**

The CCG will maintain a register of procurement decisions taken, to include:

- 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.

The register will be updated whenever a procurement decision is taken.

5.8 **Publication of decisions and contracts**

In the interests of transparency, the register of decisions and details of all contracts, including the value of the contracts, will be published on the CCG website following the agreement of the contract. Where it is decided to commission services through AQP, the type of service being commissioned and the agreed price for each service will also be included. Such details will also be set out in the annual report.

Where services are commissioned through an AQP approach, the CCG will ensure that there is information publicly available about those providers who qualify to provide the service.
The register of decisions and details of contracts will be made available for
inspection, on request to the CCG’s headquarters.

The register of decisions, together with the registers of interests will form part of the
annual report and as such will be subject to external audit.

5.9 Member Practices

The British Medical Association (BMA) have identified that a conflict of interest
may arise in the following instances:

- Where GPs may refer their patients to a provider company in which they have
  financial interest;
- Where GPs make decisions regarding the care of their patients to influence the
  ‘quality premium’ they receive through their CCG;
- Where enhanced services are commissioned that could be provided by
  member practices.

NHS Greater Huddersfield CCG will expect that member practices must continue to
ensure that patients are referred to the service that they in their professional opinion
believe is most appropriate for that patient’s condition, whilst responding to the
wishes and choices of that patient. Where the most appropriate service to which the
patient is referred is also one in which the GP has a vested interest the GP must
inform them of this fact, in line with paragraph 76 of the General Medical Council

5.10 Managing conflicts of interest: contractors and people who provide services
to NHS Greater Huddersfield CCG

Anyone seeking information in relation to a procurement, or participating in a
procurement, or otherwise engaging with the CCG in relation to the potential
provision of services or facilities to the group, will be required to make a declaration
of any relevant conflict / potential conflict of interest.

Bidders will be asked to complete a formal declaration at the invitation to tender
stage of the procurement process. This form is enclosed as Appendix 4.

Anyone contracted to provide services or facilities directly to the CCG will be
subject to the same provisions of this policy in relation to managing conflicts of
interests. This requirement will be set out in the contract for their services.

5.11 Code of Conduct for Managing Conflicts of Interest where GP practices are
potential providers of CCG-commissioned services

5.11.1 Factors to address when commissioning services from GP practices

The attached template at Appendix 5 sets out the factors the CCG and its Audit
Committee should seek assurance on – and be ready to assure local communities,
Health and Wellbeing Boards and auditors – when commissioning services that
may potentially be provided by GP practices. Setting out these factors in a
consistent and transparent way as part of the planning process will enable the
organisation to seek and encourage scrutiny and enable local communities and
Health and Wellbeing Boards to raise questions if they have concerns about the approach being taken. Completed templates, or their equivalent, will be made publicly available.

The first set of questions are intended to apply equally to:

- services that it is proposed to commission through competitive tender where GP practices are likely to bid;
- services that it is proposed to commission through an Any Qualified Provider (AQP) approach, where GP practices are likely to be among the qualified providers that offer to provide the service; and
- services that it is proposed to commission through single tender from GP practices.

These questions – most of which are also relevant when commissioning services from non-GP providers – focus on demonstrating that the service meets local needs and priorities and has been developed in an inclusive fashion, involving other health professionals and patients and the public as appropriate. These are matters on which the local Health and Wellbeing Board will clearly wish to take a view.

The question on pricing applies to the AQP and single tender approaches.

There are specific questions on AQP about safeguards to ensure that patients are aware of the range of choices available to them. These requirements apply also to GP practices as providers of services, but it is essential that the CCG satisfies itself and others that these safeguards will be in place before commissioning the service.

The remaining questions are specific to single tenders from GP practices and focus on providing assurance that:

- there are no other capable providers, i.e. that this is the appropriate procurement route: where relevant, commissioning support services (CSUs) should ensure that they provide robust advice on this point; and
- the proposed service goes beyond the scope of the services provided by GP practices under their GP contract – this should be discussed with the NHS England area team if they are in any doubt on this point.

5.11.2 Providing assurance

The CCG will address the factors set out in the template when drawing up plans to commission a service for which GP practices may be potential providers. This will provide appropriate assurance:

- to Health and Wellbeing Boards and to local communities that the proposed service meets local needs and priorities; and
- 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.

The CCG will set these factors out when fulfilling their duty in relation to public involvement.
The factors include involving Health and Wellbeing Board(s), in accordance with CCG duties.

5.11.3 Preserving integrity of decision making process when all or most GPs have an interest in a decision

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). In many cases, e.g. where a limited number of GPs have an interest, it should be straightforward for relevant individuals to be excluded from decision-making.

In other cases, all of the GPs or other practice representatives on a decision-making body could have a material interest in a decision, particularly where it is proposed 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 AQP.

Section 5.5 gives details on excluding individuals from meetings or decision-making when conflicts of interests arise.

Depending on the nature of the conflict, GPs or other practice representatives could be permitted to join in the Governing Body’s discussion about the proposed decision, but should not take part in any vote on the decision.

5.11.4 Transparency - publication of contracts

Details of all contracts, including the value of the contracts, will be published on the CCG website as soon as contracts are agreed. Where it is decided to commission services through AQP we will publish on the CCG website the type of services we are commissioning and the agreed price for each service.

Such details should be set out in the annual report. Where services are commissioned through an AQP approach, we will ensure that there is information publicly available about those providers who qualify to provide the service.

5.11.5 Role of commissioning support

Commissioning support units (CSUSs) can play an important role in helping the CCG decide the most appropriate procurement route, undertake procurements and manage contracts in ways that manage conflicts of interest and preserve integrity of decision-making.

5.12 Managing conflicts of interest on an ongoing basis

NHS Greater Huddersfield CCG will continue to monitor its procedures for monitoring conflicts of interest to ensure that they continue to remain fit for purpose as the organisation develops.
6 Commissioning Primary Medical Services

Procurement decisions relating to the commissioning of primary medical services, delegated by NHS England to the CCG, will be made by the Primary Care Commissioning Committee. The Committee will act in accordance with the agreement entered into between NHS England and NHS Greater Huddersfield CCG, which will sit alongside delegated authority to make decisions within the remit as set out in its terms of reference.

The establishment of such a committee does not preclude GP participation in strategic discussions on primary medical care issues.

The Health & Well-Being Board and Local Healthwatch will be invited to send a representative to attend the Committee.

In order to ensure openness and transparency, the Committee will meet in public, except where the Committee may resolve to exclude the public from a meeting whenever publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other specified reasons.

The committee will be constituted to ensure that a majority is held by lay and executive members.

6 Public Sector Equality Duty

The Equality Act 2010 includes a general legal duty to

- eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act
- advance equality of opportunity between people who share a protected characteristic and people who do not share it
- foster good relations between people who share a protected characteristic and people who do not share it

The protected characteristics are:

- age
- disability
- gender reassignment
- marriage or civil partnership (only in respect of eliminating discrimination)
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

Public bodies have to demonstrate due regard to the general duty. This means active consideration of equality must influence the decision/s reached that will impact on patients, carers, communities and staff.

It is no longer a specific legal requirement to carry out an Equality Impact Assessment on all policies, procedures, practices and plans but as described
above, the CCG does need to be able to demonstrate that it has paid due regard to the general duty.

It is not considered necessary to carry out an EIA on this policy as it does not have an impact on patients, carers, staff or the wider community.

7 Implementation and Dissemination

NHS Greater Huddersfield CCG will ensure that all employees and decision makers are aware of the existence of this policy.

This policy will, following approval by the Audit Committee be disseminated to staff and member practices via the CCG intranet.

All staff will be notified of this policy via the CCG newsletter.

8 Monitoring Compliance with and the Effectiveness of Procedural Documents

Monitoring compliance of the policy will be via the Audit Committee and the Accountable Officer will take any action as necessary.

9 References


NHS Commissioning Board 2013 Managing Conflicts of Interest Guidance: Clinical Commissioning Groups (2013, March)

NHS Commissioning Board Code of Conduct: Managing conflicts of interest where GP practices are potential providers of CCG-Commissioned services. (2013, April)


Managing Conflicts of Interest Technical Appendix 1, (2012) NHS Commissioning Board

Ensuring Transparency and Probity, (2011) British Medical Association
Managing Conflicts of interests in Clinical Commissioning Groups, (2011) Royal College of General Practitioners / NHS Confederation

Good Medical Practice, (2006) General Medical Committee

NHS Greater Huddersfield Clinical Commissioning Group Constitution
10 Associated Documentation

NHS Greater Huddersfield Clinical Commissioning Group Constitution
Standards of Business Conduct Policy
Anti-Fraud, Bribery and Corruption Policy
Procurement Policy
### DECLARATION OF INTERESTS FORM – APPENDIX 1

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<tr>
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<tr>
<td>Meeting:</td>
<td>Date:</td>
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<tr>
<th>Agenda item in which you have an interest</th>
<th>Type of interest</th>
<th>Brief description of your interest</th>
<th>Agreed arrangements for managing conflict of interest</th>
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<td>Direct Pecuniary</td>
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<td>Indirect Pecuniary</td>
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<td>Non-pecuniary personal Relationship</td>
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Signed: | Dated:
Appendix 2

NHS GREATER HUDDERSFIELD CLINICAL COMMISSIONING GROUP – DECLARATION OF INTEREST FORM

This form is required to be completed in accordance with NHS Greater Huddersfield Clinical Commissioning Group’s Constitution and Conflicts of Interest Policy.

Notes:

- Within 28 days of a relevant event, members need to register their financial and other interests.
- If any assistance is required to complete this form please contact the Governance & Corporate Manager.
- The signed hard copy of the completed form should be sent to the Governance & Corporate Manager.
- Any changes to interests declared must also be registered within 28 days of the relevant event by completing and submitting a new declaration form.
- The register will be published in the Annual Report and on the CCG website.
- Members and employees completing this declaration form must provide sufficient detail of each interest so that a member of the public would be able to understand clearly the sort of financial or other interest the member has and the circumstances in which a conflict of interest with the business or running of the CCG might arise.
- If in doubt as to whether a conflict of interest could arise, a declaration of the interest should be made.

Interests that must be declared:

- 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.
- Shareholdings (more than 5%) of companies in the field of health and social care;
- Positions 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 contracting for NHS Services;
- Research/ funding grants that may be received by the individual or any organisation they have an interest or role in;
- Any other role or relationship which the public could perceive would impair or otherwise influence the individual's judgement or actions in their role with the CCG.

Whether such interests are those of the individual themselves or a family member, any other relationship or other acquaintance of the individual

Where there are no interests to declare a nil return must be submitted.
## Declaration of Interest Proforma

<table>
<thead>
<tr>
<th>Name</th>
<th>Position with the CCG e.g. Governing Body Member, Employee, Committee Member, CCG Member</th>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Type of Interest</th>
<th>Details</th>
<th>Personal interest or that of a family member, close friend or other acquaintance?</th>
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<tbody>
<tr>
<td>Roles and responsibilities held within member practices</td>
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<tr>
<td>Directorships, including non-executive directorships, held in private companies or PLCs</td>
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<tr>
<td>Ownership or part-ownership of private companies, businesses or consultancies likely to do business with the CCG</td>
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<tr>
<td>Shareholdings (of more than 5%) of companies in the field of health and social care</td>
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<tr>
<td>Positions of authority in an organisation (e.g. charity or voluntary organisation) in the field of health and social care</td>
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<tr>
<td>Any connection with a voluntary or other organisation contracting for NHS services</td>
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<tr>
<td>Research funding / grants that may be received by the individual or any organisation they have an interest or role in</td>
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<tr>
<td>Any other role of relationship which the public could perceive would impair or otherwise influence the individual’s judgement or actions in their role within the CCG</td>
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<tr>
<td>No interests to declare</td>
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**Declaration:**

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 Constitution and published accordingly. I understand that if I have provided information which is untrue or inaccurate then I may be liable for disciplinary and/or criminal action.

**Signed:** _______________________________  **Date:** ____________
NHS Greater Huddersfield CCG

Bidders/potential contractors/service providers’ declaration form: financial and other interests

This form is required to be completed in accordance with NHS Greater Huddersfield CCG’s Constitution

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.
- If any assistance is required in order to complete this form then the Relevant Organisation should contact the Governance & Corporate Manager.
- The completed form should be sent to the Governance & Corporate Manager.
- Any changes to interests declared either during the procurement process of during the terms of any contract subsequently entered into by the Relevant Organisation and the CCG must be notified to the CCG by completing a new declaration form and submitting to the Governance & Corporate Manager.
- Relevant organisations completing this declaration form must provide sufficient detail of each interest so that 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 might arise.
- If in doubt as to whether a conflict of interests could arise, a declaration of the interests should be made.
- If information is provided which is untrue or inaccurate, this may lead to disciplinary and/or criminal action.

Interests that must be declared:

- 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;
- 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, 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, desires or actions whether such interests are those of the Relevant Person themselves or of a family member, close friend or other acquaintance of the Relevant Person.
NHS Greater Huddersfield Clinical Commissioning Group

Bidders / potential contractors / service providers’ declaration form: financial and other interests

<table>
<thead>
<tr>
<th>Name of Relevant Organisation</th>
<th>Interests</th>
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<tbody>
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<td>Type of Interest</td>
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<tr>
<td>Provision of services or other work for the CCG</td>
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<tr>
<td>Provision of services or other work for any other potential bidder in respect of this project or procurement process</td>
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<tr>
<td>Any other connection with the CCG, 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.</td>
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<table>
<thead>
<tr>
<th>Name of Relevant Person</th>
<th>Complete for all relevant persons</th>
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</thead>
<tbody>
<tr>
<td>Interests</td>
<td>Type of Interest</td>
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<tr>
<td>Provision of services or other work for the CCG</td>
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<tr>
<td>Provision of services or other work for any other potential bidder in respect of this project or procurement process</td>
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</table>
Any other connection with the CCG, 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:
NHS Greater Huddersfield Clinical Commissioning Group  
(Template to be used when commissioning services that may potentially be provided by GP practices, including provider consortia, or organisations in which GPs have a financial interest)

<table>
<thead>
<tr>
<th>Service:</th>
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<tbody>
<tr>
<td><strong>Question</strong></td>
<td><strong>Comment/Evidence</strong></td>
</tr>
<tr>
<td>Questions for all three procurement routes (Competitive tender, AQP, Single tender)</td>
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</tr>
<tr>
<td>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?</td>
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<tr>
<td>How have you involved the public in the decision to commission this service?</td>
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<tr>
<td>What range of health professionals have been involved in designing the proposed service?</td>
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<tr>
<td>What range of potential providers have been involved in considering the proposals?</td>
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<tr>
<td>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)?</td>
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<tr>
<td>What are the proposals for monitoring the quality of the service?</td>
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<tr>
<td>What systems will there be to monitor and publish data on referral patterns?</td>
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<tr>
<td>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?</td>
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</table>
### Appendix 5

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
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<tbody>
<tr>
<td>Why have you chosen this procurement route?</td>
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<tr>
<td>What additional external involvement will there be in scrutinising the proposed decisions?</td>
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<tr>
<td>How will the CCG make its final commissioning decision in ways that preserve the integrity of the decision-making process?</td>
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<tr>
<td><strong>Additional question for AQP or single tender (for services where national tariffs do not apply)</strong></td>
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<tr>
<td>How have you determined a fair price for the service?</td>
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<tr>
<td><strong>Additional questions for AQP only (where GP practices are likely to be qualified providers)</strong></td>
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<tr>
<td>How will you ensure that patients are aware of the full range of qualified providers from whom they can choose?</td>
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<tr>
<td><strong>Additional questions for single tenders from GP providers</strong></td>
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<tr>
<td>What steps have been taken to demonstrate that the services to which the contract relates are capable of being provided by only one provider?</td>
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<tr>
<td>In what ways does the proposed service go above and beyond what GP practices should be expected to provide under the GP contract?</td>
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<tr>
<td>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?</td>
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3 Taking into account S75 regulations and NHS Commissioning Board guidance that will be published in due course, Monitor guidance, and existing procurement rules.
The following Scenarios are courtesy of The NHS Confederation and the Royal College of General Practitioners 2011:

**Scenario 1**

Three GPs and a practice manager who are members of the governing body of a clinical commissioning group have recently bought a small number of shares in GP Provident – a company set up by an investor and 16 local GP practices to provide tier-2 community health services. GP Provident has recently paid for two local GPs to be trained as GPs with a special interest (GPSIs) in gynaecology and has agreed to invest in the extension of a local surgery (where a commissioning group lead is a partner) and in purchasing ultrasound equipment so that a new GPSI service can be set up.

The CCG has recently published its strategic commissioning plan, which indicates that the group intends to see a shift of up to 30 per cent of outpatient gynaecology services from acute hospitals to community-based settings over the next three years, and that the CCG will be developing a specification for these community services to be delivered by Any Qualified Provider.

**Discussion**

Although the GPs and practice manager are not major shareholders in GP Provident, a conflict clearly exists as they have could made personal financial gain as a result of the CCG’s commissioning strategy. There is also a possibility that there could be a perception of actual wrongdoing. The CCG has to consider whether GP Provident has been given a competitive advantage over other providers or if these individuals have put themselves in a position to make a financial gain – due to access to insider knowledge about local commissioning intentions – and if it has put sufficient measures in place to avoid or remedy this.

The individuals concerned should have declared their interest in GP Provident when they bought the shares, and again at the point when the CCG began to discuss its commissioning strategy.

The CCG should have a policy that clearly identifies circumstances under which members of the governing body should not participate in certain activities. The governing body may have decided to exclude these members from certain decisions about the commissioning strategy in line with its policy, although in this case that would have removed four key decision-makers from a central part of the group’s business.

A decision to simply record the interest so that it is transparent might also be appropriate. Even if not excluded from discussion of the strategy, these individuals may well be excluded by the group’s policies from being involved in the development of the GPSI gynaecology service specifications (other than to the extent any other potential supplier might be involved in such service planning), or from any subsequent contract monitoring.

The CCG may wish to consider whether or not involvement with a provider company likely to develop services and bid for contracts in this way is compatible with being a CCG board member at all, as this scenario is likely to arise again. However, this situation should have been identified and dealt with at the point when individuals were being selected to join the CCG.

A decision should have been taken at that point on whether or not it would be appropriate for owners, directors or shareholders of local community service providers to be members of the governing body. If not, these individuals could not have been selected, or would be required to resign at the point when they decided to buy the shares.
Scenario 2

The diabetes lead of a CCG has been working on a community diabetes project for two years and has a plan to reduce diabetes outpatient’s activity by 50 per cent and to reinvest in primary care education, patient education, more specialist nurses and community consultant sessions. A cornerstone of this new service is a proposal to fund local practices for participating in GP and nurse education, and improving the prevention, identification and management of diabetes within primary care.

Discussion

Rather than benefiting a particular organisation, in this scenario all GP practices/primary care providers in the area could potentially benefit from the proposals being developed by primary care-based commissioners, at the expense of existing secondary care providers. The CCG may have to deal with the perception and challenge that the GP commissioners were favouring their ‘electorate’. However, there is nothing wrong with the proposal if it can demonstrate that it is possible and appropriate to reduce the number of people being referred to hospital for the management of diabetes and related complications, that it is likely to improve patient experience and outcomes overall, and that the service improvement required to achieve this relates specifically to general practices with registered lists of patients.

The CCG should have set out and communicated the case for change and the rationale for the proposed service model clearly and transparently before taking, or recommending, the final decision to proceed. When developing the diabetes commissioning strategy, the group should have consulted on, and then been absolutely clear about, who would have the opportunity to provide the service model. This should have been consistent with an existing commissioning strategy and procurement framework and with the Joint Strategic Needs Assessment and health improvement plans of the relevant health and wellbeing board.

Other qualified providers should be given the opportunity to provide those elements of the new service not specifically embedded in general practice, for example, specialist nursing and community-based consultant sessions.

Scenario 3

Dr X is the chair of a local commissioning group. He is married to Dr Y. Dr Y is the clinical director for Health R Us, a company which has developed risk stratification software designed to enable primary care providers to identify vulnerable patients at risk of going into hospital and help them to put measures in place to address this. Health R Us has offered to supply the software to Dr X’s CCG free of charge for one year to help develop it. It will then be offered at a discounted price because of the work that the group would have done in developing it and acting as a demonstration site.

Discussion

There is no immediate financial gain to Drs X and Y from the decision to accept the software free of charge for a year. However, there is potential future gain to Dr Y (and therefore to her husband) as the clinical director of a company that could profit from a product that her husband’s CCG has helped to develop, and from a preferential position as an incumbent supplier to that group.

Dr X should declare an interest and he should exclude himself from any decision-making about this project. Any decision subsequently taken by the rest of the group should depend on whether or not the product on offer would help them to achieve an existing, stated commissioning objective (that is to say they should not accept it just because it is on offer),
and whether or not the deal being offered was in line with the group’s existing policies for partnership working/joint ventures/sponsorship, etc.

If the CCG had a clear, prioritised commissioning strategy and policies for working with other organisations, from the outset, this decision should be fairly straightforward. However, there is a question as to whether or not the group should accept this offer at all. Although it may meet an explicit commissioning objective, it may not be appropriate even then to simply accept the offer without, at least, some kind of analysis of whether other companies might be willing or able to offer the same or better. The concern is not necessarily about the personal relationships involved, but more generally about whether this is an acceptable way for a public body to do business.

**Scenario 4**

Dr A is a member of a CCG with a longstanding interest in and commitment to improving health and social care services for older people. She has worked closely with local geriatrician, Dr B, for many years, including working as her clinical assistant in the past. They have developed a number of service improvement initiatives together during this time and consider themselves to be good personal friends.

Recently, they have been working on a scheme to reduce unscheduled admissions to hospital from nursing homes. It involves Dr B visiting nursing homes and doing regular ward rounds together with community staff. It has been trialled and has had a measure of success which has been independently verified by a service evaluation. They would now like to extend the pilot, and the foundation trust that employs Dr B has suggested that a local tariff should be negotiated with the CCG for this ‘out-reach’ service.

The CCG has decided instead to run a tender for an integrated community support and admission avoidance scheme, with the specification to be informed by the outcomes of the pilot.

**Discussion**

Due to her own involvement in the original pilot, association with the incumbent provider and allegiance to her friend and colleague, Dr A has a conflict of interest. She should not be involved in developing the tender, designing the criteria for selecting providers or in the final decision making even though she is a local expert. If the CCG has clear prompts and guidelines for its members, this should be obvious to Dr A, who should decide to exempt herself.

If the CCG is clear at the outset about its commissioning priorities and strategy and its procurement framework (setting out what kind of services would be tendered under what circumstances), its decision to tender for the service should not come as a surprise to the trust, or to the individuals involved.

The CCG need to ensure that they do not discourage providers, or their own members, from being innovative and entrepreneurial by being inconsistent or opaque in their commissioning decisions and activities.